



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Mr A McNally

One Housing Group Ltd

JUDGMENT AND ORDER ON PRELIMINARY HEARING

HELD AT: London Central

ON: 4 August 2022

BEFORE: Employment Judge A M Snelson (sitting alone)

On hearing the Claimant in person and Ms I Baylis, counsel, on behalf of the Respondents, the Tribunal adjudges and orders that:

JUDGMENT

- (1) The complaint of detrimental treatment on protected disclosure grounds was presented out of time and the Tribunal has no jurisdiction to consider it. Accordingly, that complaint is dismissed.

ORDER

- (1) No later than 5 August 2022 the Respondents shall deliver to the Tribunal and copy to the Claimant such application as may be advised for transfer of the proceedings to another Employment Tribunal Region.
- (2) No later than 10 August 2022 the Claimant shall deliver to the Tribunal and copy to the Respondents' representative his comments on the application made under para (1).
- (3) A preliminary hearing for case management shall be held by CVP (or similar) at 10.00 a.m. on 25 August 2022 with one hour allocated.
- (4) The Respondents shall, no later than 9 September 2022 deliver an amended response form setting out all grounds on which the claims under the Equality Act 2010 will be resisted.

NOTES:

- (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.
- (2) The Employment Tribunals Rules of Procedure 2013 (to which any reference below to a rule refers) provide by rule 6 that if an Order is not complied with, the Tribunal may take such action as it considers just, which may include waiving or varying the requirement, striking out the claim or response (in whole or in part), barring or restricting a party's participation in the proceedings and/or awarding costs.
- (3) You may apply under rule 29 for this Order to be varied, suspended or set aside.
- (4) Where reasons have been given orally on any disputed issue, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

COMMENTARY

1. The matter came before me in the form of a public preliminary hearing to consider time-based jurisdictional challenges to the Claimant's claims. Mr McNally represented himself with skill and determination but also with impeccable courtesy and restraint. The Respondents were helpfully represented by Ms Baylis, counsel.
2. For reasons given orally I held that the 'whistle-blowing' detriment claim was presented outside the time limit of three months in circumstances where it had been 'reasonably practicable' to present it in time and that, accordingly, the Tribunal had no jurisdiction to consider it. I therefore dismissed that claim.
3. That left the three race-based claims under the Equality Act 2010 which had been identified by EJ Lewis at the case management hearing on 1 July. By her Order, I was required to determine whether the last of those, a claim for race-related harassment based on events which occurred on 8 October 2021, was out of time. For reasons given orally, I held that it was 'just and equitable' to apply a longer time limit for the presentation of that claim than the 'default' three months, such that it was within time (as extended) and so within the jurisdiction.
4. EJ Lewis had directed that, if the third (harassment) claim was found to be in time, the time issues in respect of the first two claims (both for direct race discrimination) would be for decision at the final hearing.
5. The three surviving claims (or perhaps four, since the case on harassment rests on two separate comments made in the course of the same conversation) are explained in EJ Lewis's Order, to which reference should be made. Mr McNally confirmed that, for the purposes of the first two claims,

he relies on hypothetical comparators.

6. Amended grounds of resistance (Order, para (4)) are all that is required to complete the process of clarifying the issues in what remains of this dispute.
7. Although the Equality Act 2010 claims survive, I noted certain weakness which I judged to warrant deposit orders. Those orders, with reasons, accompany this. I strongly encouraged Mr McNally to read the deposit orders and accompanying notes carefully and to consider obtaining professional advice.
8. A final hearing was already listed to commence on 17 November this year. In the ordinary course I would have given directions for the preparation of evidence but that was not appropriate here because there is an outstanding application for the proceedings to be transferred to another Region. I directed that the application be renewed and responded to. Correspondence in accordance with my Order, paras (1) and (2) should be sent to the usual email box, marked for the urgent attention of Regional Employment Judge Wade.
9. The listing on 25 August is to cater for the possibility that the proceedings are not transferred. If the case remains at London Central, the Tribunal will be determined to ensure that the procedural timetable is appropriate and proportionate to the narrow scope of the case as it now stands. I was at pains to stress to Mr McNally that the fundamental role of the Tribunal is to judge the *Respondents'* conduct, not his, and that the hearing will be focussed on deciding whether, in the few specific ways alleged, their actions involved any infringement of his legal rights.
10. If there is a transfer, the listings on 25 August and 17 November will be cancelled and case management will pass to the new Region.
11. Finally, I hope that the parties will reflect on the diminished case that remains and on the obvious benefits to both sides of looking for a practical and dignified settlement if that can be achieved through dialogue – either privately or through ACAS. If any negotiations take place, they are reminded that the Tribunal must be told nothing about them.

EMPLOYMENT JUDGE- Snelson
05/08/2022

Judgment entered in the Register and copies sent to the parties on: 05/08/2022

For Secretary of the Tribunals