



EMPLOYMENT TRIBUNALS

Claimant: Mr A Coldridge

Respondent: Just Family Law Ltd

REASONS

Requested by the Claimant following promulgation of Judgment following Preliminary Hearing on 29 November 2022

1. By a claim form dated 15 October 2021 the Claimant pursued complaints of unfair dismissal under s.98 Employment Rights Act ('ERA'), automatically unfair dismissal for making a protected disclosure under s.103A ERA and discrimination on the grounds of age and/or sex.
2. At a Telephone Case Management Preliminary Hearing held on 6 July 2022 Employment Judge Livesey made various orders and directed that this case should be listed for a Preliminary Hearing on 29 November 2022 and confirmed the following matters were to be determined at that hearing:
 - Whether to strike out the claim, or any part of it, because it has no reasonable prospect of success within the meaning of Rule 37;
 - Whether to order the Claimant to pay a deposit (not exceeding £1,000) as a condition of continuing to advance any specific allegation or argument in the claim if the Tribunal considers their allegation or argument has little reasonable prospect of success within the meaning of Rule 39; and
 - Whether to make any of the orders sought by the Respondent under Rule 50.
3. Judge Livesey found that the relevant circumstances were as follows. The Claimant, a man in his mid-50s is a solicitor who was initially employed by the Respondent through an agency on 10 June 2019. The Respondent maintains that he was not directly employed by it until 10 February 2020. On 16 June 2021 the Respondent served written notice of dismissal on the Claimant which was to expire on 15 September 2021. The Respondent states that this was for performance and business related issues relating to his time recording and billing. The Claimant submits this was an unfair dismissal for redundancy. He contends that he was treated less favourably than female and/or younger employees of the Respondent because he was not provided with secretarial support and was exposed to the risk of redundancy when such colleagues were not.
4. The Claimant also claims that during his notice period he was summarily dismissed on 23 July 2021 for whistleblowing because of concerns he had set out in a letter to the Respondent and its solicitors about an alleged potential breach of GDPR requirements by the Respondent. The Respondent states that the Claimant was dismissed on 23 July for gross misconduct because he made derogatory and unprofessional remarks about the Respondent's owner to a courier who had attended at his home to collect property

belonging to the Respondent. There was a further dispute of fact between the parties as to when the Claimant commence employment with the Respondent and whether or not he had acquired the necessary qualifying period of employment under s.108 ERA to pursue his claim of ordinary unfair dismissal under s.98 ERA.

5. The Claimant failed to respond to respond and comply with case management orders which had been made on 6 July 2022 in respect of providing a schedule of loss and disclosure of relevant documents. The Respondent applied to strike out the Claimant's claims for this failure. Judge Livesey responded to this application by letter to the parties on 23 August 2022 which stated, inter alia, as follows:

"The Claimant's response to the Case Management Order and the further letter of 9 August and his explanations for his failure to attend the hearing have now been considered. Whilst not entirely adequate, it appears that he is now willing to engage in the process and a fair hearing on 29 November is still possible. The nuclear option of striking the claim out at this stage is not appropriate, but the Claimant must understand that another Judge will not be so lenient if he fails to adhere with directions going forward."

6. Judge Livesey granted extensions of time for the Claimant to file his Schedule of Loss and complete disclosure of documents. Judge Livesey's letter then concludes as follows:

"The Judge notes that the Claimant states that "he needs further and better particulars" which is not understood. It has not been asserted that his claim has been somehow misunderstood and/or that the Case Summary is inaccurate in any respect. No further clarity is required and/or has been ordered. Any additions to or broadening of the claim now would be considered to be by way of amendment and an application would be required with, in particular, an explanation as to why any new claims were being raised so long out of time."

7. At the commencement of the hearing Judge Craft set out in detail the position in the proceedings and the purpose of the Preliminary Hearing. Judge Craft noted the parties had been ordered to disclose all relevant documents to each other prior to this hearing. The Respondent had lodged a bundle of documents comprising 140 pages (**Exhibit R1**) and was informed the Claimant had provided four documents which were all related to matters of potential mitigation.
8. The Claimant then informed the Tribunal and Mr Milsom, Counsel for the Respondent, that he accepted that he did not have two years continuity of employment with the Respondent at the date of his dismissal and that the Tribunal had no jurisdiction to consider his claim for ordinary unfair dismissal for that reason. He also informed the Tribunal that he wished to withdraw his allegations of sex and age discrimination. The Tribunal confirmed that a Judgment would be promulgated that the Claimant's claims of sex and age discrimination are dismissed upon their withdrawal by the Claimant and that the claim of ordinary unfair dismissal would also be dismissed because it had been agreed that the Tribunal had no jurisdiction to consider it.
9. The remaining claim was the Claimant's claim he had been dismissed contrary to s.103A ERA for making protected disclosures. The Claimant then informed the Tribunal that he intended to pursue a claim that he was dismissed by the Respondent because he was a British Army Reservist contrary to s.108(5) ERA. He confirmed that this was the first time he had referred to such a claim in these proceedings. It was explained to him that this claim was substantially out of time and apparently asserted that the sole or principal reason for his dismissal was a different reason to that he had pursued to date. It was fully explained to him that if he wanted to pursue this claim he would have to make an application to amend the current claim to include this claim and the Respondent would be entitled to oppose such an amendment. The Claimant confirmed that he understood that this was a claim that he should have been raised far earlier and that he was apparently putting forward another reason for his dismissal over a year after commencing these proceedings. The Tribunal adjourned the hearing to enable the

Claimant to consider his position.

10. When the hearing reconvened the Claimant informed the Tribunal that he had decided not to pursue an application to amend this claim. The Tribunal had already informed the parties that it would be necessary to complete consideration of the applications for strikeout and/or Deposit Order before the Tribunal could give any consideration to the Respondent's applications under Rule 50. Therefore, the hearing proceeded with the Tribunal receiving submissions from Mr Milsom and the Claimant in respect of the remaining claim.
11. The burden is on the Claimant to prove that the reason, or if more than one, the principal reason for his dismissal was that he made a protected disclosure to the Respondent and its solicitors. He has to show that he made a disclosure of information which was made in the public interest. A disclosure of information within the terms of s.43B ERA is different to raising a concern or making an allegation. The disclosure of information must tend to show a breach of a legal obligation.
12. The Claimant's case is that he made such a disclosure in a letter which he sent to the Respondent's solicitors on 13 July 2021. An immediate difficulty for the Claimant in pursuing this claim is that he had already been given notice of dismissal by the Respondent in a letter sent to him dated 16 June 2021. This informed him that the Respondent was terminating his employment with effect from 15 September 2021. The contents of the letter of 13 July 2021 could not possibly have been a reason for the Respondent to give notice to the Claimant on 16 June 2021 that his employment with the Respondent would terminate on 15 September and that he would remain on garden leave during his notice period.
13. The part of the email of 13 July 2021 upon which the Claimant relies does not disclose information. At best it raises a concern about a potential unparticularised breach of GDPR. The Claimant was then on garden leave scheduled to last until 15 September 2021. He explained to the Tribunal that in addition to a potential unparticularized data protection issue he had a concern that the owner of the Respondent had been gossiping about him and others. His explanation to the Tribunal demonstrated that he had no relevant knowledge of the business relationships he was, and apparently still is, concerned about. He said that he had been seeking information from the Respondent but did not know if there was a smoking gun. This means he was seeking rather than disclosing information, and so it is not surprising that he is unable to specify the category of wrongdoing within s.43B(1)(a)-(f) his enquiries related to. The Tribunal has found that the Claimant has no reasonable prospect of establishing that he made a qualifying disclosure within the terms of s.43B ERA for these reasons.
14. Furthermore, even if it could be argued that the relevant contents of the letter relied upon constituted a qualifying disclosure the Tribunal is satisfied that the Claimant has no reasonable prospect of establishing that this was the sole or principal reason for his dismissal on 23 July 2021. It is the Respondent's case that the Claimant was dismissed because of his abusive behaviour towards a courier. The Respondent's letter to the Claimant on the following day makes it clear that this was the reason for the Respondent terminating his employment immediately when he was in the middle of garden leave.
15. The Tribunal agrees with Mr Milsom that it need not be established that the Claimant behaved as reported by the courier or whether he had justification for behaving in that way. The Claimant has to establish that the sole or principal reason for his summary dismissal on 23 July 2021 was that he made a qualifying disclosure. The Tribunal has concluded that there is no reasonable prospect of him being able to establish that his dismissal was brought forward to an earlier date because of the letter which he sent to the Respondent on 13 July. There is no indication before the Tribunal that sending it resulted in any adverse consequences for him. Therefore, for all these reasons the Tribunal must strike out the Claimant's remaining claim because it has concluded taking the Claimant's case as pleaded at its highest that it has no reasonable prospect of success and must be struck out. This meant that the Respondent's applications did not

have to be considered.

16. After the Tribunal had confirmed its Judgment with ex-tempore reasons Mr Milsom made an application for costs on behalf of the Respondent in the sum of £2,500 which sum included Mr Milsom's Brief Fee for preparing for, and attending, this hearing in the sum of £1,000. Mr Milsom relied on the Claimant's late withdrawal of claims at the start of this hearing, the Tribunal's conclusion that his remaining claim had no reasonable prospect of success and the Claimant continuing these proceedings after receipt of the Respondent's letter of 16 September 2022 which was headed: 'Without Prejudice – Subject to Contract and save as to Costs'. The Respondent had made a financial offer to settle the claim in this letter reserving the right to refer to the letter at the conclusion of the case in support of any application for costs. The Claimant had not accepted the financial offer made to him and the offer had then been withdrawn.
17. The Claimant responded by indicating that he understood that cost orders in the employment tribunal were the exception rather than the rule. Initially, he maintained that the Respondent had not informed him that they would make a costs application against him notwithstanding the letter of 16 September. He then submitted that he had still attempted to continue negotiation with the Respondent after receiving the letter but the Respondent had unreasonably sought to restrict him from making an application for damages for breach of contract in the County Court in the settlement terms which they proposed to him. He is now working in a self-employed capacity which provides limited income to him. He has no capital or other liquid assets apart from approximately £1,000 in his current account for ongoing expenses.
18. The Claimant had been warned by the Respondent that he was at risk of a costs application which was limited to costs incurred after the Respondent's withdrawal of the offer it had in its letter to the Claimant of 16 September 2020. The Claimant continued to pursue these proceedings relying on a number of misconceptions. The Tribunal gave the Claimant credit for withdrawing three claims at the start of this hearing although it considers that this concession could, and should, have been made before the hearing. It was unreasonable of the Claimant to have pursued the proceedings further after receipt of the Respondent's letter of 16 September. The continuation of the proceedings incurred additional costs for the Respondent. Therefore, after due consideration the Tribunal has concluded that the Claimant should pay the costs of Mr Milsom's Brief Fee. The Claimant is ordered to pay costs of £1,000 to the Respondent within the terms of Rule 76(1) Employment Tribunal Rules of Procedure 2013 (as amended).

Employment Judge Craft
Date 23 February 2023

Reasons sent to the Parties on 10 March 2023

FOR THE TRIBUNAL OFFICE