EMPLOYMENT TRIBUNALS

Claimant: Mr P Louis

Respondent: Network Homes Ltd

Heard at: Watford Employment Tribunal (in public; by video)

On: **10 February 2022**

Before: Employment Judge Quill (sitting alone)

Appearances
For the claimant: In person
For the respondent: Mr J Cook of counsel

JUDGMENT

1. Any claim relating to holiday entitlement, holiday pay, or payment in lieu of holiday is dismissed upon withdrawal.

2. The Claimant's argument that he had a contractual right to work only on the IT BA project, and that there a breach of that contractual right because he was required to do other work during employment (see paragraphs 1.30 and 1.31 of Claim 2) is not a claim which is within the jurisdiction of the employment tribunal as it does not arise and is not outstanding on the termination of employment.

3. The claims as presented, and as clarified during the preliminary hearing, do not include claims of race discrimination (even though the box was ticked on claim 3).

4. The Claimant's application to strike out the part of the response (contained in subsequent further information, rather than the original response) which states that while it is admitted that the Claimant's glaucoma is a disability, knowledge is denied.

REASONS

1. The Claimant accepts that he did, in fact, do work allocated to him on other projects. He does not allege that doing so brought an early end to his fixed term contract, or that doing so was connected to the termination, without renewal, of the fixed term contract.

2. What the Claimant suggested to me should have the label of an indirect race discrimination complaint is not, in fact, an allegation of indirect race discrimination. Instead, the argument which the Claimant had in mind when he ticked the relevant box, and which he described to me amounts to an argument that he was treated less favourably as a fixed term employee. The complaint about the failure to apply a "Rooney Rule" policy goes forward on that basis.

3. The claimant made clear that he was not arguing that the claim was one of direct race discrimination, and nor was he alleging (for example) that a higher proportion of fixed term employees (or permanent employees) were of a particular race.

4. My reasons for not striking out part of the response are that what the Respondent (and relevant employees) actually did know is an entirely factual issue. While the issue of what they ought to have known, will require legal analysis, that analysis will have, as its starting point, the entirely factual issue of what the did, in fact, actually know; the starting point of the analysis about what they ought to have known, will be to consider their actual knowledge of various relevant matters, and to consider what further enquires or deductions a reasonable person might have made.

5. I do have some doubts about the Respondent's reasonable prospects of being able to show that the information on the health monitoring forms should not (at the very least) have put the Respondent on notice that the Claimant might have a medical condition which might amount to a disability. However, I do not think this is an appropriate argument about which I should make a deposit order. Evidence about the disadvantage the Claimant was (allegedly) at and whether the Respondent knew that the Claimant was at that disadvantage will be relevant in any event, regardless of whether the Respondent knew (or ought to have known) about the disability.

Employment Judge Quill

Date 10 May 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

11 May 2022

FOR THE TRIBUNAL OFFICE