



EMPLOYMENT TRIBUNALS

Claimant: Estrelita de Guzman Mondala

Respondent: Cinzia Morris and Ian Morris

Heard at: Bury St Edmunds (CVP) **On:** 2 November 2023

Before: Employment Judge Laidler

Representation

Claimant: Not attending and not represented

Respondent: Ms L Copsey, Solicitor

JUDGMENT

1. The claimant's application to amend her claim dated the 13 October 2023 is refused save for the amendment to her first name as set out in the heading to this judgment.
2. All claims of discrimination are struck out on the grounds that they have no reasonable prospects.
3. Orders are made as set out below for particularisation of the claims which proceed.

REASONS

1. The claim in this matter was received on 12 May 2023 and a previous case management hearing was heard before Employment Judge Warren on the 28 September 2023. The ET1 form appeared to have been prepared by solicitors on behalf of the claimant and both parties were represented by solicitors at that hearing. Although the boxes had been ticked in the ET1 claiming discrimination on the grounds of race and religion or belief it was not clear from the particulars at section 8.2 the basis for those complaints. The other complaints were said to be of unfair dismissal, wrongful dismissal, a redundancy payment and monetary claims.

2. Employment Judge Warren recorded in his summary sent to the parties that the claimant's solicitor had indicated in the agenda for that hearing that he would need to amend the claim as he had obtained further allegations of discrimination from his client. The judge determined that he would list a further preliminary hearing in order to give the claimant's solicitor time to formulate a properly constructed application to amend which "he understands must clearly set out each and every allegation relied upon, what was said or done, by whom, where and when. He will need to be clear as to the relevant head of claim relied upon in each respect". The order that was made was for that application to amend to be filed by no later than 14 October 2023 .
3. In the parties presence the judge listed a further hearing for 2 November 2023.
4. On the 1 November 2023 at 3:40 PM the claimant's solicitor wrote to the Employment Tribunal stating they would like to inform "that our client the applicant will not be able to attend as she is abroad" they also stated that they were not in a position to find a counsel for the hearing and requested "you to please give us another date at least 5 days for CVP hearing so that we can manage to attend the hearing".
5. This judge directed that a letter be sent to the parties asking why the application had been made so late and requesting the respondent's comments. The judge had also seen reference by the respondent to an application made by the claimant of 13 October 2023 and as it had not been seen by the judge a copy was requested
6. Nothing further was heard from the claimant's solicitor and they did not attend this hearing which proceeded in their absence the judge having indicated that with the postponement request was refused and that the hearing would proceed.

The application of 13 October 2023

7. Before the hearing started the judge obtained from the respondent's solicitor a copy of the application that had been submitted by the claimant on 13 October 2023. This comprised two parts. The first was an application to amend the claimant's first name which had been spelt incorrectly in the claim form. That application has been granted as it was clearly a typographical error and the correct spelling is as in the heading to this judgement
8. The second part of the application was purportedly complying with the order of Employment Judge Warren. The solicitors stated they were providing documents as to the grounds of "humiliation" and evidential documents from the claimant to support the same. What was attached appeared to be a typewritten version of the information already given at 8.2 of the claim form and then various handwritten notes which may or may not (it is not known) be from the claimant and a series of text message exchanges between the claimant and various others. Nowhere in

this documentation is it set out clearly the basis upon which the claimant says she was treated less favourably on the grounds of her race and religion or belief. The judge had not directed evidence to be filed but that a “properly constructed application to amend” be lodged on behalf of the claimant. That is not what was done.

9. The claimant and her solicitors have had ample opportunity to provide the information that was required in support of an application to amend but have failed to do so. It is not for the tribunal to read through handwritten documents and text messages to try and ascertain which aspects are said to amount to discriminatory conduct. Nothing on the face of the documents alerts the tribunal to what might be being relied upon. Judge Warren also directed that the claimant’s solicitor would need to make clear the relevant head of claim relied upon in each respect and that has not been done either.
10. The application to amend is therefore refused. It follows that the claims of discrimination are not adequately particularised and the respondent does not know the case it has to defend as presently drafted. Those claims in the ET1 have no reasonable prospects of success and are struck out

The claims that proceed

11. The other claims brought in the claim form are:
 - a. unfair dismissal,
 - b. wrongful dismissal,
 - c. a claim for a redundancy payment
 - d. holiday pay and
 - e. arrears of pay including something described as a “gift money”.

Again these are not adequately particularised. An order is set out below requiring further information to be provided so that the tribunal and the respondent knows what is being alleged. Once the order has been complied with or indeed if it is not the file will be referred back to this Employment Judge to make further directions as may be appropriate. The claimant and her advisers are reminded of the provisions in the Employment Tribunal Rules which enable claims to be struck out if there is a failure to comply with relevant tribunal orders.

ORDERS

Within 14 days of the date on which this judgment is sent to the parties the claimant is to file and serve the following further information: –

1. In relation to the claim of unfair dismissal all facts and matters relied upon in asserting that it was procedurally unfair, whether it was being alleged that the respondent had failed to follow the ACAS Code (rather than the access code pleaded) and if so which aspect of the Code is it said was not followed
2. The claimant states in section 8.2 of the ET1 form that the dismissal fell outside the bounds of reasonable responses “when compared with the respondent’s treatment of other employees”. The claimant is to set out

who she is referring to and what treatment they received and in what circumstances.

3. The claimant also refers at section 8.2 paragraph 5 to “the respondent allowed a large amount of inappropriate email usage by other employees to go completely unpunished” and the claimant is to set out the detail of what is being referred to
4. In relation to wrongful dismissal the claimant is to set out the contractual provision relied upon and to make it clear how much notice she says she was contractually entitled to.
5. In relation to redundancy the claimant is to explain why she says there was a redundancy situation and why she should be entitled to a redundancy payment.
6. Holiday pay - the claimant is to set out the basis of this claim stating in particular but not limited to the amount of holiday she was entitled to, what had been taken and how much is claimed.
7. “Gift money” the claimant is to set out the legal basis of this claim and why she says that the Employment Tribunal would have jurisdiction in connection with it.

About these orders

1. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
2. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
3. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

4. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

5. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

6. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
7. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
8. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: *<https://www.gov.uk/appeal-employment-appeal-tribunal>*

Employment Judge Laidler

2 November 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

3/1/2024

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FOR THE TRIBUNAL OFFICE