



EMPLOYMENT TRIBUNALS

Claimant
Ms A Patel

v

Respondent
Dallas Wear Limited
t/a Hilltops Pharmacy

Heard at: Bury St Edmunds (by CVP)

On: 18 February 2022

Before: Employment Judge Laidler

Appearances:

For the Claimant: In person

For the Respondent: Ms K Kaur, Peninsula Representative

JUDGMENT having been sent to the parties on 8 March 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claim in this matter was received on the 2 July 2021 following a period of ACAS Early Conciliation between the 28 May and 3 June 2021. The claimant ticked the boxes claiming notice and holiday pay stating the amount owed was £111.37. She also claimed compensation for stress and anxiety and 2 weeks' pay claiming she had been forced to resign due to 'poor working conditions and bullying.' The dates given for her employment were the 22 February to 19 April 2021, so the claimant did not have the requisite 2 years continuous service to be entitled to bring a constructive unfair dismissal claim.
2. The Respondent defended the claims stating that all notice had been paid as the Claimant was placed on garden leave and that the Claimant had been paid £111.38 in respect of outstanding holiday pay.
3. The notice of this hearing was sent to the parties on 8 December 2021. This contained the following Case Management Orders:
 - Disclosure of documents by 17 December 2021.
 - The Respondent to send to the Tribunal no later than 7 days before the Hearing a Bundle in PDF format containing both sides' documents.
 - Witness statements to be exchanged by 29 December 2021; and

- Both parties to file their witness statements with the Tribunal in PDF form no later than 7 days before the Hearing.
4. On the eve of this Hearing, at 17.19 the Respondent paid the sum of £111.37 claimed by the Claimant in respect of holiday pay.

Claimant's Application to Amend

5. Upon receipt of the notice of hearing the claimant advised by email of the 15 December 2021 that she had taken advice and that her claim 'could be related to discrimination due to my race...' This had not been copied to the respondent and by letter of 9 January 2022 it was sent to the respondent by the Employment Tribunal for comments within 7 days.
6. The Claimant's employment ended on 19 April 2021. Any discrimination complaint should have been filed by 18 July 2021 subject to any extension time by virtue of ACAS Early Conciliation.
7. The claim the Claimant seeks to bring of race discrimination is an entirely new claim and therefore out of time.
8. ACAS Early Conciliation took place between 28 May 2021 and 3 June 2021 and the ET1 was issued on 2 July 2021.
9. The Claimant submitted a detailed statement with the ET1 which did refer to bullying by the pharmacist, but no reference to it being on the grounds of race. It was mostly referring to the lack of variety in the job role with the Claimant stating she spent most of her days popping out thousands of blister packs of tablets into boxes. This the Claimant stated did not equip her with transferable skills.
10. The Claimant then set out in detail the dispute about her final pay and why she believed monies to still be outstanding.
11. Even before this, however, the Claimant had engaged in extensive correspondence with the Respondent direct following her resignation about the money which she was allegedly owed. The Claimant said to this Tribunal that she had a lot of things happening and was traumatised by the events of her employment. She felt that maybe she had not wanted to recognise it as discrimination but believes it was. She had anxiety, stress and required medication to calm her down. She is aware that the claim is late, but the claim of discrimination only became clear to her as she was going through the details of her case in preparation for this hearing.
12. The Claimant referred to her letter to the Tribunal of 22 October 2021, but having read that, it is primarily a response to the ET3, although the Claimant does refer to discrimination. She does not specify the protected characteristic relied upon and neither did she apply at that point for leave to amend.
13. The application to amend was submitted on 15 December 2021, but there were no details of the discrimination provided at that time. The claimant stated that she had been advised that 'my claim could be related to

discrimination due to my race, as once the employer found out I was multi-racial they started to behave more hostile and began bullying me’.

14. By email of the 20 December 2021 the claimant advised she had provided more detailed particulars to the respondent’s representative on the 17 December 2021.
15. The Respondent’s objections were seen dated 14 January 2022, in which they make the point that the claim was a new claim brought out of time. It was submitted that greater prejudice would be caused to the Respondent by allowing the application, than to the Claimant.
16. The Claimant provided further particulars of the acts of discrimination by letter of 21 January 2022.
17. The Tribunal must consider all the circumstances and balance of prejudice between the parties. The claim of discrimination is out of time and a completely new claim with there being no reference to discrimination in the ET1. Whilst appreciating the Claimant’s position that it was only when preparing her case that she recognised this race discrimination, she had been preparing her case and discussing it with ACAS back in May and June 2021. She had also been engaged in direct correspondence with the Respondent. There was no mention whatsoever of discrimination.
18. Although the Claimant states she was traumatised by her employment, there is no independent evidence that she had been prevented from bringing the discrimination complaint sooner.
19. The Tribunal is satisfied that greater prejudice would be caused to the Respondent in allowing the late claim, than to the Claimant in refusing permission to amend.
20. The Application for leave to amend is therefore refused.

Claimant’s Application for Preparation Time Costs

21. On the above decision having been given the Claimant made an application for preparation time. The grounds were that she had had to prepare for her case and was not aware until the day of the Hearing that the money claim had been paid the previous evening. She had had to prepare her own Bundle. She claimed 14 hours for the preparation (not including the discrimination application).
22. The claimant had sent various emails to the tribunal complaining that the respondent had not disclosed documents and objecting to an application to vary the date for the exchange of witness statements.
23. By email of the 20 December 2021, the Claimant forwarded an email exchange between herself and the Respondent from 15 – 17 December. The respondent’s representative Holly Wild had asked to vary the case management orders due to the Christmas period. In relation to disclosure to the 20 January and witness statements the 4 February. The Claimant tried to telephone the representative but without success. She stated in

her email response to the Respondent that she did not see why they needed such a long extension and was prepared to agree to an exchange of witness statements by the 5 January 2022.

24. By email of the 20 December 2021 the Respondent applied for a variation of the orders to 4 February 2022 for the exchange of witness statements. That was not referred to a judge so the Respondent should have assumed that the application had not been granted. The Respondent did follow this up with another email of the 31 January 2022.
25. It was only at this Hearing that the Respondent's representative advised that the money claimed by the Claimant had been paid at 17.19 the day before. Neither the Claimant nor the Tribunal were aware.
26. The representative attending for the Respondent had only just taken over the matter and could not provide much detail about the delay in preparing a Bundle and exchange of witness statements. In fact, no witness statements were produced by the Respondent. Having taken instructions it was argued that the Hearing would still have had to go ahead to deal with the Claimant's application to amend and that matters do often settle at the last minute. That did not however address the fact that the Claimant had spent time in preparing for a Hearing on the non-payment of wages which had been unnecessary and she had had to spend more time due to the non-cooperation of the Respondents.

27. Relevant Rules

Employment Tribunal Rules 2013

76.(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

- (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
- (b) any claim or response had no reasonable prospect of success; or
- (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

76.(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

The amount of a preparation time order

79.(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of-

- (a) information provided by the receiving party on time spent falling within rule 75(2) above; and
 - (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
- (2) The hourly rate is £33 and increases on 6 April each year by £1.
- (3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).

Conclusions on preparation time

28. The Tribunal was satisfied that the conditions set out in Rule 76 were satisfied to give the Tribunal a discretion to make a preparation time order in favour of the Claimant. The Respondent had acted unreasonably in the conduct of the proceedings by failing to comply with Tribunal orders for disclosure of documents and the production of witness statements leading the Claimant to have to spend more time in chasing the same and preparing her own Bundle.
29. Even though the Tribunal has not had to determine the claim for non-payment of wages it is clear that the Claimant was due the sum claimed which has now been paid and the defence of that claim had no reasonable prospects of success. The defence was that the sums had been paid when clearly, they had not. Had that been accepted at the outset then the Claimant would not have had to spend the time that she did.
30. The Claimant has claimed 10 hours preparation time dealing solely with the money claim. The Tribunal accepts that is reasonable and proportionate in all of the circumstances having seen the preparation she has had to do and emails sent to the Tribunal and the Respondent. The current rate is £41 and the Claimant is awarded £410 in preparation time costs to be paid by the Respondent.

Employment Judge Laidler

Date: 9 May 2022

Judgment sent to the parties on
23 May 2022

For the Tribunal office