



EMPLOYMENT TRIBUNALS

Claimant: Mr A Bockarie

Respondents: Goulden House Co-operative

PRELIMINARY HEARING

Heard at: Remotely by CVP **On:** 9/2/2022

Before: Employment Judge Harrington

Appearances

For the Claimant: In person

For the Respondent: Mr K Chehal, Consultant

REASONS FOR JUDGMENT OF 9 FEBRUARY 2022

- 1 At a Preliminary Hearing on 9 February 2022 I gave Judgment striking out the Claimant's claim for Breach of Contract. His claims of Direct Race Discrimination, Victimisation and Harassment related to Race are proceeding to the full merits hearing listed from 4 – 7 October 2022 at London South Employment Tribunal, Montague Court, West Croydon.
- 2 By an email dated 14 March 2022 the Claimant, Mr Bockarie, requested the written reasons for this judgment. I received his request on 29 March 2022.
- 3 I now produce my reasons for the Judgment. All numbers appearing within square brackets refer to pages from the Preliminary Bundle.
- 4 This Preliminary Hearing follows a Preliminary Hearing which was held on 7 June 2021 with Employment Judge Tsamados [57]. At that hearing it was agreed that the Claimant's claims were for direct race

discrimination, victimisation, harassment related to race and breach of contract [61]. The Claimant's claim for wrongful dismissal was dismissed upon withdrawal. I note that the Claimant's claims arise from his employment with the Respondent as a cleaner between 7 October 2019 and 28 February 2020. Employment Judge Tsamados made various case management directions and the claims were listed for a full merits hearing in October of this year at the London South Employment Tribunal in West Croydon.

5. Paragraph 10 of the Case Management Directions required the Claimant to provide some further information of his claim by 19 July 2021 [58]. In the event, the Case Management Order was not produced by the Tribunal until after this date and so, quite sensibly, the parties agreed an extension of time until 11 August 2021 for the Claimant to produce his further information. That further information is found in the bundle prepared for this Preliminary Hearing [37].
6. Following the production of this document, the Respondent made an application to strike out the Claimant's claims or for consideration of a deposit order. This application was made by email dated 27 August 2021 [70-72]. On or around 20 December 2021 the Claimant also made an application to strike out the Respondent's response to his claims. Accordingly, the Tribunal recorded that the Claimant's application would be heard alongside the Respondent's application and I have proceeded today to hear and determine the applications.
7. The Claimant has represented himself at this hearing and the Respondent has been represented by Mr Chehal, a consultant. I have heard lengthy and detailed submissions from both parties. In addition to the Preliminary Hearing bundle that was sent to the Tribunal by the Respondent, the Claimant has sent a number of emails, each with a number of attachments. In order for me to consider the matter within the listed time, I emphasised to the Claimant that it was for him to take me to what he considered was relevant in those materials. In this way, we have looked at various pages of the attachments together, during his submissions.
8. I note two further matters before considering the substance of the applications. Firstly, the Claimant referred me to the fact that he had wanted a face to face hearing today. He said he wanted this because part of his application to strike out the Respondent's response was on the basis that some documents disclosed by the Respondent have been manufactured by the Respondent for the purposes of defending his claims. The Claimant was of the opinion that a face to face hearing would be helpful as I would be able to examine the 'originals' of these documents.
9. I considered this submission but decided that it was appropriate to proceed with the remote hearing. I am not trained, nor is it part of my function, to forensically examine documents in an attempt to identify their

authenticity. Whilst a more in-depth consideration of the physical features of the documents might assist at the full merits hearing, for the purposes of these preliminary applications, it is sufficient for me to consider the parties oral submissions, looking at the documentary evidence on screen at a remote hearing.

10. Secondly, on occasion and entirely understandably, the Claimant wished to address me on more detailed features of his case and why he felt so aggrieved by his dismissal and the actions of the Respondent. I had to remind him that those arguments are appropriate for a full merits hearing but do not assist me on the application to strike out, where my focus must be on the specific arguments which are said to make a decision to strike out, pursuant to Rule 37 of the ETs (Constitution & Rules of Procedure) Regulations 2013 Schedule 1, appropriate.
11. I turn first to the Respondent's application. Mr Chehal submitted that the Claimant's claims have no reasonable prospects of success and therefore should be struck out. It is the Respondent's submission that the Claimant has still not particularised his claims sufficiently to enable the Respondent to respond to them, as required and as necessary, for the claims to proceed to a full merits hearing. Mr Chehal took me to the Claimant's document entitled 'Case Management Orders' [37]. He referred to its vagueness.
12. Following a detailed consideration of the further information provided and submissions from the Claimant, I was able to clarify the following matters with the Claimant.
13. Direct Race Discrimination –
The treatment relied upon by the Claimant as amounting to direct race discrimination is threefold: (i) being put under pressure on 16 January 2020 to sign an inaccurate report of issues with Mr Clutterbuck. It is said by the Claimant that workers who were not black were not required to sign such a report (ii) being allocated, by the Estate Manager, Block A to clean in the period January and February 2020 and following Fateh and Hussain leaving, and (iii) being dismissed.
14. Whilst the Claimant refers to the colleagues employed by the agency as an appropriate comparator, the Respondent contends that a hypothetical comparator is appropriate for his case.
15. Harassment –
So far as harassment is concerned, he complains of three matters: (i) the incident detailed in paragraph 37 of his document which is said to have happened in November 2019 [42] (ii) the incident on 24 February 2020 and (iii) the conduct complained of that is said to have happened on 25, 26 and 27 February 2020.
16. Victimisation –

The Claimant relies upon the grievance he raised informally about the Estates Manager in February 2020 as being the protected act. The detriment is then said to be the conduct, which is also complained of as harassment, which is said to have occurred on 24 February and 25 - 27 February 2020.

17. Following this clarification, I considered the claim for Breach of Contract with the parties. Following further protracted attempts to understand these claims adequately, I have concluded that the claim based on the alleged change to the working hours does not have reasonable prospects of success pursuant to Rule 37 (1) (a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1.
18. The Claimant explains that he worked on some, or possibly all of his working days, from 7 am until 3 pm. He refers to the hours advertised for the job as being 9 am – 5 pm. On the face of it, therefore, he appears to have worked different hours to those advertised when he was recruited - that is to say that the total number of hours worked per week were the same but rather than it being daily 9 – 5 pm, it was 7 am – 3 pm on some days or possibly all the days. This of course made no financial difference to the Claimant and he attended to work those hours without protest.
19. On the basis of this factual context and the failure by the Claimant to provide the particulars required by the Tribunal, as set out by Employment Judge Tsamados in this Order [65-66], I am satisfied that this claim has no reasonable prospects of success.
20. I have considered the entirety of the Claimant's document, including paragraphs 78-81 [48]. Some of these paragraphs actually describe claims already identified – for example, the claim for being dismissed is, as confirmed by the Claimant, a claim for direct race discrimination. Beyond this, I am not satisfied that the remaining complaint about the staff handbook is adequately particularised. In paragraph 45 of the case management order Employment Judge Tsamados required the Claimant to identify the term of the contract the Respondent allegedly breached and what damages flow from that breach. I understand that there is a dispute over when the Claimant was given access to the staff handbook but at the last hearing, the Employment Judge spent some time with the Claimant identifying the information required from him in respect of each claim he brought. That information has not been provided in respect of any claim involving the staff handbook, including the Claimant failing to identify what damages are said to flow from any failure to give him access to the handbook.
21. To return to the Respondent's application, I am satisfied that there are no reasonable prospects of the Claimant's claims for breach of contract succeeding and that there has been a failure by the Claimant to comply with the orders of Employment Judge Tsamados to provide further

particulars of the claims. Accordingly I strike out the Claimant's claims for breach of contract. However the Claimant's claims for race discrimination: direct, victimisation and harassment, proceed as detailed in the Case Management Order.

22. With regards to the Claimant's application, the Claimant says that the Respondent's response should be struck out on two grounds: firstly that there was a failure to comply with paragraph 14 of the Case Management Order [59]. This required that there be agreement reached by 1 November 2021 as to the documents to be used at the full merits hearing. So far as the Claimant is concerned, there was no such agreement. Secondly, the Claimant refers me to documents at pages 119 – 120 and the meeting notes of 27 February, all appearing within his bundle 'RD bundle 4'. He tells me that these documents are fabricated.
22. The Claimant assumes that his writing, which appears on page 120, is there because the Respondent has copied some words that he did write and that appear on page 127. He says that he thinks the notes from 27 February meeting with Ms Marshall are fabricated because he does not believe she made the reports, as recorded there, of his alleged misconduct. The Claimant tells me that this would be inconsistent with how Ms Marshall reacted to him when he returned to the site, after his dismissal, to collect some belongings. Ms Marshall was polite to him and helped him with collecting his things.
23. I am unable to make a decision on these points without hearing the evidence in the case. It is important for the Tribunal to understand the relevant factual context to the documents referred to by the Claimant and which the Respondent puts forward as having been produced at the relevant time. There is insufficient information currently before me to make a determination, on the face of the documents alone, that they have been manufactured. Therefore whilst I entirely understand the Claimant's arguments and indeed, these are arguments he may wish to pursue at the full merits hearing in October 2022, I am unable to make a finding today that on the balance of probabilities these documents have been manufactured by the Respondent.
24. Further, whilst I also entirely understand his point about the lack of an agreement to the file of documents, as set out in the Case Management Order, I consider that striking out a response for the failure to reach such an agreement would be disproportionate, taking into account the stage at which the proceedings have reached, the extent of any prejudice to both parties and the overriding objective.
25. In summary, in my Judgment the claims for breach of contract will be struck out. The Claimant's claims of direct race discrimination, victimisation and harassment will be determined at the full merits hearing in October 2022.

Employment Judge Harrington
Date: 16 May 2022

Sent to the parties on
Date: 19 May 2022

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