



EMPLOYMENT TRIBUNALS

Claimant:

Mr M Razzaq

Respondent:

v The Secretary of State for Justice

Heard at:

Reading (hybrid)

On: 1 March 2022

Before:

Employment Judge Anstis (sitting alone)

Appearances:

For the Claimant: In person

For the Respondent: Mr S Crawford (counsel)

REASONS

INTRODUCTION

1. These are the written reasons for the tribunal's judgment of 1 March 2022, which was sent to the parties on 18 March 2022. The claimant made a request for written reasons on 27 March 2022 and that request was referred to me on 6 May 2022.

THE APPLICATION

2. This hearing was listed to address an application made by the respondent to strike out or for a deposit order in respect of elements of the claim.

The claims at paragraph 8

3. I will first address the question of whether the further information fully addresses the claimant's claim and if not, what I'm going to do about it.
4. The claimant's claim was originally case managed by Employment Judge Ord. During the hearing before Employment Judge Ord (on 24 March 2021) the claimant withdrew claims of unfair dismissal, automatically unfair dismissal and wrongful dismissal (also called breach of contract). This was on the basis that he had been reinstated to his role.
5. Employment Judge Ord identified that there were claims of disability discrimination that would then be proceeding, but did not identify what the claimant now says are two claims to be found at paragraph 8 of his original

claim form: a claim of whistleblowing detriment and breach of contract. In both cases, these relate to his transfer from one part of the prison to another.

6. Employment Judge Ord's order included a provision that if there is anything wrong with his description of the claim, the parties should identify this within 14 days. The claimant did not do so, and when the case went before Employment Judge Eeley (on 4 August 2021) she considered that she was addressing a claim that was one of discrimination only: the disability discrimination claim as originally formulated by the claimant along with amendments he sought to add to include race and sex discrimination. There is no mention in Employment Judge Eeley's order of any claims other than discrimination claims.
7. The question is what I do with the whistleblowing detriment and the breach of contract claims in relation to the transfer between two parts of the prison. I accept that they are arguably described by the claimant in his claim form at paragraph 8 and have not been expressly dismissed or withdrawn. However, they were not identified by the claimant in front of either Employment Judge Ord or Employment Judge Eeley and the claimant did not respond when Employment Judge Ord ordered the parties to correct any misunderstanding of the claim within 14 days.
8. It seems to me that in those circumstances I should strike out those two elements of the claim on the basis that they were not actively pursued by the claimant, as we have had two previous hearings at which they were not identified by him as being claims that he wanted to bring, and they were not identified by him as being missing from Employment Judge Ord's order.

Harassment

9. There is a further matter that arises as regards claims of harassment. There are claims of harassment set out in the original claim, and in the amended claim form. The claimant has not specifically related any of those harassment claims to a protected characteristic, but they seem to relate to his disability. The order made by Employment Judge Eeley required the claimant to set out all his complaints of discrimination. A claim of harassment is a claim of discrimination, although that may not be obvious to the claimant who is not a trained lawyer. I also note that the way in which Employment Judge Eeley set out her requirement for further information is such as to address elements of discrimination other than harassment or victimisation (for the avoidance of doubt, there is no victimisation claim).
10. I am left with the difficult question of what I do with the harassment claims that were set out in the amended ET3. They were not addressed by Employment Judge Eeley. They were not specifically addressed by Employment Judge Ord, although because they would fall within the broad heading of complaints of disability discrimination they do not have the same difficulties as the claims at paragraph 8.

11. This is a point I have found difficult to decide but I have decided that the complaints of harassment described by the claimant in his amended claim form should be permitted to continue. My reason for that is that Employment Judge Eeley's order for further information is specifically directed at complaints of discrimination other than complaints of harassment, but the complaints of harassment are clearly set out in the claimant's claim form, and the points I have made about the claimant attempting to correct Employment Judge Ord's understanding of his claims do not apply in respect of the harassment claims.
12. There is one proviso to that, which is that Employment Judge Eeley found that the claimant was disabled in the period October 2020 to February 2021. She says nothing about any disability outside that period and it seems that she was not asked to make findings of disability for a period early than earlier than October 2020. In those circumstances I consider that the claimant's claims of harassment prior to October 2020 cannot proceed. That only relates to the very first complaint of harassment, which is what was said to him immediately following the assault he suffered.
13. It might be said that that same analysis would apply to any complaints of harassment after February 2021, but I do not think I can say that because we know that there is now a second claim in the offing, and ultimately the tribunal may have to decide (if it is not conceded) whether the claimant was disabled after February 2021. I note also the one aspect of harassment was added in by the amendment and this allegation post-dates February 2021.

“Further information”

14. That then brings me on to the further information document and a criticism that is made by the respondent of that in their application to strike out parts of it. I agree that there are elements of this further information document that clearly are not legally sustainable. I include in that the claimant's comparison of his position and to that of a pregnant woman. That's simply not going to work either as a matter of indirect discrimination or as a matter of direct discrimination. I also have in mind the claimant's claims of reasonable adjustments discrimination based on sex and race. Those are not sustainable claims. There is mention in the strike out application of claims of discrimination arising from disability but as far as I can see there are no claims of discrimination arising from a disability.
15. There is one other point which I will strike out, not as a matter of law, but simply on the basis that, as the respondent puts it, that there are no facts put forward in support of this contention and no comparators are named. That is the allegation concerning the delay in the dismissal letter. It is agreed that the dismissal letter was late, but I simply can't see anything in what the claimant says in his further information from which the tribunal could conclude that somebody who was not disabled but was in the same position as him would have been treated any differently.

Other matters

16. There was more to the respondent's application to strike out than this, but it seems to me that, broadly speaking, much of this is tangled up with the question of what the policy was, why a warning wasn't given and why the respondent moved immediately to dismissal. That seems to me to be a complicated subject that requires evidence and ventilation before a full hearing. As I understand it, the application is set out on the basis that the claimant was complaining that he been given a warning when in fact he hadn't been given a warning, but it rather seems that the claimant's claim complaint is that he hadn't been given a warning and that instead he was dismissed. That requires some untangling but seems to me I am not in a position to strike that out or impose a deposit order. There are various other points that are made in relation to policies, particularly as regards absence. Those are going to have to be heard at a full hearing where a tribunal can consider exactly what policies were or weren't in force and how they were or weren't applied to the claimant.

**Employment Judge Anstis
16 May 2022**

Sent to the parties on: 18 May 2022

For the Tribunal Office