



EMPLOYMENT TRIBUNALS

Claimant

Mr P Baptiste

v

Respondent

1. Mr G Redmond
2. Royal Mail Group Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford **On:** 12 June 2023
Before: Employment Judge R Lewis

Appearances:

For the Claimant: In person
For the Respondents: Mr R Chaudhry, solicitor advocate

JUDGMENT

1. The claimant has permission to amend his claim by inclusion of a complaint about Mr Howe's phone call to him on or about 23 August 2022. The complaint is of direct race discrimination.
2. The claimant may amend his claim/alternatively it is confirmed for avoidance of doubt that the claim includes a complaint about the decision set out in the content of an undated letter sent to him by Ms Sinclair on or about 19 July 2022.
3. All other claims of discrimination, howsoever expressed, are struck out.
4. Mr G Redmond is dismissed from the proceedings as individual respondent.

REASONS

1. Neither party asked for these reasons, but it seems to me right that the tribunal provides them, in particular as the claimant acts in person, but plainly does not have sufficient understanding of the tribunal process as will enable him to do justice to the case which he wishes to present.

Background

2. This was the hearing listed by Employment Judge J Anderson on 2 May 2023. He set out four points for decision, which I abbreviate to: amendment; limitation;

deposit; and Mr Redmond's individual position. The final hearing has separately been listed for 4 days in the autumn of 2024, and that listing is confirmed.

3. The short background is that the claimant was in dispute with the employer between in or about 2018 and 2019 at least. Following a suspension of several months, he was transferred to work at a different location, and, he says, demoted to the grade of Postman from the managerial role which he had held for some years.
4. The claimant later clarified that he had been paid a number of substitution allowances for several years, but did not have a contract of employment as a manager.
5. Day A was 29 August 2022 and Day B was 12 September. The claim was presented on 19 September. At all times the claimant has acted in person and Messrs Weightmans for the respondent.
6. The response set out that the claimant had in 2018 received a serious two year written warning for misconduct, and been transferred to work at the JMC location. The claimant was adamant that the warning had been 'revoked' on appeal, and, somewhat to my surprise, not to mention that of Mr Chaudhury, produced a letter from an appeal hearer, Mr Clarke, saying that his appeal against the disciplinary sanction had been upheld. Mr Clarke's letter made very clear that the appeal succeeded on procedural not substantive grounds, ie that he did not rule that the claimant had not committed the misconduct for which he was disciplined. He also did not revoke the relocation of the claimant, which he said he had no power to deal with. The claimant's successful appeal was not mentioned in the Grounds of Resistance, which were accordingly incomplete and misleading. The omission is not acceptable to the tribunal, or, indeed, to an employee in his third decade of service. It is to be rectified in the amended Grounds ordered below.
7. The claimant sent written additional information, in response to a request, on 25 December 2022. It was a lay person's attempt to clarify his claim. It was an improvement on the ET1, but not a complete functioning clarification. It cross referenced to what appeared to be a bundle of several hundred pages.
8. It was not clear that in the time between receipt and this hearing, it received the attention from Weightmans which it demanded. The response had not been updated or amended in reply. The claimant had raised points on which Mr Chaudhury told me that he had no instructions; and efficient case management at this hearing required that the tribunal (and Mr Chaudhury) should have some outline of the respondent's response to it. I asked if the respondent had a copy of the bundle to which it referred, and was told that a copy had been sent to it by the claimant the previous Friday (this hearing took place on a Monday). I do not know if and when a copy was asked for. The claimant cannot have had any reasonable expectation that the respondent's representative would come to grips with several hundred pages of papers over a weekend.
9. The December information set out a claim for a sum of wages of just over £300,000. The calculation referred repeatedly to 260 weeks of losses. As the claimant was in receipt of basic pay throughout that period, he claims therefore to

have been unlawfully not paid a gross salary of some £60,000 pa on top of basic pay: that seems a large amount, on any approach. The claimant confirmed, in short, that this sum represents what he claims to have lost as a result of his suspension and 'demotion' (as he called it) in 2018.

Amendment: Mr Howe

10. In his December information, the claimant for the first time referred to Mr Ian Howe, who he said had telephoned him on 23 August 2022 and told him not to go to the office.
11. It took some considerable time to disentangle what this complaint actually was. As I understood it, the claimant at that time worked Monday to Friday only. He had on 20 August 2022, with permission of the Saturday manager, gone to the Acton office to carry out tasks which he described as "photocopying papers".
12. The following Tuesday, Mr Howe, not previously known to the claimant, telephoned the claimant and told him not to come back to the office because a member of staff went home because the claimant had been at the office the previous Saturday. That member of staff was Mr Dacones, who the claimant confirmed was one of those who had complained of the claimant's conduct in 2017/2018.
13. I repeatedly asked the claimant to clarify what exactly Mr Howe had said, and he could go no further than the instruction not to go back to the office because "a member of staff went home", and/or "staff members don't want you there".
14. The claimant considers that this was an act of race discrimination because, in his phrase, it was "racial preference and racial profiling." (Judge Anderson mistakenly wrote that this point was a complaint of sex discrimination).
15. I accept that the claimant did not refer to this in the ET1, although it must have been a recent event in his mind; he said that he simply forgot. On its face, the allegation is within time; and it seems to me likely to be capable of fair trial. Although the allegation has been live since 25 December 2022, Mr Chaudhry at this hearing had no instructions on the factual matrix.
16. I made every allowance for the claimant's difficulty as a litigant in person. I attached little weight to the matters absent from the ET1. It seemed to me that the balance of prejudice favoured the claimant on this issue: he would be greatly prejudiced if not permitted to test the point on evidence, and the respondent be relatively little prejudiced if called upon to defend the point. It is plainly a matter for short evidence of the reason why a decision was taken.

Ms Sinclair

17. In the ET1 the claimant referred to Ms Sinclair, and referred to trying to sort things out with her. He showed me an undated letter from Ms Sinclair, which he thought he had received on or about 19 July 2022, because it referenced a meeting on 11 July. In the letter Ms Sinclair told the claimant that she would not investigate his grievance and gave her reasons (which were in short that the matter was stale and had previously been through the procedure).

18. It seemed to me that this point was on the borderline between clarification of something referred to in the ET1, and requiring permission to amend. In any event, it seemed to me beyond doubt that the claimant should have permission to amend if required. The right to have a grievance heard is fundamental, and a refusal to entertain a grievance is a matter on which a respondent may be called upon to give an explanation. The balance of prejudice was plainly in the claimant's favour, and that matter proceeds.

Mr Redmond

19. Mr Redmond has been named as the the only individual respondent, out of the many, many individuals against whom the claimant has complaints. There was nothing in the ET1 to explain the case against Mr Redmond, which the claimant had clarified on 25 December.
20. The complaint was that the claimant had emailed the respondent's CEO Helpline on 18 April 2022. Mr Redmond replied to the claimant on 13 May. He wrote that he understood that matters had been resolved, and he dealt with some routine procedural matters. His job title was at the foot of his email, it was Executive Correspondence Manager. Mr Redmond's style of reply was courteous and professional, and I asked the claimant to clarify why it was the basis of the claim of race discrimination. His answer was that he "put it down to racial profiling by the company" and could say nothing about Mr Redmond as an individual.
21. This is a single incident involving Mr Redmond. It is out of time. I could see no reason to extend time. It is struck out on that ground. Alternatively, it is struck out on grounds that it has no reasonable prospect of success. Mr Redmond clearly wrote that he was replying on the basis of an understanding derived from others, and it can be seen that his role is simply to deal with routine correspondence sent to the CEO. It is fanciful to say that the letter is tainted by racial profiling by Mr Redmond.

Limitation

22. In the ET1, and again in his additional information, the claimant set out a lengthy narrative of events which began in 2017, and continued after a lengthy suspension. His complaint was that he suffered multiple acts of race discrimination in 2017 and 2018. Within his narrative, there were some further events in 2019, but the narrative ceased in 2021, and it was difficult to identify any specific allegation of racial discrimination in the period after 2019.
23. The claimant's overarching point was nevertheless straightforward. He believes that on grounds of race he was demoted from a managerial role in 2018, and that he has suffered a significant loss of earnings ever since. In other words, he says that he continues to live with the consequences of racial discrimination.
24. The claimant joined the respondent in the year 2000. At all times he was a member of the CWU. He said that he had so many other things on his mind, along with the stress of suspension, that he had not considered or known about a tribunal avenue to his disputes until very recently.
25. It seemed to me that the fundamental flaw in the claimant's case was that he has mixed up the question of the act of discrimination (which on his case might have

been suspension, and then return at a lower grade some years ago) with the continuing consequences as he sees them (namely a significant financial loss).

26. In my judgment all events before 29 May 2022 are out of time, and it is not just and equitable to extend time. That being so, and subject to what is said elsewhere in this Order, and in the Order of Judge Anderson, all allegations of events before that date are struck out and a separate case management order is made.

Unlawful deductions

27. This is a claim for the sums which the claimant says he was not paid after his 'demotion.'
28. The legal basis of this claim cannot be a claim for breach of contract, as the claimant was employed by the respondent at the time he presented his claim. It could be a claim for losses caused by discrimination; however, I have struck out all discrimination claims relating to the suspension and its consequences. Therefore, it cannot proceed on that footing.
29. It therefore goes forward, if at all, as a claim for unlawful deductions only. In that claim, it is for claimant to prove that the sums claimed were contractually due and payable to him. The respondent will have to answer it in its amended Grounds of Resistance with more than a general denial. If appropriate, the respondent has liberty to apply for a second public preliminary hearing, at which it may apply for the claim to be struck out.

Deposit orders

30. Mr Chaudhury did not pursue an application.

Employment Judge R Lewis

Date: 22 June 2023

Sent to the parties on:

12 July 2023

For the Tribunal: