



EMPLOYMENT TRIBUNALS

Claimant: Ms Amal Mohamed

Respondents: R1) Staffline Recruitment Limited
R2) Grocery Delivery E-Services UK Ltd
R3) Miss Alexandra Narcisa Bledea

**At an Open Preliminary Hearing (Hybrid) heard
at the Employment Tribunal**

Heard at: Nottingham **on:** 13 October 2022

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Mr Nikolas Clark, Counsel
Respondent: R1) Mr James Symons, Solicitor
R2) & R3) Mr Stephen Bishop, Counsel

JUDGMENT

The Employment Judge gave Judgment as follows;

1. The 2nd Respondent's application for a deposit order is refused.
2. The 2nd Respondent's application for costs is refused.
3. The application to amend the grounds of claim is granted.

REASONS

Background to this Hearing

1. At a Preliminary Hearing conducted by me on 11 May 2022 I was to consider an application by the Respondents for strike out/deposit order in respect of the claims made against the 2nd Respondent.
2. I was also to consider an application for costs.
3. As I explained in my reasons in respect of that hearing the cause of the difficulty was that when the Claimant had originally made her claim, she had only been able to name the 3rd Respondent as “Karina”.
4. Shortly before the hearing of 11 May 2022 the Claimant had discovered that the name of the person was in fact Alexandra Narcisa Bledea. She had been mistaken in thinking that the person was named Karina.
5. That hearing had to be adjourned because the Claimant needed to make an application to amend her claim and to join in this person as the 3rd Respondent.
6. I therefore also had to adjourn the 2nd Respondent’s application for strike out/deposit/costs.
7. Originally that hearing was going to take place on 12 July 2022 but that had to be adjourned to today because of my availability.

The Hearing Today

8. The agenda for the hearing today was to consider;
 - 8.1. An application by the Claimant to amend her claim so that she could name Miss Bledea as the 3rd Respondent.
 - 8.2. I would also then consider applications by the 2nd Respondent for;
 - 8.2.1. A deposit order.
 - 8.2.2. Costs.
9. There was no dispute that the Claimant’s application to amend her claim should be granted to allow her to name correctly the person who she said been responsible for the discrimination she says that she has suffered. The 2nd Respondent no longer wished to pursue the application for a strike out.
10. There was an agreed bundle of documents that if I referred to page numbers it is from that bundle.
11. Apart from the 1st Respondents, the other representatives are different from the representatives at the previous hearing.

Submissions

12. I heard submissions from Mr Bishop who relied to on the written submissions made by Mr Small in his skeleton argument for the first hearing in May and then added to them with his own supplementary submissions.
13. It was a contention of the Second Respondent that the allegations of discrimination have little prospect of success because the Claimant is unlikely to be able to show that the difference in treatment was because of her sex.
14. In respect of the whistleblowing allegation, he said that she was unlikely to be able to show that it was made in the public interest.
15. In respect of the victimisation complaint, it is said that there was little prospect of her succeeding with her allegation that she made and undertook a protected act on 15 June.
16. In his contentions for the Claimant, Mr Clark pointed out that the issue of credibility was an issue for trial. There had been some difficulties because the Claimant did not know the name of the individual who she says had mistreated her. She does now though.
17. It does not go against her credibility that she did know the name of the person at the time. He said that she only had a very brief encounter with the 3rd Respondent and was only engaged with the 2nd Respondent for a very short period of time.
18. He contended that these were factual matters that could only really be determined by a Tribunal.
19. In considering in whether to make a deposit order I must consider the provisions of Rule 39(1) of the Employment Tribunal Rules of Procedure. I must consider whether any specific allegation or argument in a claim has little reasonable prospect of success. If I am satisfied it has little reasonable prospect of success, I go on to consider whether I should make an order requiring a party to pay a deposit not exceeding £1000 as a condition of continuing to advance that allegation or argument.
20. I have been referred to a number of cases namely;
 - ***Jansen Van Rensburg v Royal Borough of Kingston-Upon-Thames UKEAT/0096/07.***
 - ***Tree v South East Coastal Ambulance Service NHS Foundation Trust UKEAT/00045/27.***
 - ***Garcia v The Leadership Factor Limited [2022] EAT19.***
 - ***Chandhok v Tirkey [2015] ICR 527***
21. All the cases above emphasise that I have a greater leeway when considering whether to make a deposit order than I would if it was a strike out. I must though have a proper basis for doubting the likelihood of a party being able to establish the

facts essential to the claim.

Conclusion

22. I am satisfied in this case though that it is not appropriate for me to make a deposit order. I am satisfied that this is a case that turns on its facts and those facts need to be determined by a full Tribunal and that this case should proceed without a deposit order the circumstances of this case.

The Costs Application

23. In this case it is the 2nd Respondent's case that the Claimant has been unreasonable in the conduct of the proceedings.

24. Mr Bishop's contention is that the identity of the 3rd Respondent was a vital fact as if that person did not work for the 2nd Respondent then several of the claims against the 2nd Respondent would fall to be struck out.

25. Prior to the 19 October 2021 they had undertaken a thorough search of employment records and did not have any employees working in its warehouses at Nuneaton called Karina at the relevant time.

26. The original Preliminary Hearing which included the strike out request had to be adjourned on 17 February 2022 and relisted for the 11 May 2022. It was only on the morning of that hearing that the Respondents were informed that the 3rd Respondent was not in fact Karina but an Alexandra Bledea.

27. Mr Bishop's contention was that Ms Mohamed had not made all reasonable enquiries to establish the identity of the 3rd Respondent.

28. He says that the Claimant could have asked someone called Liban Ahmed but had chosen not to do so and the Claimant had not contacted the person who assisted her until May 2022. It was only then that she was able to discover the name of the person.

29. To make an order for costs under Rule 76 of the Employment Tribunal Rules of Procedure I must undertake a two-stage process. I must be satisfied that the Claimant has been guilty of unreasonable behaviour and if I am so satisfied, I then must decide whether to exercise my discretion in making an order for costs.

30. If I decide that its appropriate to make an order for costs, I then may consider the Claimant's means as I think it is appropriate.

31. I am not satisfied in this case that the Claimant has acted unreasonably. She was only engaged with the 3rd Respondent for a very short period, and I am satisfied that she genuinely did not know the identity of the person. As soon as she found out the identity of the person, she informed the Tribunal just prior to the hearing in May.

32. There has been no prejudice to the parties other than the additional costs incurred and whilst it was unfortunate the behaviour does not pass the threshold of making it unreasonable and I am not therefore satisfied that its appropriate to make an order.

Amendment of Claim

33. I see there is no objection to the application to amend and that is granted.

Employment Judge Hutchinson
Date: 31 October 2022

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.