



EMPLOYMENT TRIBUNALS

Claimant: Mr I A Chandel

Respondent: Northfield Farm Ltd

Heard at: London South Croydon, in public, by CVP.

On: 10 January 2024

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: in person

Respondent: Mr E McFarlane, Senior Appeals Consultant

REASONS

These are the reasons for the Judgment which were given orally at the public preliminary hearing held on. The Judgment was sent to the parties on 17 January 2024. They have been requested by the Claimant. These written reasons additionally set out the background to the hearing and our findings in more detail. However, they do not materially depart from the oral reasons that were given.

Background

1. The Claimant presented a claim to the Employment Tribunal on 24 December 2022 following a period of early conciliation between 29 October and 24 November 2022.
2. He was employed as Manager for Burger Section/Van from 26 May 2022 to 26 October 2022 (although the Respondent states that his dates of employment were from 22 May 2022 to 25 October 2022). His claim form raises allegations relating to complaints about the bullying and harassment of other members of staff by his employers which he raised with them and was subsequently dismissed.

3. The Claimant has ticked the unfair dismissal box at paragraph 8.1 of the claim form and has also indicated by ticking the box below headed “I am making another type of claim which the Employment Tribunal can deal with”, that he challenges “the reasoning of dismissal.” He provides a degree of narrative at box 8.2 of the claim form. In addition, he has provided some further information at box 9.2 which asks him to specify what compensation or remedies he is seeking.
4. In its response to the claim form, the Respondent denies the allegations and states that the complaints that the Claimant is bringing are unclear.
5. In a letter dated 20 March 2023, the Employment Tribunal wrote to the Claimant in the following terms:

“It is currently unclear whether or not the claimant has claims which are within the tribunal’s jurisdiction. A separate letter will be sent in respect of the unfair dismissal claim.

It is not clear whether the claim for harassment falls within the jurisdiction of the tribunal as the claimant has not stated what unwanted conduct he personally was subjected to and how it related to a protected characteristic (see section 26 Equality Act 2010).

The claimant is ordered to write to the tribunal and the respondent within 28 days to provide a list of the unwanted conduct he relies on stating for each incident the person responsible, the date, what happened and the relevant protected characteristic.

Alternatively if the claim is that the claimant was subjected to detriments including dismissal because he complained of harassment contrary to section 26 Equality Act 2010 then he should make this clear in writing to the tribunal and respondent within 28 days, giving a list of the detriments complained of, and details of when, how and to whom he raised a complaint of harassment contrary to section 26 Equality Act 2010.

A preliminary hearing will be listed in due course for the tribunal to consider whether the complaints have reasonable prospects of success.”
6. The letter went on to list a number of organisations which might be able to provide advice to assist the Claimant.
7. Also on 20 March 2023, the Employment Tribunal wrote to the Claimant advising him that claimants are not entitled to bring a complaint of unfair dismissal unless they were employed for 2 years or more except in certain specific circumstances which do not seem to apply in his case. He was given until 29 March 2023 to give reasons in writing as to why his complaints of unfair dismissal should not be struck out.
8. On 22 March 2023, a notice of the full hearing was sent to the parties advising of dates from 16 to 19 July 2024. In addition, the parties were sent notice of a preliminary hearing for case management set for 18 August 2023. However the preliminary hearing did not take place because the Claimant was overseas in India and at the time of the hearing there was a power cut.
9. On 29 March 2023, the Claimant sent an email to the Tribunal in which he set out what would appear to be his response to the letter requesting further information that was sent on 20 March 2023. Unfortunately, he did not copy this to the Respondent’s representative.

10. On 17 April 2023, the Claimant sent an email to the Tribunal providing what appears to be a further response to the letter seeking further information that

was sent on 20 March 2023. Unfortunately, again he did not copy this to the Respondent's representative.
11. On 12 September 2023, the Employment Tribunal wrote to the parties stating that the claim would be listed for a further preliminary hearing to determine the nature of the Claimant's claims and to consider whether all/any of the claims or allegations should be struck out or subject to a deposit order on the basis that they have no, or little, reasonable prospect of success.
12. The letter also advised the Claimant of the necessity to contact the Tribunal's administration if he needs to give evidence from India and also it set out the information he needed to provide.
13. On 28 September 2023, notice of today's hearing was sent to the parties.

Today's hearing

14. The hearing was conducted by Cloud Video Platform ("CVP"). The Claimant attended in person and the Respondent was represented by Mr McFarlane with Mr Leo and Mr Jan McCourt in attendance.
15. The Claimant had some difficulty joining the hearing and ultimately was only able to participate with audio only using his mobile phone. Both parties were content to continue in this manner.
16. I explained, mainly for the benefit of the Claimant, that today's hearing was to determine what complaints he has brought and then to consider whether these were ones that the Tribunal has jurisdiction to deal with and whether they should be struck out or a deposit order issued as a prerequisite of continuing with all or any of them. Dependent on the outcome of this part of the hearing, I would then go on to deal with any further case management if it was necessary.
17. I went through the powers of the Tribunal to strike out complaints/allegations in some detail and also the powers to issue a deposit order or indeed orders in respect of the complaints/allegations.
18. The Respondent had provided an electronic bundle of documents comprising of 41 pages. I also provided Mr McFarlane with copies of the two emails identified above which the Claimant had not copied to him at the time as well as a further email from the Claimant dated 3 January 2024 (also not copied to the Respondent). I adjourned for half an hour to allow Mr McFarlane to read them and to take instructions.

Findings

19. In his claim form, the Claimant has ticked the box indicating that he was unfairly dismissed and in addition he indicates that he is challenging the

reasoning for his dismissal. The details of his claim at box 8.2 indicate that he was concerned and expressed his concerns as to the way in which the Respondent was treating other members of staff which he describes as “bullying and harassment”. More generally he sets out his general dissatisfaction with the nature of the work, which he found quite different from

what he expected it to be, his general feeling that he was treated unfairly and, in particular, as to the reason why he was dismissed, which he believes was as a result of his raising concerns about the treatment of members of staff.

20. He has sent three emails to the Tribunal which appear to be a response to our letter ordering him to provide more information about the nature of his claims. These are dated 3 January, 29 March and 17 April 2023. Whilst these expand upon his issues of concern, they raise matters of more general concern as to the work, as to disclosure of personal information and as to his working terms and conditions. Whilst the Claimant asked for a contract of employment it does appear that this was provided and it is not something which he relies upon as giving rise to his dismissal. Whilst the Claimant also raises his concerns that other members of staff were either working illegally or claiming social security benefits or both, these are not complaints that he raised prior to his dismissal.
21. I asked the Claimant a number of questions in order to ascertain what he was complaining about and whether it fell within any of the types of complaints that the Tribunal has jurisdiction to deal with.
22. From his answers I elicited the following:
 - 22.1 He believes he has brought complaints of unfair dismissal and harassment.
 - 22.2 He was complaining at work about the way surrounding workers were being treated, which he labels as “bullying and harassment”;
 - 22.3 He was unable to identify any specific reason why he believed the other workers were being treated in this way. I commented to the parties that obviously if what the Claimant alleges is true (and I have made no decision either way), it is clearly not an acceptable way for an employer to behave towards its workers.
 - 22.4 When he complained to Mr Leo McCourt about the way in which the other workers were being treated, he alleges that Mr McCourt said that this is how he wanted the business to function - essentially because it was better for business. Again, I said by way of comment to the parties, that if this allegation is true (and I have not decided either way) it is clearly a deplorable way for an employer to conduct its business.
 - 22.5 He complained on a number of occasions verbally to different staff/managers: on 2 June 2023 to Mark; on the 7 or 8 July 2023 to Cagla; and every week or every second week to Mr Dominic McCourt.

22.6 He believes the last occasion was on 5 or 6 October 2023, on which occasion Mark advised him to write a grievance letter albeit this was about the Claimant's concern that his private affairs regarding his wife were being discussed at work.

22.7 The Claimant received an email on 18 October 2023 telling him that his employment had been terminated but no reason was given.

22.8 The Claimant's concerns were that, as a professional and hard-working person, he had left a better paid job and gone to work in an environment which, if he had known what it was like, was one he would never have joined [this point appears as corrected after an interruption by the Claimant].

23 I invited Mr McFarlane to question the Claimant, but he had not questions.

Submissions

23. In submissions, Mr McFarlane said that the claim form and the emails that the Claimant sent subsequently do not appear to disclose anything further than his general unhappiness with the work environment and as to how others were being treated. He has not given any indication of a link to a protected characteristic, either his own or of other members of staff. Whilst his unfair dismissal claim is perhaps more closer to a complaint that he has been dismissed for making a public interest disclosure (ie whistle-blowing), he has not identified any of the recognised grounds within section 43B of the Employment Rights Act 1996 ("ERA"). What is clear is that he was unhappy at work but most of this arose from having made "a wrong call" in going to work for the Respondent. Whilst he raises the issue of a contract it was clear that he got one and he is not alleging that he was dismissed for requesting one.
24. [At this point, the Claimant interrupted my reasons and asked if he could just say something about the contractual point and what he had asked for. I explained that I was giving my judgment and not to interrupt me (as he had already done but I had allowed as it was a correction). I added that this issue was not relevant. He continued speaking and I told him to stop which he did.]
25. Mr McFarlane continued. Whilst the Claimant's email of 17 April raises human rights issues these are not matters that are engaged in his case. In his email of 29 March he refers to the "employment statutory code of practice" which he states means that his dismissal is automatically unfair because it violates basic employment rights, he does not identify what basic employment rights he refers to. And he also refers to unlawful discrimination against the protected characteristic of belief and refers to a code of practice. However, he has not identified what that belief is and although he refers to other personal matters, these are not linked to the work environment.
26. Mr McFarlane finally submitted that whilst the Respondent does not accept the characterisation placed on events by the Claimant, he has not

identified any actionable claims over which the Tribunal has jurisdiction and so they have no reasonable prospect of success.

27. I invited the Claimant to reply. He stated that employing staff not paying taxes and/or claiming social security benefits at the same time as working was clearly in the public interest. Whilst I agreed with him, I pointed out that this was not part of his claim and whilst he may have raised it in an email this was only after he had been dismissed.

Relevant law

28. Under Rule 37(1)(a) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the Employment Tribunal has the power to strike out all or part of a claim or response if among other things it has no reasonable prospect of success. This power is a draconian step to take only in exceptional cases.
29. Mechkarov v Citibank NA UKEAT/0041/16, set out the approach that should be taken in a strike out application in a discrimination claim, although this should also be applied to other analogous claims:
- 2.1 only in the clearest case should a discrimination claim be struck out;
 - 2.2 where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence.
 - 2.3 the claimant's case must ordinarily be taken at its highest.
 - 2.4 if the claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and
 - 2.5 an Employment Tribunal should not conduct an impromptu mini trial or oral evidence to resolve core disputed facts.
30. Harassment is defined under section 26 of the Equality Act 2010. A person "A" harasses another "B", if "A" engages in unwanted conduct related to a protected characteristic (eg race, sex or disability), which has the purpose or effect of violating the dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether the unwanted conduct has such purpose or effect, the Tribunal must consider the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
31. In essence, a complaint of detrimental treatment or dismissal for making a public interest disclosure (ie whistle-blowing) arises in the following circumstances. A claimant must have disclosed information to his employer, either verbally or in writing, which in his reasonable belief relates to the commission of a criminal offence; or a failure to comply with a legal obligation; or a miscarriage of justice; or that the health and safety of an individual has been endangered; or that the environment has been endangered. The

claimant has to show that the disclosure was in the public interest. Finally, the claimant has to show that he was treated to his detriment or dismissed as a result of making the disclosure. This is governed by sections 43A-C, 47B & 103A ERA.

32. As has already been pointed out to the Claimant in correspondence, under section 108 ERA, a claimant requires two years' service to bring a complaint of unfair dismissal, unless specific circumstances apply (such as whistleblowing as indicated in the paragraph above).

Conclusions

33. Having considered the matter carefully, I come to the simple conclusion that the claim as a whole has no reasonable prospect of success because it simply does not identify complaints over which the Tribunal has jurisdiction.
34. With regard to harassment which broadly the Claimant's claim points to, it fails because he has not identified that the unwanted conduct of which he complains was linked to either his own protected characteristic or indeed the protected characteristics of his colleagues. He gives no reason for the treatment other than Mr McCourt wanted to conduct his business in this manner. Moreover, his complaint is about the way that the others were treated.
35. With regard to unfair dismissal, the Claimant does not have the requisite two years' service to bring a complaint of ordinary unfair dismissal under section 98 ERA.
36. Whilst it could be said that the Claimant is in effect stating that he was dismissed because he made a protected disclosure, relating to the treatment of others at work, for which he does not require the two years' service, he has not identified that his complaints (or disclosures) fell within any of the categories of qualifying disclosure set out within section 43B ERA.
37. Whilst I appreciate that the Claimant is unrepresented, I believe that it would be in effect taking over his case and putting words into his mouth to suggest that they do. In any event he did not address the issue of whether he had a reasonable belief that his complaints were made in the public interest. Indeed, the only public interest he identified was that relating to the alleged non-payment of taxes and fraudulent claims for social security benefits which in any event were not the reason for his complaints to the Respondent and he only made after his employment had ended.
38. For these reasons I find that the claim has no reasonable prospect of success and I therefore strike it out under rule 37(1)(a) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 because it has no reasonable prospect of success.

2 February 2024

REASONS SENT TO THE PARTIES ON

21 March 2024

P Wing

FOR

EMPLOYMENT TRIBUNALS

Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) 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.