



EMPLOYMENT TRIBUNALS

Claimant: Piotr Luc

Respondent: Homerton Healthcare NHS Foundation Trust

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 09 June 2022

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Matthew Sellwood, of Counsel, instructed by Hempsons LLP

JUDGMENT

1. The several claims filed by the Claimant are to be linked with this claim.
2. The sole respondent in this and every other claim is Homerton Healthcare NHS Foundation Trust, and claims against other respondents in the linked claims are dismissed on withdrawal by the Claimant.
3. The Claimant does not bring a public interest disclosure claim: in so far as one is contained within this claim it is dismissed as having no reasonable prospect of success.
4. The Claimant is given leave to add a further allegation of race discrimination: that *“Liam Triggs allowed Mica Wallis of human resources to view his occupational health records, when she had no right to see such records, and that this was direct race discrimination.”*
5. All the allegations in all the claims are about the claimed actions (or intentional inaction) of Liam Triggs.

6. All allegations in this claim (Claim 1) predating 26 April 2021 are out of time and I do not extend time to allow them to form part of the claim. They remain background facts asserted by the Claimant.
7. The Respondent's application to strike out the (1st) claim is refused.

REASONS

1. This preliminary hearing was called to consider the Respondent's application to strike out the claim or to order the payment of a deposit as a condition of being permitted to continue with it. Depending on the outcome of the application to strike out case management orders would be made. Deposit orders were sought in 5 other linked claims.
2. At the conclusion of the preliminary hearing (which took three hours) I agreed a summary of the case with the Claimant and Counsel for the Respondent, in the following terms:

Mr Luc's line manager was Liam Triggs. Mr Luc says that Mr Triggs treated him badly, and did so because he (Mr Luc) is Polish. He says that Mr Trigg's assistant, Misha Huk, also treated him badly. Mr Huk is also Polish, and Mr Luc does not say that Mr Huk treated him badly because of his nationality, but because he is a man, and says that Mr Huk treated women better than he was treated by Mr Huk.

Mr Luc says that various other people bullied and harassed him, but he does not say that this had anything to do with him being Polish. He says that when he complained about this to Mr Triggs, Mr Triggs did nothing about it (because of Mr Luc's nationality) so that it carried on, and did not stop. He says that his first claim is a protected act. He says that after he filed his first claim, on 27 August 2021, Mr Luc reorganised his department, resulting in his post being removed. He says this is victimisation. He says that in his first claim he also complained about human resources, and they were complicit in Mr Trigg's reorganisation, and so they too victimised him.

3. The Respondent says the 1st claim was filed out of time, which the Claimant disputes. This will be an issue in the hearing.
4. The Claimant seeks specific disclosure of an investigation report prepared by Shelley Morgan of Ibex, an external consultant. The Respondent agreed that it will disclose this as part of disclosure, but said that it is still not finalised and so cannot be disclosed now in any event. I noted that the Respondent agreed to its disclosure. Whether there may be an issue about disclosure of drafts of the report can be considered at a future case management hearing.
5. The Claimant said that his manager, Liam Triggs, treated him badly for years. He had brought the first claim for race discrimination and harassment, and then 5 victimisation claims against individuals (the protected act being the 1st claim) alleging bullying and harassment against individuals.

6. The Claimant says that his nationality and race are Polish (for brevity I use the word “*nationality*” to cover both in the rest of this judgment).
7. The Respondent does not plead the statutory defence, and the Claimant agreed that the sole respondent in each case is Homerton Healthcare NHS Foundation Trust. Accordingly, I ordered that the other claims be linked with this claim and claims against all other respondents dismissed on withdrawal by the Claimant.
8. There is reference to public interest disclosure in the paperwork. The Claimant had, or has, an issue with GDPR. He accepts that this Tribunal has no jurisdiction to deal with any such complaint. The previous case management order was not entirely clear, but the Claimant makes no public interest disclosure claim. In so far as there may be such a claim I dismiss it as having no reasonable prospect of success. The Claimant objected to his human resources personnel accessing his personal (occupational health) records without his consent. This was a GDPR matter, and was, in my judgment, a matter which had no reasonable prospect of success. It could, however, be formulated as part of the race discrimination claim, as the Claimant asserted that this part of the detriments he had suffered from his manager.
9. I permitted the Claimant to amend his claim to include an allegation of direct race discrimination: that Liam Triggs allowed Mica Wallis of human resources to view his occupational health records, when she had no right to see such records, and that this was direct race discrimination.
10. The claim was explored. I asked the Claimant why he thought anything that happened was linked to his nationality. The Claimant said that Liam Triggs did not treat others, who were not Polish, in the same way.
11. I asked how many people Mr Triggs managed. The Claimant said that it was about 14 people. They were of all sorts of races and nationalities. I asked if there were any other Poles. The Claimant said there was one, Mica Huk, who had also bullied and harassed him. One of the other claims he had brought was against Mica Huk. I observed that this seemed counter intuitive. The Claimant said that Mica Huk had treated him badly, not because he was Polish, but because he was male. It was a sex discrimination claim. Counsel advised that this is claim 6.
12. Counsel submitted that the claim had no reasonable prospect of success. The 1st claim was simply a list of all the things that the Claimant was unhappy with from 2017 to August 2021. There was nothing in the claim to indicate any link with the Claimant’s nationality. The Claimant was asserting that his manager was harassing him, assisted by an accomplice, Mica Huk, who was also Polish. It was inherently improbable that this would be the case. While there were cases where people treated others of the same race poorly because that was how they did so in their home country but would not do so to people of other ethnicities that was not the case here. It was fanciful to suggest that Mica Huk went along with Liam Triggs alleged harassment because the Claimant was male, and he treated women better than men.

*Madarassy*¹ meant the Claimant had to show some arguable causative link between treatment and race, and here there was nothing. The claims were of direct discrimination and harassment, the same matters said to be one or the other. There was a blanket approach of saying this happened, I am Polish, so it happened because I am Polish. There had to be more to found a claim, and here there was not.

13. I explored this with the Claimant. He said that others had bullied and harassed him. They may have had any reason to do so, or none, but he did not allege that the reason they did what they did was his race. The allegations he made, in every case, was that Liam Triggs let them get away with doing so, did not protect him, or sanction them, and Liam Triggs did so because he, the Claimant, is Polish. All the allegations, in every claim, were against Liam Triggs, and Liam Triggs only.
14. Counsel for the Respondent submitted that it was fanciful to allege that Liam Triggs had engineered a restructure of his team of 14 in order to get rid of the Claimant for bringing the 1st claim. That would have required, Counsel submitted, a large scale conspiracy among management and human resources.
15. Counsel also submitted that the Acas early conciliation period was 26 July 2021 – 16 August 2021. Three months before 26 July 2021 was 26 April 2021 and everything before that was out of time. There were allegations made against different people.
16. I decided that all allegations predating 26 April 2021 were out of time, that it was not just and equitable to extend time to allow them to be brought as allegations, but that the Claimant would wish to refer to them as background facts, part of the factual matrix, in order to attempt to show that his allegation against Liam Triggs was well founded. I decided that it was not just and equitable to extend time, as no good reason (in fact no reason) was put forward as to why claims had not been brought in time in respect of these allegations, and there was unfair prejudice to the Respondent in being asked to defend historical allegations.
17. The law on burden of proof is comprehensively set out in Royal Mail Group Ltd v Efoji [2021] UKSC 33, and I have borne that case in mind.
18. I have also borne in mind Bahad v HSBC Bank Plc (PRACTICE AND PROCEDURE : race and religious discrimination) [2022] EAT 83, in particular paragraphs 27 onwards, including references to Anyanwu & Another v South Bank University and South Bank Student Union [2001] ICR 391, Malik v Birmingham City Council UKEAT/0027/19 and Mechkarov v Citibank N.A [2016] ICR 1121.
19. Bearing all this in mind, and in particular how difficult *Bahad* makes it to strike out a race discrimination claim, I decided that I would refuse the Respondent's request to strike out the 1st claim.

¹ Madarassy v Nomura International plc [2007] EWCA Civ 33; [2007] ICR 867

20. Having dealt with the applications for strike out and deposits, and the application to amend there was no time to consider case management, and I directed a case management hearing be listed (by cvp) in October for a full day, to compile a full list of issues, and to deal with case management orders.

**Employment Judge Housego
Dated: 20 June 2022**