



EMPLOYMENT TRIBUNALS

Claimant: Ms A Breneska

Respondent: Wincanton Group Limited

Heard at: Reading **On:** 22 October 2024

Before: Employment Judge Anstis

Representation:

Claimant: In person

Respondent: Mr C Hill (counsel)

JUDGMENT having been sent to the parties on 28 October 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

1. These are the reasons for the tribunal's judgment of 22 October 2024. They are provided at the request of the claimant. Her request was made on 8 November 2024 and forwarded to me on 19 December 2024.
2. The claimant submitted her claim on 16 October 2023 following a period of early conciliation from 17 August 2023 to 28 September 2023.
3. The claim was subject to case management by EJ Shrimplin at a preliminary hearing on 14 March 2024. I set out below the claims that EJ Shrimplin identified, together with (in brackets and italics) further explanation given by the claimant in initial discussions during this hearing.
 - a. Direct sex discrimination, comprising:
 - i. Wrongful suspension (*said to have taken place on 5 April 2022*),
 - ii. Blocking her apprenticeship (*said to be a consequence of her suspension, I think on the basis that at the point of her suspension she was told not to communicate with particular people*),

- iii. Attempting to kill her (*by descaling a kettle on 28 June 2022*),
 - iv. Demotion (*at the end of November 2022*) and
 - v. Automatically unfair redundancy (*31 May 2023*).
- b. Automatically unfair redundancy (*This is a repeat of one of the items above. It relates to a claim of sex discrimination rather than a claim of unfair dismissal and it appears that in the claimant's point is simply that her dismissal was an act of unlawful direct sex discrimination. Her comparator for this claim is Felicio Menendez.*)
 - c. Failure to pay equal pay relating to a pay rise. (*The pay rise in question took effect on 1 April 2022 and from that point onwards the claimant is claiming equal pay for like work with her male colleagues Furqan Siqander and Roderick Braithwaite.*)
 - d. Failure to pay notice pay, arrears of wages and redundancy pay. (*There is no claim for arrears of wages (other than the claim for equal pay) or redundancy pay. The claim of a failure to pay notice pay is that the claimant says her contract entitled her to two months notice pay but she was only paid one months' notice pay.*)
4. The employment judge also makes an order that requires further particulars of any claims of sex harassment, direct sex discrimination and victimisation. I take it that these would be claims in addition to the ones previously identified.
 5. The employment judge listed a one day public preliminary hearing to take place on 26 June 2024. This hearing was postponed to take place before me today. By the time of the hearing before me it appeared in the tribunal's listing diary as a half-day case management preliminary hearing. It was not clear either to me or the parties how this had happened, but I have proceeded on the basis that this is the public preliminary hearing ordered by EJ Shrimpton.
 6. The purpose of the preliminary hearing is as follows:
 - a. To identify the legal and factual issues the tribunal will be asked to decide.
 - b. To decide whether any of the claimant's claims should be struck out as having no reasonable prospects of success.
 7. On the former point, I worked through with the claimant the claims previously identified, as set out above, but there was then the question of what the claimant's further particulars added.
 8. The further particulars are clear on the allegation of victimisation, but much less clear on the allegations of sex harassment and direct sex discrimination.

9. As the respondent points out, there is nothing in that document that is specifically identified as an act of sex harassment or direct sex discrimination. This is certainly not the kind of document that EJ Shrimpton would have expected to see.
10. I bear in mind that the claimant is not legally represented, but also that she would have had the benefit of discussion of these matters at the first case management hearing before EJ Shrimpton.
11. In discussion with me the claimant did not seem to recognise the need to identify which of these complaints were acts of sex harassment or direct sex discrimination. Perhaps the best that can be said is that as the only woman on the staff it appeared to her to be obvious that this was all sex harassment or direct sex discrimination, and so obvious that nothing more needed to be said about it.
12. The problem is that the claimant's further particulars cover much that cannot possibly be considered to be sex harassment or direct sex discrimination. For instance, the first page covers a wide range of matters. It is not clear what are complaints and what are not. For instance, is the suggestion that another employee told her that he was in control of all operations a complaint she is bringing, and if so, is it a complaint of sex harassment, direct sex discrimination or something else?
13. Early on in this page the claimant says that the individual in question was upset that she was on the same grade as he was. It is unclear whether this is an allegation of sex harassment, direct sex discrimination or an attempt to explain the individual's later behaviour on a basis that is simply to do with jealousy and nothing to do with her sex.
14. Much of the rest of the page is taken up with complaints about cleaning standards, and I do not see how this could be anything to do with sex harassment or direct sex discrimination.
15. She talks about her colleague becoming quite aggressive "*because I was disagreeing with his way of cleaning*". If that is true then the aggressive behaviour (if any) is explained by the disagreement and is not anything to do with sex harassment or direct sex discrimination.
16. The document continues in much the same way.
17. Aside from the question of victimisation (which I will return to) I am unable to discern any allegations of sex harassment or direct sex discrimination in this document. I will have to consider the respondent's application to strike out the claimant's claims solely on the basis of the claims previously identified by EJ Shrimplin.
18. In considering striking out the claimant's claims, it appears that EJ Shrimplin particularly had in mind questions in relation to time limits, as the order goes on

to note that “*any complaint about something that happened before 17 August 2023 may not have been brought in time*”, having earlier recorded that “*the claimant’s employment was terminated on 31 May 2023*”. Mr Hill’s position was that in fact it was anything before 17 May 2023 that would be out of time, and that accorded with my calculations of the necessary time limits. Everything other than the act of victimisation, matters arising on the dismissal and the possible equal pay claim would be out of time.

19. The question becomes whether I should extend time in respect of any of the earlier matters. The claimant raises some serious allegations, but unfortunately has set out no basis at all on which I could or should extend time. Mr Hill is able to point to a number of basis on which I should not extend time, including that the respondent’s operations at that particular site have closed down, meaning it is uncertain whether the respondent still has access to relevant witnesses. He points to an invoice for legal advice produced by the claimant in summer 2022, which suggests (and I agree) that she was aware of her legal rights at a relatively early stage of matters, and in time to take action in respect of each of her complaints. In those circumstances the balance of prejudice suggests that I should not extend time, and there is no proper basis on which I could or should extend time for individual matters of discrimination.
20. There remains the question of whether it is arguable that these could be considered to be continuing acts when taken together with matters that are within time – which would be the claimant’s dismissal.
21. I will come later to the difficulties with the dismissal claim, but despite the point being raised by EJ Shrimplin it has not been argued by the claimant that these should be taken as continuing acts, nor do I see how these could be seen as continuing acts taken together with the claimant’s dismissal. What she complaint of are actions by her colleagues, whereas the dismissal relates to the closure of the entire site, surely a matter beyond the control of her immediate colleagues. This cannot be considered a continuing act.
22. So the claims that pre-date 17 May 2023 must be struck out.
23. That leaves claims in relation to dismissal, the equal pay claim and victimisation.
24. The claimant’s dismissal is said to be a matter of sex harassment and direct sex discrimination. It is agreed between the parties that the dismissal came about because the respondent had no more work at the site, and a more accurate way of putting the claim would be an allegation that it was sex discrimination or sex harassment that a male colleague was kept on to finish of work when she was not. That is the discrimination point on the claimant’s dismissal.
25. The problem with this is that as Mr Hill was able to point out the claimant is noted as saying at the time (and she does not dispute this) that she “*would*

prefer not to stay past the 31st May ... “does not want to stay with Wincanton” and “*would like to be made redundant*”. In those circumstances it cannot be less favourable treatment for her not to stay on, and any claim of direct sex discrimination is bound to fail.

26. This leaves the question of notice pay on dismissal, the question of equal pay and the question of victimisation.
27. The claimant’s claim for equal pay is based on the idea that colleagues who did the same job as her got a pay rise following April 2022 when she did not. But Mr. Hill has been able to point out, and I think it is broadly accepted by the claimant, there are payslips showing that she did in fact get a pay raise in or around April 2022, on that basis, I simply don’t see how that claim can continue, and it must be struck out.
28. There remain two claims. The first is a claim for an extra month notice. On the dismissal I think it is agreed by the respondent that the claimant’s notice period was two months, but they say that it was varied by the respondent when there was no objection by the claimant to one month. I don’t know the full facts of that, and of course I can’t get them in this hearing, but it does seem to me that it is not right for me to say that that has no reasonable prospect of success. That claim should continue.
29. There is then a complaint of unlawful victimisation, which is that in response to an allegation of discrimination made by the claimant in April 2022, the respondent refused to provide a reference for her when it was requested in May or June 2024. We may need to explore that in a little more detail, but I cannot say that that has no reasonable prospects of success, so that claim will continue. There are two claims that continue, one of which is for an extra month’s notice and the other of which is in respect to victimisation on the provision of the reference.

Employment Judge Anstis
Date: 20 December 2024

REASONS SENT TO THE PARTIES ON

23 December 2024

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FOR THE TRIBUNAL OFFICE