



EMPLOYMENT TRIBUNALS

VIDEO PUBLIC PRELIMINARY HEARING

Claimant: Mr C Miller-Tuitt

Respondents: Swale Heating Limited [First Respondent]
John Roche [Second Respondent]

Heard at: Croydon (by video) **On:** 27 September 2022

Before: Employment Judge Shore

Appearances

For the claimant: In person
For the respondent: Ms A Chute, Counsel

RESERVED JUDGMENT AND REASONS

1. The correct name of the first respondent is “Swale Heating Limited” and the Tribunal’s records shall be amended accordingly.
2. The correct name of the second respondent is “John Roche” and the Tribunal’s records shall be amended accordingly.
3. Because the claimant did not obtain a valid ACAS Certificate against John Roche before issuing the First Claim, his subsequent claims against the second respondent are void because of the principle of issue estoppel and are all struck out.
4. In the alternative, the second respondent cannot be a party to an unfair dismissal claim and would be removed as respondent to the unfair dismissal claims in the First and Second Claims.
5. Any proceedings intimated/issued against “Claire French” are dismissed, as the claimant did not obtain an ACAS certificate against her.
6. The claimant’s effective application to add a claim of direct discrimination because of religious belief and/or harassment related to religious belief is refused. It was only contained in the claimant’s Third Claim and related to events in 2020. There was no reason offered by the claimant as to why the

claim was not presented in the First of Second Claims. I find that the respondent would be more prejudiced by allowing the application than the claimant would be by refusing it.

7. As the religious belief claim is the only new matter in the Third Claim, the remainder of the Third Claim is struck out as an abuse of process.
8. The claim of race discrimination has been clarified to the extent that it can now be understood. If the respondent seeks a strike out or deposit in respect of the claim of unfair dismissal, it should make application to be heard at the next preliminary hearing.
9. The claim of race discrimination should not be struck out as having no reasonable prospects of success at this time.
10. The claim of pregnancy/maternity discrimination was misconceived as the claimant was not pregnant and is not a woman. It is struck out in its entirety.
11. No claim for monies owed can be made against the second respondent and he is removed as respondent in any such claim.
12. I was unable to determine whether the claimant's claims for monies owed are out of time because the claimant was unable to explain them. However, I find that the claimant's claims for unauthorised deduction of wages have no reasonable prospect of success because he could not explain to me what the basis of such claims were. In those circumstances, he cannot possibly win a claim. His claim for unauthorised deductions is struck out as having no reasonable prospect of success.
13. Having struck out the second Claim for Issue estoppel and the Third Claim for abuse of process, the claimants remaining claims are of unfair dismissal and direct race discrimination as against the first respondent as described in the case management order that accompanies this Judgment.

REASONS

Background and history of claims

1. The claimant has presented three claim forms to the Tribunal:

First Claim

- 13.1. On 16 April 2021, the claimant issued claim number 2301428/2021 against "Swale Heating clare french" and "John Roache" ("First Claim").
- 13.2. The claimant's Claim Form (ET1) (which appears at pages [B2 to B13] of the papers before me) made reference to ACAS Early

Conciliation Certificate number R130545/21/50. It was not disputed that this certificate [B1] named the claimant as Prospective Claimant and named "Swale heating" as Prospective Respondent.

13.3. The ACAS Certificate [B1] shows that early conciliation started and ended on 16 April 2021.

13.4. In the First Claim at paragraph 8.1 [B7], the claimant indicated claims of:

- 13.4.1. Unfair dismissal;
- 13.4.2. Race discrimination;
- 13.4.3. Pregnancy or maternity discrimination;
- 13.4.4. Arrears of pay; and
- 13.4.5. Other payments.

13.5. The only other description of the claims were in paragraphs 8.2 [B8] and 9.2 [B9]. In paragraph 8.2, the claimant stated:

"Racist remarks and other people leaving the business for mistreatment."

In paragraph 9.2, the claimant stated:

"I would like compensation as it has put me out of a job and wasted 2 years for nothing. They have swindled me out of money before and this is the final straw. As I am expecting a baby also they have forced me into this position I am in and not happy with the treatment."

Second Claim

13.6. On 26 May 2021, the claimant issued claim number 2301906/2021 against "John Roache" ("Second Claim").

13.7. The claimant's Claim Form [B16-B27] refers to an ACAS Early Conciliation Certificate number R141349/21/49. It was not disputed that this certificate names the claimant as Prospective Claimant and "John Roache" as Prospective Respondent.

13.8. The Early Conciliation Certificate [B15] shows that early conciliation started and ended on 26 May 2021.

13.9. In the Second Claim at paragraph 8.1 [B21], the claimant indicated claims of:

- 13.9.1. Unfair dismissal;
- 13.9.2. Race discrimination;
- 13.9.3. Pregnancy or maternity discrimination;
- 13.9.4. Religion or belief discrimination and
- 13.9.5. Other payments.

13.10. The claimant completed one line of narrative in paragraph 8.1 [B21], two paragraphs of narrative at paragraph 8.2 [B22], and 8 lines of narrative at paragraph 9.2 [B23].

Third Claim

13.11. On 4 June 2021, the claimant issued claim number 2301981/2021 against “Swale heating” and “John Roache” (“Third Claim”).

13.12. The claimant’s Claim Form [B29-B40] makes no reference to any ACAS Early Conciliation Certificate.

13.13. In the Third Claim at paragraph 8.1 [B34], the claimant indicated claims of:

- 13.13.1. Unfair dismissal;
- 13.13.2. Race discrimination;
- 13.13.3. Pregnancy or maternity discrimination;
- 13.13.4. Religion or belief discrimination; and
- 13.13.5. Other payments.

13.14. The claimant completed one line of narrative in paragraph 8.1 [B34] : “Overtime payments”.

13.15. The claimant completed one paragraph of rambling narrative in paragraph 8.2 of the claim Form [B35].

13.16. At paragraph 9.2 [B36], the claimant set out the value of his claim at £173,515.00.

13.17. At paragraph 15 of the Third Claim[B40], the claimant stated he had recorded conversations and emails.

14. The respondents have filed a Response (ET3) to each of the claimant’s Claim Forms.

15. This hearing was set up by a Notice of Hearing dated 25 March 2022, which stated that the purpose of today's hearing was to "consider the respondent's (sic) application raised in the ET3." As the Notice of Hearing post-dates, the last of the three ET3s filed by the respondents, I find that the ET3 mentioned it is the Grounds of Resistance filed by both respondents in respect of the third claim [B88-B93]. I saw no correspondence and heard no submission from either party that the ET3 in question is that filed in response to the First or Second Claims.
16. The Notice of Hearing contained no case management orders.
17. By carefully going through the respondents' Grounds of Resistance filed in response to the Third Claim, I find that the applications raised by the document are as follows (I have included the relevant paragraph number and page number in the bundle – e.g., §8 [89]):
 - 17.1. The claims against the second respondent were made against "John Roache". His correct name is "John Roche" (§8 [89]).
 - 17.2. The Third Claim is the same as the First Claim, with the exception that the Third Claim also includes a claim for religious belief discrimination – it names the same respondents and ticks the same heads of claim (§§15-17 [89]).
 - 17.3. The Second Claim is a duplicate of the First Claim, so the Third Claim should be struck out as an abuse of process. In the alternative all 3 claims should be joined (§§18-22 [89-90]).
 - 17.4. The unfair dismissal claim is inadequately pleaded (§23 [90]).
 - 17.5. The second respondent cannot be a party to an unfair dismissal claim and should be removed (§24 [90]).
 - 17.6. The claim of race discrimination is inadequately pleaded (§32 [91]).
 - 17.7. The claim of race discrimination should be struck out as having no reasonable prospects of success (§35 [92]).
 - 17.8. The claims of pregnancy or maternity discrimination are inadequately pleaded (§36 [92]).
 - 17.9. The claim of pregnancy/maternity discrimination is misconceived as the claims was not pregnant and is not a woman (§37 [92]).
 - 17.10. The claims of pregnancy/maternity discrimination have no reasonable prospects of success and should be struck out (§39 [92]).
 - 17.11. The claim of religious belief discrimination has no reasonable prospect of success and should be struck out (§41 [92]).

- 17.12. No claim for monies owed can be made against the second respondent (§44 [93]).
- 17.13. Some of the claimant's claims for monies owed may be out of time (§46 [93]).
18. It was a little disappointing that I have had to do the work to determine what applications were before me when the respondents are legally represented.
19. The respondents submitted a document titled "List of Issues for Preliminary Hearing", which listed the following matters:
- 19.1. Did the claimant obtain an ACAS EC certificate in respect of the second respondent?
 - 19.2. If not, did the claimant comply with the early conciliation procedure (Section 18A(1) Employment Tribunal Act 1996 and rules 1, 2(1) and 3(1) Early Conciliation Procedure Rules)?
 - 19.3. Should the second respondent be dismissed as responded in all three claims, or at least the First Claim?
 - 19.4. In any event, should the claims of unfair dismissal be dismissed against the second respondent?
 - 19.5. Should some or all of the claimants claims be struck out as having no reasonable prospect of success/
 - 19.6. In the alternative, should deposits be ordered?
 - 19.7. Should the claimant be required to give further information about his claims?
 - 19.8. Should the claims be consolidated?
20. I was limited in what I could do in this case by the wording of the order of the Tribunal that set this hearing up. I may only vary a previous order of a Judge if it is clearly in the interest of justice to do so.

The hearing

21. The hearing was listed to take place as a remote video hearing to begin at 10:00am. The claimant was late joining the hearing and, when he did join, he was using a mobile phone from a van. The connection was very poor. Mr Miller-Tuitt said that he could not find anywhere quiet at home from which to conduct the hearing.
22. During the first part of the hearing, we lost connection with the claimant three or four times. I was concerned that the connection and the location that the

claimant was calling in from was likely to jeopardise a fair and just hearing. The claimant would need to look at various documents and would be unable to do so on a mobile phone.

23. The claimant confirmed he had received 2 documents from the respondents, but had not read them. These were the bundle and the bundle index. We lost connection with Mr Miller-Tuitt again at 10:30am and I asked for an email to be sent to re-join at 11:00am. All the details were sent to each party.
24. There was no sign of the claimant at 11:00am. I decided that it was a hopeless task to continue to try and hear the case by video and I asked my clerk to email the parties with a request to join a telephone hearing at 11:15am.
25. Ms Chute and her instructing solicitors joined on time. Mr Miller-Tuitt was late, and when he did join, he advised that he had found somewhere with reliable wi-fi and a laptop to continue the hearing by video. I therefore postponed the hearing to 12:00pm on the same cloud address.
26. The claimant eventually joined at 12:15pm and said he would log in by telephone and use the laptop for documents.
27. We eventually started. I had a bundle of documents and an index prepared by the respondents. The bundle consisted of 210 pages. If I refer to a page or pages in the bundle, I will put the pages number(s) in square brackets by the reference.
28. Following the guidance of the EAT in **Cox v Adecco** [2021] UKEAT/0339/19/AT, I decided that the first task I had to undertake was to establish the claimant's claims.
29. I would make the preliminary observation that I found the claimant to be vague to the point of being obtuse. I made every effort to ask the claimant short questions in plain language to assist him in giving details of his claims, but he seemed unwilling or unable to give much detail of anything.
30. The claimant said he has a degree in business management [35] and did not say that he had any illness or disability that was impairing his ability to explain his case.

Unfair dismissal

31. Mr Miller-Tuitt said he had been constructively unfairly dismissed. He had resigned because he had been forced to resign: he didn't accept what was going to happen to him going forward.
32. He had resigned on 6 April 2021 [173-174]. His resignation said:

"Unfortunately, I have to hand in my notice.

Thank you.

Hope this helps.”

33. Mr Miler-Tuitt gave an account of dealings with John Roche, the second respondent, who was his manager. He says that the problems had started when Mr Roche had met him on a job, but he could not say when that was.
34. The clamant says he asked Mr Roche how he could gain a promotion. It is alleged that Mr Roche said that the claimant had to get a gold star, which is a performance award for being at the top of the respondent's Key Performance Indicators ("KPIs"). The claimant says he obtained the gold star in April and May 2021, but wasn't promoted to the position of Assistant Regional Support Manager.
35. I should record that the respondents have no recollection of any gold star award process. Further, Ms Chute reminded me that the claimant's employment with the respondent had ended on 30 April 2021. Mr Miller-Tuitt responded with the comment that he obviously wasn't working for the first respondent after that date, but the first respondent had not given him access to his work PDA, which had he dates and information that he needed on it.
36. Ms Chute took me to a document in the bundle [197] that listed the complaints about recruitment exercises that Mr Miller-Tuitt had raised in his grievances filed in April 2021. These were:
 - 36.1. A Regional Support Manager role for North Hub for which applications closed on 31 July 2020. The claimant applied after the deadline.
 - 36.2. A Regional Support Manager role for Kent in February 2021. The claimant did not apply.
 - 36.3. A Regional Support Manager role for Kent in March 2021. The claimant did not apply.
 - 36.4. A Lead Technician role (all areas) in September 2020. The clamant did not apply.
 - 36.5. An Installation Support Manager role for which the claimant applied on 10 March 2021. He was asked to submit a CV on 11 March 2021, but did not comply with the request, so was not shortlisted.
37. Mr Miller-Tuitt responded to the document at page 197:
 - 37.1. He took no issue with the failure to be appointed to the RSM post for North Hub in August 2029.
 - 37.2. He accepted that he didn't apply for the Kent job in February or March 2021.

37.3. He accepted that he did not apply for the Lead Technician role in September 2020.

37.4. He does not believe he received the first respondent's request for his CV in respect of the Installation Support Manager role in March 2021. He does not recall whether he submitted his CV.

38. At this point, we broke for lunch, having dealt with the unfair dismissal claim.

Discrimination

Victimisation

39. After lunch, we had a broad discussion about the claims of discrimination, which Mr Miller-Tuitt summarised as being of:

39.1. Victimisation;

39.2. Lack of equal opportunities

39.3. Paternity pay; and

39.4. Discrimination.

40. Mr Miller-Tuitt's claim of victimisation is mentioned only in one line of his three Claim Forms (§8.2 of the Third Claim [35]), in which he states:

"The company is big enough that someone of colour should be able to go for a job without this victimisation and lack of equality."

41. The claimant identified the acts of victimisation as being two disciplinary hearings. There were no documents concerning disciplinary hearings in the bundle. The claimant could not say when the disciplinary hearings had taken place.

42. The claimant was unable to identify what the protected act was that led to the detrimental treatment of him.

43. Later in the hearing, Ms Chute advised that the claimant had received a written warning on 29 July 2020 and a final written warning on 9 February 2021.

Maternity/Pregnancy Discrimination

44. The claimant accepted that he had never been pregnant and was not a woman. Even when I read out section 18 of the Equality Act, which makes it clear that such claims can only be brought by a woman, he would not agree to withdraw the claim.

45. He said that his claim was about the first respondent's failure to pay him paternity pay. I asked him several times in several ways when the child that

qualified him for a paternity payment was born, but he was unable to say even which year the child was born in until his fifth or sixth attempt to answer the question, when he said that the child was born "in 2021."

46. I indicated that I was minded to strike the maternity/pregnant discrimination claim out.
47. Mr Miller-Tuitt then said that the claim was about a failure to pay paternity pay and that he wanted to amend his claim to include this matter.

Lack of equal opportunities and discrimination

48. I have rolled these two claims together as they appear to be claims of direct discrimination because of race. The claimant said that the discrimination was the failure to promote him. His comparators were his white colleagues who were promoted.
49. Mr Miller-Tuitt said that a colleague, Mr Murphy, had remarked about dreadlocks on 17 June 2020.
50. Mr Miller-Tuitt alleged that John Roche had stopped his emails from working, had failed to promote him and had promoted other white colleagues instead of promoting the claimant.

Religious belief discrimination

51. The claimant identifies as Rastafarian. He was discriminated against when Mr Murphy made comments about dreadlocks.
52. John Roche had put the claimant on a job with a white skinhead because he was a Rastafarian. That happened about the same time as Mr Murphy's comments

Arrears of pay

53. Mr Miller-Tuitt said that he had not been paid for overtime that he had worked in November 2020 and August 2020 and 'going back". He said he couldn't explain it.

Claims against the second respondent

54. I asked the claimant to explain why he had issued three claims. He said that he had issued the second claim because the first claim had been rejected by the Tribunal. He accepted that he had no valid ACAS certificate in respect of the second claimant when he issues the First Claim.
55. He accepted that he had no new ACAS certificate in respect of the first respondent for the Third Claim.
56. I indicated to the parties that I would work out a Case Summary and List of Issues for their consideration, but as it was already nearly 3:00pm, I needed

to move on to the actual reason for the hearing: the respondent's applications for various orders.

57. Ms Chute set out the respondent's case, relying on her skeleton argument. I gave Mr Miller-Tuitt the opportunity to make representations, but he declined the offer.

Findings

58. I find that Ms Chute's skeleton argument properly and correctly set out the relevant law.
59. I find that the claim against Mr Roche in the First claim was refused. That is a determination of the claim and the subsequent proceedings are barred by cause of action estoppel. That means that the Second Claim has to be struck out in its entirety.
60. The claimant seemed unable to describe the factual basis of his claim, other than to make general comments about having been the victim of discrimination with almost no detail about when any alleged incident happened.
61. His claim of pregnancy or maternity discrimination was hopelessly misconceived. He applied to amend the claim to one for non-payment of paternity pay at this hearing, but could not confirm the date of birth of the child in respect of who's birth he alleges he was entitled to the paternity pay.
62. The claimant could identify no protected act that has to be the basis of any victimisation claim.

Employment Judge Shore

Date 2 November 2022

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