



EMPLOYMENT TRIBUNALS

Claimant

Mr Henry Stan Fullah

v

Respondent

(1) Medical Research Council;
(2) Professor Susan Gathercole;
(3) Mrs Michelle Barthelemy;
(4) Dr Tony Peatfield; and
(5) Ms Julie Kemp

Heard at: Cambridge

On: 19 and 20 July 2022

Before: Employment Judge M Ord

Members: Mrs K L Johnson and Mr A Schooler

Appearances

For the Claimants: Not present and not represented

For the Respondent: Not present and not represented

JUDGMENT on REMITTED ISSUES

1. The Tribunal reconvened on 19 and 20 July 2022 to consider the remitted issue of whether the detrimental acts of suspension and then dismissal were because of protected acts carried out by the Claimant (Employment Appeal Tribunal Judgment EA-2019-000928-BA).
2. It was agreed between the parties and the Tribunal that the remitted issues could be dealt with without the need for a further hearing. At a telephone Case Management Hearing held on 12 April 2022, both parties were agreeable to the matter being resolved without the need for oral evidence, that the decision would be based on the evidence heard at the original Hearing and written submissions to be provided in accordance with Orders made that day.
3. The original Judgment of 22 May 2019 found that the Claimant's claims of victimisation and unfair dismissal failed (full written reasons dated 28 August 2019).

4. On Appeal, the Employment Appeal Tribunal held that:-
 - 4.1 the Claimant's suspension was a detriment; and
 - 4.2 the question of whether the detrimental act of suspension and dismissal were because of the protected acts carried out by the Claimant, should be remitted to the same Tribunal.
5. The Employment Appeal Tribunal in particular referred this Tribunal to the findings in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL11, and the decisions of the Employment Appeal Tribunal in Martin v Devonshires Solicitors [2010] UKEAT0086/10, Woodhouse v West North West Homes Leeds Limited UKEAT/0007/12/SM, and Page v The Lord Chancellor [2021] EWCA Civ.254.

Background

6. The background to this matter is as follows:
 - 6.1 The Claimant had made a number of complaints and had raised grievances against other members of the Respondent, had issued previous Tribunal actions and threatened other litigation. The protected acts relied upon by the Claimant were two previous Employment Tribunal claims brought against the First Respondent and named individual Respondents.
 - 6.2 The first, was Case number: 1501358/2010; where the Hearing took place in January and February 2012, Reserved Judgment sent to the parties on 4 April 2012 (unsuccessfully appealed in June 2013).
 - 6.3 The second Case was number: 3400450/2016; in February 2017 with full written Reasons provided following oral Judgment on 24 February 2017 – full written Reasons sent to the parties on 12 June 2017.
 - 6.4 The Claimant had raised complaints as follows:
 - 6.4.1 A formal complaint of bullying and harassment against his Manager in September 2008;
 - 6.4.2 An appeal against that decision (that the grievance was not upheld) following which the relevant Manager was given a formal written warning in September 2009;
 - 6.4.3 Against his then Manager in March 2010, making allegations of unfavourable treatment, harassment, discrimination and victimisation on the grounds of race and ethnicity, which were not upheld (this complaint being the basis for his first Tribunal claim);
 - 6.4.4 In September 2013, the Claimant had threatened to commence a personal injury claim against the First Respondent but never did so;

- 6.4.5 In December 2013, the Claimant asked for a change of contractual hours which was refused on business grounds following which the Claimant alleged his Line Manager was targeting him for criticism, which he described as harassment and victimisation which he attributed to his race (no formal complaint or grievance was made);
- 6.4.6 The Claimant had been absent from work from August 2010 until the Tribunal Hearing in January / February 2012 and the promulgation of the Reserved Judgment. He began a further period of sick leave in January 2015 and on his return at the beginning of May that year requested financial recompense for his absence. He allegedly contacted ACAS regarding this matter, although ACAS were unable to provide any details to the Respondent;
- 6.4.7 In March 2016, the Claimant contacted ACAS again. He had alleged in his Annual Performance Review document an allegation that his Line Manager had made a racist remark towards him. The Claimant refused to share the specific details of what he was basing his claim on and said that he was preparing an Application to the Employment Tribunal;
- 6.4.8 When the Second Respondent, who had met with the Claimant, wrote to the Claimant to set out the points discussed at the meeting, it was recorded that,
- 6.4.8.1 allegations of discrimination were serious;
 - 6.4.8.2 the Claimant had been invited to explain the basis of the allegations so they could be understood and acted upon;
 - 6.4.8.3 asked for information from the Claimant regarding his disability and how it could be handled in the workplace;
 - 6.4.8.4 asked the Claimant what disability discrimination allegations were being levelled at either the Line Manager or the unit more generally;
 - 6.4.8.5 the Claimant agreed that the situation in the Team where the Claimant was working was “*close to unworkable*” because of the lack of trust; and
 - 6.4.8.6 the Second Respondent asking therefore that constructive action should be taken to resolve the issues in the Team to re-establish a harmonious working environment.
- 6.4.9 The Claimant’s reply was to give no details as requested but asked if the Second Respondent had been contacted by ACAS. She confirmed that they had, but could not supply details of what the Claimant was complaining about because none had been given to them;

6.4.10 In May 2016, the Second Employment Tribunal claim was issued and on receipt of the details of the complaints, the Respondent carried out investigations with grievance meetings in June and July 2016. The Grievances were not upheld;

6.4.11 The Second Tribunal claim was heard and concluded on 24 February 2017;

6.4.12 On his return to work, the Claimant was suspended;

6.4.13 In the letter of suspension, the Respondent said to the Claimant,

“You have made numerous and serious unsubstantiated allegations of discrimination and victimisation, showed marked non-engagement with us and / or Occupation Health around your medical conditions and displayed uncooperative attitudes and behaviours that are damaging the IT Team environment for others working there”.

6.4.14 An independent external Human Resources Consultant was asked to explore whether in the light of events over the previous 24 months the relationship of trust and confidence between the Claimant and his colleagues, and the First Respondent more widely, had deteriorated to the extent it was no longer possible to continue any viable employment relationship.

7. As set out in paragraphs 35 – 40 of the original Judgment, a number of individuals were interviewed and (paragraph 41 – 43) the Claimant.

8. When the Claimant was interviewed he referred to the second Employment Tribunal proceedings saying,

“Just because it wasn’t upheld didn’t mean the specific examples [of racism] didn’t happen”.

And that he had,

“Fought for a just cause”.

9. He referred to the slave trade, abolitionists, Nelson Mandela and Martin Luther King as fighting for justice but being seen as trouble makers. When asked whether he felt that he could or needed to do anything to assist to rebuild the working relationship he said,

“No, not from my perspective. I can’t think of anything that I need to do”.

10. The outcome of the Consultant's Report was that there was a case to answer in relation to the complaint that the relationship between the Claimant and the First Respondent had broken down.
11. The Claimant was invited to a meeting to discuss the position which was conducted by Dr Peatfield. The conclusion was that the relationship had broken down to such an extent that the Claimant's employment could not continue. He reached four important conclusions (paragraph 47 of the original Judgment) namely that,
 - 11.1 First the Claimant worked as part of a very small team and had, over a period of times since June 2010, raised serious allegations of racial discrimination or prejudice, disability discrimination and victimisation including allegations against three successive Line Managers and the Unit Director. None of those allegations had been shown to be well founded;
 - 11.2 The Claimant had not engaged in internal procedures, but rather raised matters externally first to ACAS and then to the Employment Tribunal without recourse to, or a willingness to, engage in internal procedures;
 - 11.3 The Claimant had been unreasonably difficult regarding the release of Occupational Health advice;
 - 11.4 The relationship between the Claimant and his Line Manager had broken down and was non-functioning. The Line Manager was unable to manage the Claimant because he was in fear of further personalised allegations being made against him, even in relation to routine line management actions. The issues raised by the Claimant had gone directly to the integrity and character of the Line Manager and the Claimant was unwilling, in Dr Peatfield's conclusion, to accept having any Line Manager in a position that he felt he deserved and that he was therefore willing to raise unjustified issues to undermine the Line Manager.
12. The Tribunal Judgment following the Hearing in February 2017 had concluded in relation to the Claimant's credibility,

"that he is prepared to cast about try anything he can think of to put forward as an allegation of discrimination, regardless of its lack of merit".
13. Dr Peatfield was further concerned that there was a genuine concern that Dr Thompson would choose to leave the organisation because of the stress of the circumstances he was working under, that the Team was working in a situation of heightened nervousness and concern that the Claimant had persisted with allegations after they had been dismissed and was thus unwilling to accept the findings of the Tribunal.

14. Against that background, we have considered the remitted points,
 - 14.1 It is correct that the Respondent has always accepted, as is set out in the Tribunal's decision, that the two Employment Tribunal claims brought by the Claimant were protected acts within the meaning of Section 27 of the Equality Act 2010;
 - 14.2 It is correct that it was immediately following the outcome of the second of those Tribunal claims that the Claimant was suspended and thereafter dismissed; and
 - 14.3 Dismissal was a detriment and, as has been found on appeal, suspension was a detriment.
15. The Tribunal is astute to the fact that employers might well say that a suspension and / or a dismissal were not carried out because of any protected act but because of some other matter involving the relationship between the parties and that a Tribunal should be cautious before accepting that argument so that the employees' rights under Section 27 of the Equality Act 2010 are not lost.
16. We have been referred to the case of Madarassy v Nomura International Plc [2007] ICR867, pointing out that a difference in status (here the making of a protected act) and differing treatment (here the Claimant's suspension and / or dismissal) is not sufficient to reverse the burden of proof in Section 136 of the Equality Act 2010.
17. The question is whether the protected acts contributed to the Claimant's suspension and later dismissal.
18. Looking at the findings of fact which we originally made, we are satisfied that they did not. What the second Employment Tribunal claim did was to set the timetable for the Respondent's acts. The Respondents, for reasons which were both sensible and understandable, did not take any action in relation to the Claimant's employment whilst the second set of proceedings were on foot and subsequently being heard. The Claimant was absent from work through illness at that time and they waited for the Claimant to return to work when fit to do so and after the conclusion of the Tribunal Hearing before taking any steps.
19. On behalf of the Respondent Mr Salter, rightly drew our attention to the need to look to see if there was unreasonable and unexplained material which could reasonably provide a platform to draw inferences of discrimination. In answer to that, he makes seven specific points:-
 - 19.1 that the relationship between the Claimant and the Respondent was toxic;

- 19.2 that this is an obviously potentially fair reason for dismissal;
 - 19.3 that there is little (if any) challenge made by the Claimant to the key evidence of the Respondent's witness as to their beliefs or the reasons for them;
 - 19.4 the Tribunal was clear that every step that the Respondents undertook were reasonable ones;
 - 19.5 there was no finding that any action was in breach of any policy or practice by the Respondent;
 - 19.6 the Tribunal made no criticism of the Respondent in the procedure it followed in dismissing the Claimant; and
 - 19.7 there was no criticism made of the evidence given by the Respondent's witnesses.
20. We then ask ourselves why was the Claimant suspended, and was his suspension because of the protected acts?
- 20.1 The Claimant was suspended because the relationship between himself and the Respondent had broken down and in particular the relationship in his working environment was detrimental to the efficient work of the Respondent's Team in particular;
 - 20.2 The Claimant himself accepted that the working relationship had broken down;
 - 20.3 The previous Employment Tribunal considered that the Claimant was willing to cast around to make allegations of discrimination however ill founded;
 - 20.4 The Claimant demonstrated an unwillingness to resolve issues in the work place. He refused to even give details of alleged (and subsequently found to be ill founded) allegations of discrimination to his employer or ACAS during early conciliation;
 - 20.5 The Claimant had not co-operated with regard to the disclosure of Occupational Health advice whilst complaining about a lack of reasonable adjustments in relation his work; and
 - 20.6 the Claimant had responded to a reasonable management decision not to allow him to adjust his working hours, due to business needs, by making (subsequently found to be unfounded) allegations of discrimination against the Line Manager.

21. Having sensibly and reasonably waited for the outcome of the Claimant's second Tribunal claim and for him to return to work from sickness absence before taking any act to suspend the Claimant, those matters set out at paragraph 20 above were the reasons for the Claimant's suspension. There was a mutual acceptance of a breakdown in the working relationship which the claimant felt he had no need to contribute to restoring.
22. The reasons for dismissal were that the relationship between the Claimant and other staff in the unit and with the First Respondent more broadly had broken down. This was irretrievable, the respondent reasonably concluded. The Claimant had not followed internal procedures to resolve grievances and had declined mediation in the past, with the Dismissing Officer not being satisfied that he would engage fully if this was offered again.
23. The Claimant has not established any facts from which the Tribunal could conclude that the Claimant has been the victim of discrimination. The reasons for suspension and for dismissal have been set out and they are not because of the protected acts but rather because of the Claimant's conduct as set out above. He brought unfounded allegations, had been willing, in the words of the 2017 tribunal judgment to cast about for anything he could think of to put forward as an allegation of discrimination, regardless of his lack of merit. He refused to accept the findings of the previous tribunal[s], referring to "fighting" for a "just cause" and that "just because it wasn't upheld doesn't mean it didn't happen".
24. Further, he refused to consider that there was anything which he could or should do to repair the working relationship which was mutually accepted as being broken. He did not engage in internal procedures fully or at all .
25. Accordingly the working relationship between the claimant, his managers and the First respondent generally was unviable.
26. Even if the Claimant had established any facts sufficient to shift the burden of proof (he did not) we would have been satisfied that the Respondent had demonstrated non-discriminatory reasons for both the suspension and the dismissal.
27. The claims remain dismissed.

Employment Judge M Ord
Date: 27 October 2022

Sent to the parties on:
28 October 2022

For the Tribunal Office.