



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Miss D. Verma

v

(1) Kings College London
(2) Daria Sulima
(3) Bethany Jones

Heard at: London Central (CVP)

On: 7 June 2024

Before: Tribunal Judge RE Peer acting as an Employment Judge

Representation

For the Claimant: Mr Michael Dhliwayo of MLS Legal

For the Respondent: Mr Gus Baker of Counsel

JUDGMENT

- (1) The claimant's application to amend her claim is refused and discretion is not exercised to permit the amendments sought.
- (2) The claimant's complaints of harassment related to religion other than the allegations that statements were made to her by the second respondent that 'you have plenty of time to decorate toys in your office' referring to a statue of Ganesh and 'I do not have time for this' are struck out under Rule 37(1)(a) because they have no reasonable prospects of success.
- (3) The claimant's complaint of wrongful dismissal is struck out under Rule 37(1)(a) because it has no reasonable prospects of success.
- (4) The third respondent is removed as a party.

JUDGMENT having been given orally on 7 June 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION - CLAIM

1. The claimant worked as an operations officer for the first respondent, a university, from 23 January 2023 until May 2023. The second and third respondent are employed by the first respondent. Early conciliation was from 1 May 2023 to 12 June 2023. The claimant presented her claim form on 29 June 2023 bringing claims for race discrimination, direct religion discrimination, harassment and wrongful dismissal. The claimant resigned on 19 April 2023 on notice and claims her notice was curtailed wrongfully by the respondent. The respondent denies discrimination and says that the claimant was offered early release from her contract by way of being in work for a few days and then using up annual leave and was not wrongfully dismissed.

PRELIMINARY HEARING

2. On 21 February 2024, the parties were sent Notice of Preliminary hearing on 7 June 2024 with a one day time allocation to consider:
 - a. Claimant's application to amend ET1 to add the pursued claims which are not in her ET1;
 - b. Respondent's strike out/deposit application; and
 - c. Case management directions.
3. The hearing was a remote hearing. The form of remote hearing was fully remote by Cloud Video Platform. The parties agreed in advance to the hearing being held as a remote hearing. A remote hearing was practicable and all issues could be determined in a remote hearing.
4. In the ordinary way, it was confirmed at the outset of the hearing that all participants could see and hear each other clearly. The claimant was represented by Mr Dhliwayo and the respondents were represented by Mr Baker. The hearing proceeded effectively as a remote hearing and no party raised any objection.
5. The tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net.
6. There was a hearing bundle of 184 pages (HB). The bundle contained copies of the claim form and particulars of claim, response forms and accompanying grounds of resistance, tribunal correspondence and orders, claimant's further information document, respondent's correspondence, claimant's skeleton argument, respondent's skeleton argument, agenda and agreed list of issues together with other documents.
7. I heard submissions from each party in respect of the applications before me.

8. I read the evidence in the bundle to which I was referred and refer below to key documents relied upon when reaching my decision.
9. I took time to deliberate and then gave my decision and reasons orally. Written reasons were requested by the claimant.

PROCEDURAL HISTORY

10. On 8 September 2023, a case management hearing was held before EJ Singh who ordered the claimant to provide further information by 6 October 2023 because as set out at paragraph 2 of the CMO “the Claimant’s claim was not clear from the pleadings”. EJ Singh listed a further case management hearing for 23 November 2023.
11. Further information was provided by the claimant (HB 95-106) on 27 October 2023. The respondent indicated its view that the further information contained new pleaded facts.
12. The parties prepared submissions in advance of the 23 November 2023 hearing. In particular the claimant set out both that the further information document was not an amendment but also that ‘amendments sought are to elucidate and enhance the understanding of the existing claims, rather than introducing new causes of action’. The 23 November 2023 hearing did not go ahead.
13. On 15 February 2024, a case management hearing was held before EJ Tinnion (HB 143). The claimant withdrew all her race discrimination claims and they were dismissed upon withdrawal. EJ Tinnion was not able to decide any application to amend the claim because as set out at paragraph 6 of the CMO by EJ Tinnion, “There was insufficient time at the PHCM on 15 February 2024 to decide the claimant’s application to amend, given the amount of time and attention required just to go through those further particulars to determine whether they are no more than further particulars of existing claims in the ET1 or raise new factual allegations (and/or new causes of action in respect of existing factual allegations) which will require the Tribunal’s leave in order to bring as claims.” EJ Tinnion produced a schedule attached as Appendix 1 (HB 139-142) to his Case Management Order listing allegations and as to whether or not they consisted of facts pleaded in the originating claim and/or whether or not they were brought as legal claims within the originating claim. EJ Tinnion identified 7 claims for which the claimant required permission to amend in order to pursue and listed a public preliminary hearing for 7 June.
14. EJ Tinnion ordered the claimant to state why the tribunal should grant the application to amend to add those 7 claims which were not in her ET1 by 18 March 2024. The claimant did not comply with this case management order.
15. EJ Tinnion ordered the respondent to state whether or not they consented to the amendment application and summarise reasons by 3 April 2024.

16. On 3 April 2024, the respondent set out its objections to any application to amend (HB 147-149). The respondent noted the claims would be out of time on the basis that they were to be treated as presented at the time the amendment is allowed, Galilee v Commissioner of Police of the Metropolis [2018] ICR 634; reliant on witness memory subject to fading over time; had no reasonable prospects of success as they did not show a prima facie case for a causal connection between the alleged detriment and protected characteristic which factor could be taken account of before allowing an amendment, citing Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT in which it was stated 'plainly not be allowed as it would be pointless'; and the Claimant had in any event failed to explain why any application to amend should be granted.
17. On 4 April 2024, the claimant emailed the tribunal to apologise for 'oversight' in not complying with EJ Tinnion's case management order and again set out that amendments were not to add new causes of action but to elucidate the existing claims.
18. In advance of today's hearing the parties each filed skeleton arguments. The claimant's skeleton addresses an application to amend. The hearing bundle of 184 pages includes an email exchange between the parties (HB 165) which confirms that a list of issues is agreed. The claimant's email of 1 June 2024 also states: 'The Claimant has no applications to amend at this stage.' However, at the hearing, the claimant's representative told the tribunal this statement in his email was wrong and the claimant did wish to apply to amend her existing claim to include the 7 claims identified by EJ Tinnion which required the tribunal's permission to proceed. Mr Baker indicated that he would be able to address that application notwithstanding the indication in advance of the hearing that the claimant was not pursuing any application to amend.

APPLICATION TO AMEND

19. The claimant applied to amend her claim to add the claims at 1,2,3,4,6,9 and 19 of Appendix 1. These are all claims which were not pleaded in the originating claim form. There is no real explanation as to why they were not initially included and/or as to the timing and manner of seeking to add these claims. These claims appear to have emerged as a result of the tribunal working to clarify the claimant's claims and through the provision of further and better particulars or information about the stated existing claims rather than in any deliberate, clear or considered fashion.
20. Claims (1) to (4) are allegations where it is accepted the facts were pleaded in the originating claim form but not as legal claims of direct religion discrimination. The allegations are as follows:
 - (1) on 24 April 2023, C's 1 month notice period was abruptly shortened and C blames Heather Kneale (HK), Daria Sulima (DS) and Bethan Jones (BJ)
 - (2) on 24 April 2023, C was asked to leave early and C blames HK, DS and BJ

- (3) on 25 April 2023, C's access to work-related systems (Sharepoint, shared inbox) was revoked by HK, impeding C's ability to work effectively during her remaining days
 - (4) on 26 April 2023, HK asked C to leave work early (2-3 hours earlier than C's normal finishing time)
21. Claim (6) is an allegation where it is accepted the facts were pleaded in the claim form but not as the legal claim the claimant now seeks to pursue of direct religion discrimination. The allegation is as follows:
- (6) 'incident 2' on 26 April 2023, HK asked C to return laptop, office key, ID card directly to HK, not Technical team.
22. Claim (9) is an allegation that the claimant accepts was neither pleaded factually or as a legal claim of harassment related to religion in her originating claim form. The allegation is as follows:
- (9) 'incident 1' on 25 April 2023 at 1739, HK sent C email accusing C of actions she did not commit.
23. Claim (19) is an allegation of victimisation where the claimant accepts no protected act was pleaded in her originating claim. The allegation is:
- (19) 'The Claimant's protected act was a formal complaint to HR on April 25 2023, raising concerns about discriminatory treatment and potential misuse of personal information.'

The originating claim form does not plead that the claimant was subjected to any detriments as a result of any protected act. At the hearing, the tribunal was told what the detriments were. I note as I have reviewed the further information document that there are alleged detriments set out therein but that of course is different from them being pleaded in the originating claim.

24. I considered the authority of Selkent Bus Co. Ltd v Moore 1996 ICR 836. I have discretion with regard to whether or not to permit amendments. It is worth setting out that the guidance in Selkent includes that: "Whenever the discretion to grant an amendment is invoked, the tribunal should take into account *all* the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it." In Selkent, three factors are set out as 'certainly relevant' but those factors are not exhaustive. I therefore considered the three factors identified in Selkent together with all the circumstances and balanced the injustice and hardship of allowing or refusing the amendment.

Nature of amendments sought

25. I noted that claims (1) to (4) and (6) relate to facts pleaded which the claimant now seeks to bring as direct religion discrimination claims. The factual allegations all relate to the circumstances at the end of the claimant's employment after she had handed in her resignation. By way of her originating claim form, the claimant brings several claims of direct religion

discrimination. I note that this initially presents as a re-labelling of existing fact. I noted that claim (9) introduces a new factual allegation.

26. Although the word 'victimisation' is used in the originating claim form, claim (9) introduces a new factual and legal claim of victimisation. The protected act relied upon is stated to be a complaint to HR on 25 April 2023. It is unclear what the claimant wishes to plead as detriments due to the protected act although the further information refers to work access revocation, improper equipment surrender request and early dismissal from work on her last working day as detriments and as to when these occurred sets out 'particularly intense from April 19, 2023 (date of resignation) to April 26, 2023 (last working day).' A victimisation claim is that a person is subjected to detriments due to doing a protected act thus the detriments must occur after the protected act.

Timing and manner

27. I refer to the procedural history set out above as to the timing and manner of the new claims the claimant now seeks to pursue by way of amendment to her originating claim form. The claimant has legal representation. As recently as 1 June 2024, the claimant was indicating that she had no application to amend. Prior to that references to the further information were ambiguous as to whether there were amendments sought or not. The claimant produced lengthy, detailed and discursive particulars of claim with her originating claim form and a lengthy further information document. Extensive time has been taken by the tribunal to support, clarify and understand the claims brought. The claimant has at no point set out in writing in one place with any clarity the amendments sought and the claims she now says she wishes to pursue by way of amendment have surfaced through case management and are scattered across several documents.
28. There is no real explanation from the claimant as to why if she was seeking to bring direct religion discrimination claims she did not frame (1) to (4) and (6) as direct discrimination claims in her originating claim form where they are pleaded as facts related to her wrongful dismissal claim. The respondent submits that as now set out, the causal link between the treatment alleged and that it was because of the claimant's religion is entirely absent and that account can be taken of the merits when deciding whether or not to exercise discretion to permit amendments. The same point arises in relation to (9) in that it is unclear why the alleged instance of harassment was not pleaded originally or how as now set out it is said the alleged unwanted conduct is related to the claimant's religion.
29. The claimant took me to the further information document and in particular a passage (HB 106) which sets out the claimant's recall of a conversation with BJ. That conversation is understood to have taken place on 24 April 2023 and was followed by an email timed 1734 on 24 April 2023 from BJ to the claimant setting out a proposal for her to be relieved of working her entire notice period further to her resignation. As such it is not clear how that conversation can relate to a protected act on 25 April 2023 or be clearly understood other than by being directed to decipher that information in that

document as setting out why any alleged treatment or detriment was done either due to a protected act, because of or related to religion.

Time limits

30. The respondent relies on Galilee as authority for the proposition that limitation relates to the time any amendment is permitted. If these amendments are permitted at this time they arise as claims approximately 12 months out of time. In so far as they emerge from and/or are set out in the further information document that was presented 6 months after the end of employment. The ordinary time limit laid down in statute is 3 months from the date of the act complained of. I acknowledge that some of the claims concern facts pleaded in the originating claim form as legal claims now framed and sought to be pursued as different legal claims. There remains however no real explanation as to why these claims were not advanced with the originating claim form which is detailed or any clear reason advanced as to why it would be just and equitable to extend time. In other words, there is no real explanation or evidence before me on which to exercise my just and equitable discretion. I note the submissions made in the claimant's skeleton. Implicitly, the claimant submits time should be extended as it would be procedurally unfair not to allow relevant claims to proceed. That submission could be made in relation to any out of time claim and does not explain why these particular new claims compel an exercise of discretion to permit amendment in circumstances where discretion also needs exercising to extend time or limitation will have to be decided at trial. It also does not address why there would be no procedural unfairness to the respondent in such circumstances given statutory time limits. It cannot be that all and any claims a claimant seeks to pursue at any point must proceed otherwise there would be no time limits laid down in statute or provision regulating amendments.
31. The claimant's skeleton also refers to coherence but it is not clear how permitting the amendments sought adds coherence to the existing claims. Allegations against HK relating to events occurring at the end of employment relating to handing back equipment do not readily present as adding any coherence to the existing claims or explain allegations against DS during employment.

All the circumstances – balance of injustice and hardship

32. I considered the prejudice and injustice of the claimant not being able to bring these claims. The claimant has direct religion discrimination claims proceeding to trial and it is not maintained that there are no merits in those particular claims. The claimant would not be prevented from referring to factual matters as background information if context was needed. As set out above, adding these new claims does not add coherence not least given the chronology. I can take account of the merits and that the new claims of direct religion discrimination taking the facts pleaded at their highest do not enable me to discern any link with the protected characteristic relied upon or from which discrimination might be inferred at trial shifting the burden. As such, if the amendments are permitted the claimant would be proceeding to trial with all the cost, time and anxiety that can entail with claims that lack any obvious merit.

33. I considered the prejudice to the respondent. The respondent would likely need to file amended grounds of resistance responding to the amended claim. At this point, there is of course no single document such as a proposed amended claim form setting out in writing the new claims the claimant now seeks to pursue. There is unfairness to the respondent if it remains in a position where it has no coherent claim to which to fully respond. These proceedings should reasonably have been timetabled for trial by now given that there have been several case management hearings since the claim was presented on 29 June 2023. Allowing the amendments builds in additional delay. Delay impacts on witness evidence as memories fade with the passage of time causing a degree of forensic prejudice to the respondent although, again, I acknowledge that some lines of factual enquiry as to alleged incidents are equivalent to those in the existing claim. Overall expanding the claims that proceed to trial adds to the costs for both parties and increases the allocation of tribunal resources to these proceedings.
34. Accordingly, I have considered all the circumstances of the case including the nature of the amendments sought, the timing and manner of the amendments and time limits and the balance of injustice and hardship. I decided not to exercise discretion to permit the amendments sought.

APPLICATION FOR STRIKE OUT AND/OR DEPOSIT ORDERS

- Strike outs general and no reasonable prospects of success ground**
35. In appropriate cases, strike outs can minimise the anxiety, expense and time inherent in taking claims to trial, **Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT.**
36. In relation to strike out on the ground that a claim or response has no reasonable prospect of success under Rule 37(1)(a) of the Employment Tribunal's Rules of Procedure 2013, the test is not whether the claim or response is likely to fail and the tribunal must be able to properly conclude that the claim or response has no reasonable prospect of success on consideration of the available material. The facts relied on by the claimant (or indeed a respondent) must be taken at their highest and where there are conflicts of fact, a tribunal must be cautious to strike out at the preliminary stage.
- Approach to strike out of discrimination claims**
37. In **Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL** the House of Lords emphasised that discrimination claims should not be struck out save in the most obvious cases as they are generally fact-sensitive and require full examination to make a proper determination.
38. In advance of the hearing, the parties agreed a list of issues based on the existing claim. The respondent confirmed that it does not seek to have the direct religion discrimination claims or two of the allegations of harassment struck out or deposit ordered. The respondent applies to strike out and/or

deposit order all other allegations of harassment related to race and the wrongful dismissal complaint.

39. The claimant's allegation of direct religion discrimination is that she was subjected to less favourable treatment by way of comparison with a Muslim because she is a Hindu by HK declining to move a box of alcohol from her office because of the presence of a Muslim colleague on that floor.

40. The claimant claims harassment related to religion and raises several allegations of unwanted conduct against Daria Sulima, the second respondent, including as set out at 4(f)(iii) and (iv) of the agreed list of issues that DS said "in the claimant's last catch up with DS after the claimant had handed in her notice:

... (iii) when the Claimant explained what other work she was doing: "You seem to have many excuses when it comes to work but you have plenty of time to decorate toys in your office" (referring to a statue of Ganesh kept by the Claimant in her office;

(iv) when the Claimant told Ms Sulima she was talking about the Claimant's god: "I do not have time for this. I want this (the recruitment task) to be completed and put on to the system by tomorrow"

41. The respondent explained that the direct discrimination claim and the allegations of harassment related to religion at 4(f)(iii) and (iv) as pleaded contain a basis for discerning a link between what is pleaded – bearing in mind when considering strike out the facts pleaded are to be taken at their highest – and the protected characteristic of religion. The respondent submitted that otherwise the allegations of harassment as pleaded set out no causative link and it is insufficient to plead various alleged detriments or treatment without also pleading that the alleged detriment/treatment is because of the protected characteristic. In those circumstances, the allegations clearly have no reasonable prospects of success because the tribunal at trial will not be able to discern facts from which discrimination might be inferred so as to shift the burden.

42. The allegations of harassment that the respondent applies to strike out and/or deposit order are that the second respondent said:

(a) when the Claimant asked about a pay increment after probation, "Well that's if you pass the probation, but for that you need to do as you're told".

(b) "You are here as a support service to our staff and students, it's what you are paid for", then reiterate parts of the Claimant's job description when the Claimant tried explaining that she was busy and trying to attend multiple things at once. The Claimant says this happened many times;

(c) When a meeting took place via MS Teams rather than in person, "Well what is your excuse for not being in this week? I had told you I wanted our catch ups to take place in person";

(d) When the Claimant explained that she was not in work because she had a blood test appointment:

i. that the Claimant was making "pathetic excuses"

- ii. "You need to be in when I say";
 - iii. "You need to be in when I want";
 - iv. "This works for me so you should adjust";
 - v. "You're still on probation";
 - vi. "I'm not convinced that you know what you are doing because your new and I don't want you to eff things up";
- (e) in the Claimant's last catch up with Ms Sulima before handing in her resignation:
- i. "I have a problem with you, you don't seem to ask any questions like the others do"; and
 - ii. "you're not like the other Operations Officers" and
- (f) In the Claimant's last catch up with Ms Sulima, after the Claimant had handed in her notice:
- i. when the Claimant told Ms Sulima she needed additional information from another colleague to complete a recruitment task which was pending: "I thought I had told you to chase Person A about this"
 - ii. when the Claimant told Ms Sulima she was awaiting a response from Person A: "It doesn't take this long to do, what else are you doing"
43. The respondent also applies to strike out and/or deposit order an allegation of harassment related to religion that HK removed the Claimant's access to work related systems on 25 April 2023 thus impeding the Claimant's ability to work effectively for the remaining day of her employment; and an allegation of harassment related to religion that HK asked her to leave work two-three hours earlier than her normal finishing time.
44. The respondent further submitted that the available facts cannot possibly be construed as indicating wrongful dismissal and that the wrongful dismissal claim ought to be struck out as having no reasonable prospects of success. The claimant resigned on notice on 19 April 2023. The respondent referred to email exchanges between the claimant and BJ (HB161-163) whereby on 24 April 2023 BJ offered to release the claimant from her notice period early on the basis that she would work and hand over on 25 and 26 April 2023 then take her annual leave such that her last day of employment would be 11 May 2023. The claimant set out in an email on 25 April, 'I can confirm acceptance of the proposed arrangements.'
45. The claimant relied on Anyanwu which I refer to above. I remind myself that the power to strike out should be used sparingly especially in relation to discrimination allegations which are particularly fact sensitive and I reflected carefully on this. The case law also provides that strike out can minimise distress and ensure that time taken for trial is proportionate. I also remind myself that in considering whether allegations have no reasonable prospects of success, I am to consider the facts pleaded at their highest. Taking the available facts at their highest, there is no reasonable prospect of the claim for wrongful dismissal succeeding. I found the respondent's submissions had merit in that as pleaded the discrimination allegations did not set out any discernible basis for a causative link between the facts pleaded and the protected characteristic relied upon and taking the facts pleaded in those discrimination allegations at their highest, it was not

possible to discern facts from which discrimination might possibly be inferred.

- 46. None of the allegations proceeding to trial are against the third respondent and accordingly, I have removed Bethany Jones as a party.

SUMMARY OF DECISIONS

- 47. I therefore decided that I would not exercise discretion to permit the amendments sought by the claimant. I also decided that the claimant's complaint of wrongful dismissal and her allegations of harassment other than the alleged statements of the second respondent about the claimant's statue of Ganesh and her God have no reasonable prospects of success and as such should be struck out as applied for by the respondent.

Tribunal Judge Peer acting as an Employment Judge

Dated: 13 June 2024

Sent to the parties on:

18 June 2024

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For the Tribunals Office