



EMPLOYMENT TRIBUNALS

Claimant

Mr Sujith Manuel

v

Respondent

Netduma Limited

Heard at: Huntingdon

On: 2 April 2024

Before: Employment Judge M Ord

Appearances

For the Claimant: Mr R Kohanzad, Counsel

For the Respondent: Mr F Mortin, Counsel

JUDGMENT

on

APPLICATION to STRIKE OUT / DEPOSIT ORDER

No Order is made on the Respondent's Applications to Strike Out, or for Deposit Orders to be made in relation to the Claimant's allegations of detriment for making protected disclosures, harassment, victimisation, indirect discrimination or discrimination arising from disability.

REASONS

1. The Respondent sought Strike Out, alternatively Deposit Orders, in relation to a number of the Claimant's complaints.
2. In relation to the complaint of automatic unfair dismissal, the Claimant has the duty to establish that the sole or principal reason for dismissal was either because the Claimant had made protective disclosures (contrary to s.100 of the Employment Rights Act 1996 ("ERA"), or because he had made or proposed to make an application for Flexible Working contrary to s.104C ERA 1996.
3. I declined to make an Order in this regard. The question is one of evidence to determine what was in the mind of the Dismissing Officer at the time the Claimant's employment came to an end. It cannot be said that the Claimant's complaints have no or little reasonable prospect of success.

4. In relation to the Claimant's complaints that his dismissal was discriminatory on the ground of age or on the ground of race and / or ethnic national origin and / or was an act of victimisation, I make no Order. The question is whether in the mind of the Dismissing Officer, the stated issues had an impact on the decision to dismiss. It is a matter to be tested in evidence and I cannot say that it has no or little reasonable prospect of success.
5. In relation to the allegation that the Claimant was humiliated on 2 June 2021 after he had been discovered asleep (a complaint which the Claimant brings as a detriment for making protected disclosures and an act of direct discrimination or harassment on the grounds of age or race / national origin), the Claimant – not only in relation to this matter but several others – puts things this way. He says that asking why the Claimant was sleeping is considered by the Claimant to be a detriment because he has been treated differently to colleagues or differently to the way he believes colleagues would have been treated. The Claimant says that he was working in an environment where he was older than the other members of staff and where he was an Asian working amongst white colleagues (in an industry, Information Technology, where ordinarily there is a higher proportion of Asian employees). Mr Kohanzad on behalf of the Claimant put it this way. The Claimant was seen, he believes, as different and difficult. He had raised problems he was experiencing in relation to the air conditioning extractor fan. It was only causing him a problem and not others so he was seen as complaining unnecessarily. He was seen to be a complainer and he was seen as different to other members of staff. The Claimant therefore says that the way he was treated in these circumstances was different to the way others would have been treated because they had not raised issues and were not seen as different.
6. That applies to the Application in relation to the events of: 2 June 2021; the events of 7 and 15 June 2021 when the Claimant was questioned over lateness; the event of 6 July 2021 when the Claimant was in his words "publicly accused" for not responding to an event invitation; the event of 21 December 2021 when the Claimant alleged he was reprimanded for being six to seven minutes late; the event of 16 February 2022 when the Claimant was allegedly "summoned" to a Performance Review without notice, including the fact that he was engaged in a break in the kitchen area; and the events of 16 February 2022 when the Claimant says he was told by Mr Fraser he would be required to complete a tricky assignment within two months which led to the Claimant considering himself at risk of dismissal.
7. The Claims in relation to holiday pay and breach of contract depend on the issue of what was reasonable notice for the Claimant to receive (the Contract of Employment being signed on the matter) and whether or not the Claimant was entitled to payment for holiday pay accrued during the period of notice. Both of those matters are for the Final Tribunal Hearing.

8. The remaining matters in respect of which the Respondents sought Strike Out or Deposit Orders will be determined by the factual evidence and it is not appropriate to make an Order to Strike Out or to make a Deposit Order in relation to any of them.

18 April 2024

Employment Judge M Ord

Sent to the parties on: 23/4/2024

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For the Tribunal Office.

Public access to Employment Tribunal decisions

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