



EMPLOYMENT TRIBUNALS

Claimant

Ms Sara Jones

v

Respondents

Revolution Zero CIC
Ms S R Sanger
Ms R Taylor

Heard at: Norwich

On: 11 March 2022

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Mr J Ratledge, Counsel

JUDGMENT ON PRELIMINARY ISSUES

- (i) The application to amend the claim to bring a claim of automatic unfair dismissal (section 103A Employment Rights Act 1996) is dismissed.
- (ii) The application to amend the claim to bring claims of being subjected to a detriment for making protected disclosures (section 47B Employment Rights Act 1996) is dismissed.
- (iii) The claim of unfair dismissal is struck out.
- (iv) The application to strike out the claims of victimisation (section 27 Equality Act 2010) and/or for holiday pay is dismissed.
- (v) The application that the Claimant should be ordered to pay a deposit as a condition of continuing to advance her claim of victimisation and/or for holiday pay is dismissed.

REASONS

Introduction

1. The background to this Preliminary Hearing is as follows:
2. The Respondent is a small, not for profit organisation that distributes excess food to a shop and two cafes. The Claimant was employed by them as a Project Co-ordinator between 1 November 2018 and 2 October 2020.
3. At a Preliminary Hearing on 21 January 2021:
 - i. The first claim (presented on 23 April 2020) was identified as a claim of disability discrimination and 26 allegations of discrimination were set out.
 - ii. The second claim (presented on 14 June 2020) was identified as a claim of victimisation, alleged by the Claimant to be as a result of submitting her first claim. Eight allegations of detriment were set out.
 - iii. The allegations of discrimination and victimisation were recorded with blanks regarding certain times and dates, and the Claimant was ordered to provide that missing information by 9 April 2021. On 4 April 2021, the Claimant provided that information, setting out in more detail each of the 26 allegations of discrimination and 8 allegations of victimisation.
4. At a Preliminary Hearing on 24 May 2021:
 - iv. The third claim (presented 30 December 2020) was identified as a claim for holiday pay, disability discrimination and unfair dismissal. The Claimant has less than two years' service but said the reason for her dismissal was that she had made a protected disclosure. The Case Management Summary records the Claimant as saying the protected disclosure was that she had reported to the Information Commissioner that she had been incorrectly identified on the First Respondent's website as its data controller.
5. At a Preliminary Hearing on 8 July 2021:
 - v. It was found that the Claimant was not a disabled person within the Equality Act 2010 and her claims of disability discrimination were struck out.
 - vi. As regards the claim of victimisation, in addition to the initial 8 allegations of detriment, a further 8 allegations of detriment were identified (albeit in general form). The protected acts were said to be the lodging of an appeal on 20 January 2020 against the

- outcome of the Claimant's first grievance and the issue of the first tribunal claim on 23 April 2020.
- vii. The issues in the claim for holiday pay were identified.
 - viii. As regards her claim for automatic unfair dismissal, the Claimant identified the protected disclosure as being that she had wrongly been identified as the data protection officer by the Respondents but stated she did not believe she had suffered any detriment or that the disclosure was the reason for the termination of her employment. The Claimant was told by the Judge that there did not appear to be a basis for her claim, and she was ordered to state on what grounds she believed she had such a claim within 14 days of receipt of the record of the Preliminary Hearing and why it should not be struck out.
 - ix. The matter was set down for hearing for 4 days from 25-28 April 2022 at the Cambridge Employment Tribunal.
6. By email dated 21 July 2021 the Claimant alleged she had made complaints about health and safety and food safety during the period between 2019 and September 2020, and that she had raised concerns with Environmental Health when she did not receive a satisfactory response from the First Respondent.
7. By email dated 11 August 2021 the Claimant stated she wished to rely on protected disclosures of raising public interest disclosures about food safety with Northampton Environmental Health on 19 June 2020 as the reason for her redundancy, and therefore her claim should not be struck out. Further, the claim was not time-barred as she was made redundant on 2 October 2020 and her (third) claim was submitted on 30 December 2020. She also stated that she wished to rely on complaints made to the Second and Third Respondents about lack of hot running water, various food safety requirements (such as temperatures of chilled foods, and the keeping of food records), the First Respondent's liability insurance, and blocked fire exits during her furlough. The Claimant repeated some of the alleged acts of detriment previously relied upon in her victimisation claim. It was unclear if, or to what extent, those alleged acts were sought to be relied upon as detriments for making protected disclosures.
8. By letter of 16 August 2021, the Respondents noted that there had already been three Preliminary Hearings in the matter and that in the Case Management Order dated 15 July 2021 (pertaining to the Preliminary Hearing on 8 July 2021) the Tribunal had ordered that the parties cooperate and seek to agree a final list of issues within 21 days of receiving that order. However, in the light of the Claimant's email of 11 August 2021, that order was impossible to comply with. The Respondents submitted that the Claimant was attempting to tailor her claims at each step of the tribunal process, depending upon the content of the Respondents' responses and the Tribunal's judgments. It noted that the Claimant's application to amend the claim was being made nearly 8

months after receipt of the first Case Management Order in which the detriment claims were identified as disability discrimination claims and one month after the Preliminary Hearing at which the Tribunal found the Claimant was not a disabled person within the meaning of the Equality Act 2010, resulting in those allegations being struck out. The Respondent made an application to strike out the claims.

9. On 3 September 2021 the Respondents wrote to the Claimant putting her on notice that should she continue to pursue her claims for automatic unfair dismissal, victimisation and loss of wages, they would make an application for costs.
10. On 5 December 2021, the matter was listed for an Open Preliminary Hearing to:
 - (i) Consider any application to amend the claim;
 - (ii) Seek to finalise a comprehensive list of issues;
 - (iii) Consider whether either by application of a party or on the tribunal's own initiative if appropriate, any claim or part of a claim should be:
 - i. Made subject to a deposit order in accordance with rule 39
 - ii. Struck out in accordance with rule 37.
11. By email of 18 February 2022, the Claimant sent through a list of what she described as 'Final Issues'. Of the list of allegations of discrimination and victimisation identified at the first Preliminary Hearing, 16 were now said to be detriments for reporting health and safety issues, four were said to be detriments (included being selected for redundancy) for health and safety disclosures, and eight were said to be acts that had happened after raising a health and safety issue by text message. Only three/four matters were identified as being detriments for doing a protected act within the meaning of s.27 Equality Act.

Amendment

12. At the hearing, the Claimant sought to amend her claim in two respects:
 - To bring a claim of automatic unfair dismissal under s. 103A Employment Rights Act, on the basis that the reason or principal reason for dismissal was that she made the alleged protected disclosures referred to in her emails of 21 July 2021, 11 August 2021 and 18 February 2022 (which, for ease of reference, will be referred to generically as health and safety disclosures).
 - To bring a claim of being subjected to detriments under s. 47B Employment Rights Act for making protected health and safety disclosures.
13. The first point, as Mr Ratledge submitted, is that the precise scope of the amendments sought still remain unclear (*Ladbroke's Racing Ltd v Traynor*

EAT 0067/06). The allegations appear to rely on many alleged protected disclosures made over a protracted period, namely between 2019 to September 2020, and the Claimant hasn't provided details of the content of the alleged disclosures, to whom they were made and when, or how they are said to constitute protected disclosures. It follows that I could not properly make an order allowing the amendments without the provision of significant further particulars identifying the essential elements of the new claims sought to be made.

14. As regards the claim for automatic unfair dismissal for health and safety disclosures, the Claimant says she referred to this claim in her third ET1. In this respect the Claimant refers to part of the Claim Form that says, in the course of a narrative account of the redundancy process, "We were told that all stock was being given away to the most needy due to the pandemic and because of health and safety concerns..." This is plainly not an allegation that the Claimant was dismissed because she had raised health and safety concerns. Further, as stated above, the second Preliminary Hearing records the Claimant as having stated that the protected disclosure relied upon in the context of her unfair dismissal claim was that she had reported to the Information Commissioner that she was incorrectly identified on the First Respondent's website as its data controller, and this was the basis for, and subject of, the discussion about the claim for automatic unfair dismissal at the third Preliminary Hearing. I therefore find that the claim for automatic unfair dismissal on the ground of making health and safety disclosures is a new cause of action that has been brought out of time.

15. As regards the detriments claims, the Claimant relies on a section of the narrative contained in box 9.2 of her first claim headed "What compensation are you seeking?" which states "When I tried to report health and safety concerns I was blocked and the focus was turned to my work". She also points to the following sentences contained in her lengthy particulars provided on 8 April 2021: "My communications with Tracy McCormick were also blocked after raising several food safety issues. Instead of my concerns the H & S role was taken away from me. I was instructed not to communicate with Tracey." Notably, however, the Claimant ticked only the box headed 'disability discrimination' on the Claim Form and the claim was identified at the first Preliminary Hearing as being a disability discrimination claim; the two sentences referred to above were in fact provided as further particulars of the seventh listed allegation of discrimination, namely "Since November [dates] 2019 the claimant was prevented [by who] from supporting staff [which staff] [in what way]". The Claimant didn't state that she had intended, or wanted, to bring a claim of being subjected to detriments on grounds of making disclosures about health and safety at any of the three previous Preliminary Hearings (only seeking to do so once her claims for disability discrimination had been struck out). I therefore consider that the first claim was neither brought nor

understood as such a claim and that the claim for detriments now being brought is also a new claim.

16. In any event, the claims the Claimant is now seeking to bring plainly do not depend simply on facts already contained in the claim form but range much wider than that. It is clear from the Claimant's emails referred to above that the amendments sought would be substantial and would change very significantly the scope of the factual enquiry needing to be undertaken by the Tribunal. The case is set down for a 4-day hearing between 25-28 April 2022 (about 6 weeks away). If the amendments were made, aside from the difficulty of attempting to pin down the Claimant's (new) case, the Respondents would need to serve an amended response, conduct a further disclosure exercise, and prepare to meet an entirely different case from the one anticipated when the matter was set down for hearing. It is almost inevitable that the hearing would need to be vacated and relisted for a hearing much later in the year, or, more likely, next year.
17. Finally, not only are the amendments being sought at a very late stage in the day, but after the Tribunal has already conducted three Preliminary Hearings concerning this matter. The Claimant told me she had been confused between a protected act for the purposes of s. 27 of the Equality Act 2010 and a protected disclosure for the purposes of the s. 47B Employment Rights Act 1996, and I realise both that the law is complicated and that she is a litigant in person. However it is apparent from the records of the previous Preliminary Hearings that the three different judges conducting them went to great lengths to help the Claimant articulate and formulate her claim, and at no time does she appear to have told them that she thought that what happened to her in the work place, culminating in her dismissal on grounds of redundancy, happened because she made complaints about health and safety, or food safety – which wouldn't have required her to have a knowledge of the law.
18. It follows that I consider the balance of hardship and injustice is plainly against allowing the amendments, and the application to amend the claim is dismissed.
19. It follows that there is no basis for the claim of unfair dismissal and I strike out that claim.

Application for strike-out/deposit order

20. As regards her claim of victimisation under s. 27 Equality Act 2010, the Claimant stated that she was now only relying on the three or four detriments set out in her email of 18 February 2022 (four allegations set out in three bullet points). After discussion, these were clarified as follows:
 - (1) On 25 January 2020 the Second Respondent delayed an offer of mediation and support from occupational health until after the Claimant's appeal against the outcome of the first grievance had been

heard. The protected act is said to be the Claimant's appeal against the outcome of her first grievance (which outcome she received on 14 January 2020).

- (2) On 18 March 2020 the Claimant was offered a large piece of work by Rebecca Taylor which was withdrawn on 19 March 2020. The protected act is said to be the Claimant's 3rd grievance dated 18 March 2020.
 - (3) On 20 March 2020 the Claimant was placed on paid leave by Rebecca Taylor. The protected act is said to be the Claimant's 4th grievance dated 20 March 2020.
 - (4) On 13 May 2020, Rebecca Taylor withdrew an offer of mediation. The protected act is said to be the lodging of the Claimant's First Tribunal claim on 23 April 2020.
21. As regards her holiday pay, the Claimant maintained that she had not been paid the correct holiday pay and that she had worked bank holidays for which she had not been paid.
 22. Mr Ratledge sought to strike out the victimisation claim and claim for holiday pay on the basis the claims had no reasonable prospect of success and argued in the alternative that a deposit order should be paid on the grounds they had little reasonable prospect of success. In this respect he submitted the Claimant had not articulated a link between the alleged detriments and the alleged protected acts, and that the third alleged detriment was not capable of constituting a detriment. As regards the claim for holiday pay, he submitted the Respondents had provided an answer to the Claimant's claims and she was wrong to believe she was still owed pay.
 23. I reject those submissions. Without any consideration of the evidence it is not possible to say that the remaining claims have no or little prospect of success. Whether or not the Claimant was subjected to the alleged detriments and if so, whether that was because she had done a protected act within the meaning of the Equality Act 2010 will depend upon what the Claimant and the Respondents' witness say about those matters at the hearing. Further I do not accept that being placed on paid leave cannot amount to a detriment – being excluded from a workplace one wants to attend, may very well constitute a detriment, even if paid. As regards the claim for holiday pay, again, without evidence, I cannot say the claim has no or little reasonable prospect of success simply because the Respondents tell me it has.
 24. Accordingly, the application to strike the claims of victimisation and holiday pay, and/or for a deposit order, is dismissed.
 25. Finally, I record that Case Management Orders were made at the conclusion of the hearing which are set out in a separate document.

Case Number: 3304162/2020 (CVP)
3305533/2020 (CVP)
3315446/2020 (CVP)

Employment Judge S Moore

Date: 14 March 2022

Sent to the parties on: 15 March 2022

For the Tribunal Office