



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hamde

First Respondent: DHL Services Ltd

Second Respondent: Mr A Nash

Third Respondent: Mr F Laino

Fourth Respondent: Mrs A Paksztys

Fifth Respondent: Mrs A Srodkowska

Sixth Respondent: BHSF Group Ltd

Seventh Respondent: Dr Lindsay Fawcett

Eighth Respondent: Mr S Waugh

Ninth Respondent: Mr J Anderson

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Cambridge ET

On: 25 July 2024

Before: Employment Judge Conley

Appearances

For the claimant: Himself, as a Litigant in Person

For the first six respondents: Mr R Dunn, counsel

For the remaining respondents: Mr M Shepherd, counsel

JUDGMENT

1. By way of a summary, the Orders I make are these:
 - 1.1 All of the respondents save for the first respondent are removed.

- 1.2 There is to be a new paragraph 6(e) on the list of issues in the form discussed earlier;
- 1.3 Paragraphs, 11(a), 11(b) and 23(c) are struck out and will be deleted.
- 1.4 Paragraph 23(a) is not to be struck out and is to remain and it is to be worded as follows: “the respondent refused claimant’s flexible working request made on the 12 February 2023 and/or his appeal made 5 March 2023; and allocated less physically demanding roles to others of a different race to himself while simultaneously refusing his request for reasonable adjustments.
- 1.5 No Deposit Orders are made.

DISCUSSION

2. This case has, prior this hearing, already been through two sets of case management with different Judges due to its complexity. Today it has been listed for a Public Preliminary Hearing which has taken the whole day and indeed the Tribunal sat late to complete the hearing. It would be fair to say that it has been challenging for all concerned for a number of reasons. The claimant, who is a litigant in person, has been assisted by an Arabic interpreter, to whom the Tribunal is indebted.
3. When the case was first listed, on 31 January 2024, it came before Employment Judge Hawksworth. He was able to wrestle the case into some sort of order by preparing, with the assistance of counsel, a draft List of Issues, albeit that for a variety of reasons it could not be completed.
4. For that reason, it was adjourned for a further Case Management Hearing before Judge Postle on the 26 April 2024, but regrettably little, if any, progress could be made on that day (I must stress that this is in no way whatsoever a criticism of the Judge).
5. I am very much obliged both to the claimant Mr Hamde himself, who has in difficult circumstances attempted to assist the Tribunal today, and also to Mr Dunn who is counsel for most of the respondents. The Tribunal was assisted earlier this morning by Mr Shepherd, who appeared on behalf of the remaining respondents (numbers seven, eight, and nine) but he played no further part in the proceedings when Mr Hamde indicated that he was withdrawing his claims with respect to those respondents. Therefore, as far as those respondents are concerned, the claim is dismissed upon Mr Hamde’s withdrawal.
6. The issues which that left for me to determine were these:
 - 6.1 Firstly, with the assistance of the parties, to try to finalise the list of issues;
 - 6.2 Secondly, to decide whether, in respect of the remaining individually named respondents (numbers 2 to 5) and the sixth respondent BHSF Group Ltd, a company, the claim was to proceed;
 - 6.3 Thirdly, to determine an application to amend the claim made on behalf of Mr Hamde to include a matter which is particularised in paragraph 28 of a

document dated the 28 February 2024 which can be found on page 400 of the Preliminary Bundle;

- 6.4 Finally, there was an application made by Mr Dunn to strike out the claims against the remaining individually named Respondents with the exception of respondent numbers two and five, and also to strike out various aspects of the claim which I will come to individually in due course.
7. In reaching these decisions. I am guided by the overriding objective and in particular, paragraphs (b) and (e) in relation to dealing with cases in ways which are proportionate to the complexity and the importance of the issues and in ways, which save expense.

Removal of parties

8. During the course of the hearing, discussions have taken place in relation to the necessity of respondents other than the first respondent remaining in the case. Mr Dunn, on behalf of those respondents, has given a clear and unequivocal assurance to the Tribunal that the first respondent, DHL Services Ltd, accepts vicarious liability for the actions of any of its employees and that if any or all of the claims were approved against any of the named individuals then DHL Services Ltd would discharge any compensation award in favour of the claimant.
9. That assurance having been given I explained its effect to Mr. Hamde, and invited him to indicate whether or not in light of that assurance he still wished to pursue his claim against the remaining individually named respondents. He did not expressly indicate that he wished to withdraw his claim against those respondents, but equally he did not oppose Mr. Dunn's application for those respondents to be removed. In exercise of my case management powers and mindful of the overriding objective, I am empowered under rule 34 of the Procedure Rules to remove any party and in the circumstances which I have outlined I will do so in relation to all of the remaining individually named respondents, and, respondent number six, BHSF Group Ltd. Therefore the claim from this point onward will be between Mr. Hamde and first respondent only.
10. That to a degree simplifies the ruling that I have to make on strike-out because I no longer need to consider Mr Dunn's application in relation to striking out the remaining respondents.

Claimant's application to amend

11. The claimant seeks to amend the claim by the addition to the list of issues of the matter referred to on page 400 of the bundle. Mr. Dunn urges me not to allow the amendment and he has set out the basis for his objection in his skeleton argument which I have found extremely helpful. He of course, invites me to consider the criteria set out in the well-known case of *Selkent* and apply the 'balance of hardship and injustice' test *Vaughan v Modality Partnership* [UKEAT/0147/20/BA]. He also relies upon other authorities including *Ladbroke's Racing Ltd v Traynor* EATS 0067/06 *McFarlane v CPM* [2023] EAT 111
12. In essence his complaint about the proposed amendment is that it lacks specificity in relation to what kind of claim it is; that it adds an unnecessary burden upon the respondent; and that it is also essentially now out of time given that the events,

which it relates to happened on the 12 February 2024. He submits that the balance of prejudice and hardship weighs strongly against the respondent.

13. He says that further time and cost would be required to particularise this claim, and perhaps even a further preliminary hearing; it widens the factual enquiry; it may lead to the claimant seeking to add yet another respondent.
14. The essence of the proposed amendment is that 'on 12 February 2024 a colleague of the claimant's called Martin Nedyalkov required the claimant to sign up for a training scheme/safe system of work that required the claimant to perform additional work which would cause his condition to worsen'.
15. It seems to me that this set of facts is entirely consistent with the substance of the claimant's section 15 'discrimination arising from disability' claim, in which the claimant alleges that the respondent, over a period of time, required him to perform certain duties which caused him a detriment arising from his disability.
16. Although it is right that the claimant has not properly labelled that claim, it seems to me that it falls very neatly and sequentially into that claim.
17. I am mindful of the fact that the claimant continues to be employed by the respondent, and that in those circumstances the situation is an evolving and ongoing one. For that reason I do not accept that there is no clear nexus between this allegation and the previous allegations; and I do not accept that it necessitates on the part of the Respondent any significant additional burden or prejudice. Neither do I consider there is much force in the submission that the claim is out of time, given that the matter was raised, first of all, very shortly after the original Case Management Hearing in a document dated 28 February 2024. In fact, at the time of that document being sent into the tribunal, the incident was very fresh indeed.
18. For all those reasons, I will allow that Amendment and that will simply form paragraph 6(e) of the List of Issues and it will be set out as per my paragraph 13 above.

Strike-out application

19. Firstly, Mr Dunn applies to strike out the Section 26 claim: harassment relating to disability - paragraphs 11(a) and 11(b) of the List of Issues. The respondent submits that despite extensive attempts during the course of today's hearing to tease out the connection between the behaviour complained of and Mr Hamde's disability, it simply hasn't been established with any degree of clarity whether or not such a connection exists. I agree. I attempted at length to understand what the claimant is saying in relation to paragraphs 11(a) and (b) and I struggled to do so. Whilst I understand that the claimant feels that being told he was rude, and being given a final written warning amounted to harassment related to disability, I've been unable to discern how he makes that connection. I have considered whether or not his is a claim that has a reasonable prospect of success. I have decided that it does not. In doing so, I make it clear that there is nothing preventing the claimant from referring to those incidents as part of the overall background facts that might be supportive of other aspects of his claim,

but I do not consider that they amount to a claim in their own right. Those paragraphs will be struck out pursuant to rule 37.

20. However, I do *not* strike out paragraph 11(c) even though I am asked to do so. I do consider that there is an arguable case that on 25 November 2023 the claimant may have been harassed in relation to his disability as a result of having been laughed at when he explained that he couldn't twist his back because of his back injury.
21. I bear in mind, the submissions Mr Dunn made in relation to the timings but the claimant's case on disability discrimination represents an ongoing course of discrimination and this incident is merely one of a number within the context of that ongoing series of events. In my judgment, the appropriate course is to leave any decision on jurisdiction in relation to paragraph 11(c) to the final hearing. I make it absolutely clear that does not mean that this part of the claim has a strong prospect of success but I do find that it meets the threshold for allowing it to continue at this stage.
22. Finally, in relation to discrimination on the grounds of race, Mr Dunn urges me to strike out, or consider making Deposit Orders in relation to all of those claims that were made within the context of claim number one.
23. In relation to paragraph 23(b) as it appears within the list of issues, I do consider that there is an arguable case there in relation to discrimination on the grounds of race. Given that there is a clear allegation that the claimant was prevented from allowing a translator to join that meeting on the 20 July 2023, and that he was not permitted to use a translating function on his mobile phone, it seems to me that does plainly provide a factual basis for a claim of discrimination on the grounds of race.
24. That leaves paragraphs 23(a) and 23(c). Taking paragraph 23(c) first, I found it very difficult to understand the allegation that the respondent deliberately hid the claimant's medical records and I struggled to find any basis for concluding that it was or could amount to discrimination on the grounds of his race.
25. Paragraph 23(a) however is somewhat different. I was critical at the beginning of the hearing of a document and email sent by the claimant to the Tribunal at about 7am on the day of the hearing - of the lateness and the level of detail. But having considered that document more carefully, it does provide more clarity as to why it is that the claimant asserts that the respondent's refusal to make reasonable adjustments to him could amount to both disability and race discrimination.
26. What the claimant has stated is that when the respondent refused his reasonable adjustments (thereby discriminating against him on the grounds of his disability) they *simultaneously* showed favouritism within the workplace to colleagues of the same race as themselves, and correspondingly a different race from himself, in allocating less physically demanding tasks to those colleagues. It seems to me that that does or at least could, provide a basis for a claim of discrimination on the grounds of race.

27. Referring again to Mr. Dunn's skeleton argument and in particular the submissions that he makes citing the case of *Chandok v Tirkey* which in turn cites the case of *Madarassy v Nomura* - in essence he submits that a bare assertion of racial discrimination, without a proper basis cannot be the foundation for a claim. I take the view that this is more than just a bare assertion. Whether it is an assertion that can be substantiated to the satisfaction of the Tribunal is another matter, and it could fail in due course. but at this early stage I am satisfied that there is an arguable case. I am mindful of the fact that the final hearing is still a very long way off and so there is ample time for the respondent to turn its mind to the issues raised by that claim. In my judgment, factually, they have to address the issue anyway because they have to address the assertion that the claimant was refused reasonable adjustments. Whether that is to be treated as discrimination on the grounds of race or disability or both does not necessarily significantly increase the burden upon them. Weighing all of those factors into the balance, that part of the claim may proceed and I will not make a Deposit Order.

Employment Judge Conley

Date: 7 November 2024

Sent to the parties on:
11 November 2024

For the Tribunal Office: