



EMPLOYMENT TRIBUNALS

Claimant

Miss Tabitha Gafencu

v

Respondent

Tesco Stores Limited

Heard at: Cambridge (by CVP)

On: 9 February 2024

Before: Employment Judge M Ord

Appearances

For the Claimant: Mr J Welch, Lay Representative

For the Respondent: Mr J Cook, Counsel

JUDGMENT Striking Out the Claim

1. The Tribunal does not have jurisdiction to consider the complaints made by the Claimant in this case.
2. The Claim therefore has no reasonable prospect of success and is Struck Out pursuant to Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. The Claimant remains employed by the Respondent and has been continuously employed since 12 November 2018.
2. Following a period of Early Conciliation with ACAS which began on 23 February 2023 and ended on 6 April 2023, the Claimant presented her Claim Form to the Tribunal on 5 May 2023.
3. In Section 8 of the Claim Form the Claimant ticked none of the boxes indicating that she was either unfairly dismissed or discriminated against, nor any claims for redundancy payment, notice pay, holiday pay, arrears of pay or other payments.
4. The Claimant indicated that she was making another type of Claim which the Employment Tribunal can deal with and said this,

"Breach of the duty of care to ensure my health, safety, welfare and mental wellbeing were being adhered to".

5. Under Section 15 marked "Additional Information" on the Claim Form, the Claimant said this,

"This ... is currently raised to the highest possible level with the business, as CEO. The appointed person to review it internally is Sara Harcourt".

6. The Claimant provided additional information on her Claim Form to set out the background and details of her Claim under Section 8.2 of the Claim Form. The Claimant referred to an initial incident involving another colleague in January 2021 which remains unresolved. The Claimant says that she has been let down by,

"multiple people over 26 months and it has left me with anxiety, fear for my own personal safety, scared to live a normal life and diagnosed with PTSD"

7. The Claimant says she was threatened with a knife by a colleague and over the following two years that colleague admitted having purchased a gun from the Dark Web and made threats to commit a Terrorist act at the Claimant's wedding.

8. The Claimant says that in the 26 months since the incident took place, meetings were still happening and that she had been threatened with knives, guns and explosives by the relevant colleague. She complains that she wanted to feel safe in her personal and work life, to be supported with help and for a thorough investigation and outcome to take place which would lead her to feel safe and supported by the business.

9. In their Response, the Respondent stated that the Claim should be dismissed under Rule 27 on the basis that the Tribunal has no jurisdiction to consider the Claim or part of it, or that the Claim or part of it has no reasonable prospect of success, alternatively to list a Preliminary Hearing pursuant to Rule 29 to clarify the Claims (and, although not stated, to consider whether the Claims as clarified have any reasonable prospect of success).

10. The Claimant submitted a reply to the Response on 6 September 2023. The opening paragraph states this,

"The case is brought to the Tribunal in the instance of Health and Safety at Work. The Claimant has suffered PTSD, significant mental health issues and initial fear of others due to the actions taken by the Respondent."

11. The reply to the Response runs to some 8 pages setting out details of events taking place between 22 January 2021 and 22 March 2023.

12. On behalf of the Respondent, Mr Cook made the following submissions:-

12.1. The Claim is brought as a Claim for breach of contract / duty of care. Under the Employment Tribunal Extension of Jurisdiction

(England and Wales) Order 1994, Regulation 3 extends the jurisdiction of the Employment Tribunal to hear proceedings in respect of a Claim of an employee for the recovery of damages or any other sum (other than a claim for damages or a sum due in respect of personal injuries) in the circumstances set out in that Order.

- 12.2. Further and in any event, proceedings for a breach of contract cannot be brought, pursuant to Regulation 3(c) of that Order before termination of the employee's employment and here the Claimant remains in employment.
- 12.3. Insofar as the Claim relates to Health and Safety, the Tribunal's jurisdiction is set out in the Employment Rights Act 1996. In particular, s.44 provides:

44. Health and Safety cases.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by their employer done on the ground that-
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities;
 - (b) being a representative of workers on matters of health and safety at work... and performed (or proposed to perform) any functions as such a representative or a member of such a committee;
 - (ba) where the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise);
 - (c) where an employee is at a place of work where-
 - (i) there was no such representative or safety committee, or
 - (ii) there was such a representative or safety committee but it was not

reasonably practicable for the employee to raise the matter by those means,

brought to the employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

13. It was not suggested by the Claimant or on her behalf that she was such a representative, that there was no such representative or safety committee or that it was not reasonably practicable for the employee to raise the matter by means of a referral to the representative or safety committee.
14. Further, It was not suggested that the Claimant, in circumstances of danger which she reasonably believed to be serious or imminent and which she could not have been expected to avert, left or proposed to leave or refused to return to their place of work or any dangerous part thereof, or took or proposed to take appropriate steps to protect herself or other persons from the danger.
15. On behalf of the Claimant, it was suggested by Mr Welch that the Claimant considered that the underlying cause for the treatment she had received was discriminatory. There was no suggestion of discrimination in either the Claim Form or in the lengthy reply to the Response which had been submitted on the Claimant's behalf.
16. Mr Welch, indeed, confirmed that his complaint was of negligence by the employer in the work place. He referred to the Claimant having suffered personal injury including Post Traumatic Stress Disorder and that she had required Counselling which was ongoing in respect of which she had no fewer than 33 appointments over two and a half years.

Summary

17. The complaints which the Claimant raises in her Claim Form and which are set out at great length in her reply to the Respondent's Grounds of Resistance do not identify complaint which falls within the jurisdiction of the Employment Tribunal.
18. The issues which the Claimant raises in those documents may found a Claim for personal injury for negligence against the Respondent, but that falls within the jurisdiction of the Civil Courts and not the Employment Tribunal.
19. The Employment Tribunal's jurisdiction for personal injury does not extend to the allegations and complaints which the Claimant makes in these proceedings.

20. In those circumstances the Tribunal has no jurisdiction to hear the Claims and therefore they have no reasonable prospect of success. The Claims are therefore Struck Out pursuant to Rules 27 and 37 of the Employment Tribunal Rules of Procedure 2013.

14 February 2024

Employment Judge M Ord

Sent to the parties on: 4 March 2024

T Cadman
For the Tribunal Office.

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.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>