



EMPLOYMENT TRIBUNALS

Claimant: Ms Meshell Khan

Respondents: The A&S Leisure Group Ltd (t/a Napoleon's Casino Bradford)

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in public by video link – “CVP”)

On: 03 November 2023

Before: Employment Judge R S Drake

Appearances

For the Claimant: No attendance

For the Respondents: Ms B Hendley (Consultant)

JUDGMENT

1. The title of the Respondent is amended to cite it as described above.
2. The claims of unfair dismissal and disability discrimination are struck out under Rule 37(1)(a) and (d) of the Employment Tribunals (Constitution & Rules) Regulations 2013 (“the Rules”) as having no reasonable prospect of success and are not being actively pursued. Therefore, they are dismissed.
3. No further case management Orders are necessary as the claims in their entirety are dismissed.

REASONS

Introduction

NB – I refer to the parties as “C” and “R” and to pages in the hearing bundle of documents prepared by R as PP1 – 65 respectively.

4. There was no attendance today by C and no explanation for such non-attendance despite me being satisfied that all the Tribunal correspondence referred to below was sent to the address nominated for communications purposes by C in her ET1. I heard oral submissions from Mr Hendley for R and accepted them in C's absence of challenge and upon examination of their merits. C had not nominated a representative though the Tribunal had received an email dated 29 August (P41-45) from a Mr Horsman who did not identify himself as representing C nor going on record as such. C had not notified the Tribunal of any capacity he held on her behalf.
5. The scope of the issues for me to consider today are as set out in (part of) EJ Rogerson' directions letter dated 5 September 2023 (P47). She set today's hearing on the following bases –
 - 5.1 The private hearing (*as today's hearing was originally set – emphasis added*) is converted to a public preliminary hearing with a time estimate of three hours.
 - 5.2 The preliminary issues to be decided at that hearing are:-
 - 5.2.1 Whether any part of the claim should be struck out if it is considered to have no reasonable prospects of success?
 - 5.2.2 Whether the Claimant should be ordered to pay a deposit as a condition of continuing with any part of the claim that is considered to have little reasonable prospect of success?
 - 5.2.3 Consequential case management orders.
 - 5.3 She added as follows:-

“The reason the hearing has been converted to a public preliminary hearing is that C has identified complaints of unfair dismissal and discriminatory (disability) dismissal following a conduct dismissal. The conduct (inappropriate touching) is/was admitted by C. R treated the admitted misconduct as sexual harassment (gross misconduct). C complains that the sanction of dismissal was too harsh but has not asserted facts to suggest that the admitted inappropriate touching was caused by her alleged disability of anxiety.

The alleged discriminatory dismissal complaint is unclear. The details provided do not explain which type of disability discrimination is alleged or why. C will have the opportunity to clarify her complaint orally at the hearing based on the details she has already provided in her claim. She can also apply to amend her claim if she wants to add any new/different information to her claim. Any application to amend the claim must be made in writing and made without delay. It must be sent to the tribunal and copied to R. The application must identify the new details C wishes to add, the type of disability discrimination complaint that is being added, and explain why it

was not included in the original claim and what effect allowing the late amendment will have on R.”

5.4 EJ Ayre by letter dated 12 October 2023 (P53) advised C that Strike Out was being considered because of C’s failure to respond to letters from the Tribunal dated 19 September 2023 (P51) and 2 October 2023 (P52), suggesting the appearance of the claims not being actively pursued.

Findings

6. I note and find the following:-

6.1 C’s ET1 contains complaints of unfair dismissal and disability discrimination but does NOT allege inter alia:-

6.1.1 Causal connection between disability and dismissal;

6.1.2 The nature of alleged discrimination;

6.1.3 The nature of any alleged detriment or unfavourable treatment other than dismissal;

6.1.4 That the allegation against her of sexual harassment (and thus gross misconduct) is denied;

6.2 The attachment to Mr Horsman’s email (P41) appears to be as or in the form of a witness statement by C but it does not identify the deponent directly, nor contain a statement of truth, nor a date and signature – it comes in any event over three months after the ET1 was presented and I conclude it cannot be admitted in evidence in the absence of C to depose to it;

6.3 C had not responded to any of the Tribunal’s communications with her listed below:-

6.3.1 5 September 2023 (P47) – EJ Rogersons’s Directions;

6.3.2 19 September 2023 (P51) – Warning of potential removal from file of Mr Horsman’s email and attachment;

6.3.3 2 October 2023 (P52) – Reminder to respond to P51;

6.3.4 12 October (P53) – EJ Ayre’s Strike Out Warning.

7. Because C is a litigant in person, I exercised great care in ensuring that her claim as expressed in a limited way in her ET1 was properly considered and judged despite her absence. I noted that where I had doubts about her pleadings and

arguments, I did not have the opportunity to gain clarification of any point because of C's absence. Further, I had before me no application for adjournment or for amendment of the claims. I further noted that though R does not yet concede or accept that C has a disability as defined by Section 6 EqA, this point would only become relevant and the subject of further directions if the claims went beyond today, but they do not.

8. In my deliberations, I considered all the contents of the documents bundle but in particular those specifically referred to and highlighted. I noted that C had set out her claim succinctly but imperfectly in her ET1 and that she had been given an opportunity to clarify it by EJ Rogerson's Direction dated 5 September 2023 (P47) but had failed to take such opportunity.

Relevant Statutory Law

9. For the sake of completeness, I set out below the basis upon which I had to consider the position as far as set out in Rule 37(1) of the Rules : -

"At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –

- (a) *that it ... has no reasonable prospect of success - (my emphasis) ;*
- (b) *... (c) ... (d) ... (not relevant)-*

Conclusions

- 10 On C's own pleading, limited as it was to her ET1, there was a complete absence of basis for arguing that dismissal was caused by disability, which in any event is not accepted by R nor yet proved by C. Further, the absence of challenge to the finding of sexual harassment leads me to conclude it is admitted and I find it clearly on any analysis is a sound basis for concluding that gross misconduct has been perpetrated by C, and that dismissal in response falls within the band of reasonable responses for any R to show in such circumstances. Therefore the claims have no reasonable prospect of success for the purposes of Rule 37(1)(a)
- 13 the complete absence of any response by C to the very important communications sent to her by the tribunal as listed in paragraph 6.3 above cause me to conclude C is not actively pursuing her claims to the extent that Rule 37(1)(d) applies which also gives me a basis for striking them out. .
7. In light of the finding above, I do not need to consider whether the claims have little reasonable prospect of success, nor to consider what if any further directions

are necessary particularly where disability is not conceded. The claims are concluded on the basis of the findings above bring the proceedings to a conclusion.

EJ Drake

Signed 03 November 2023