



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mrs S Bruce

AND

Respondent
Birmingham Women's and
Children's NHS
Foundation Trust (R1)
NHS England (R2)

JUDGMENT ON A PRELIMINARY HEARING

HELD AT Birmingham

ON

7 February 2017

EMPLOYMENT JUDGE Harding

Representation:

For the claimant: In Person
For R1: Mr True, Solicitor
For R2: Mr Meichen, Counsel

JUDGMENT

By consent the claims of victimisation against R1 and R2 are dismissed on withdrawal by the claimant.

ORDER

Background and issues

1 I explained to the claimant what is meant by a victimisation claim and we went in detail through the definition of a protected act. After I had done this the

claimant confirmed that it was not her case that she had done a protected act and she indicated that she would be content for the victimisation claims against R1 and R2 to be dismissed on withdrawal. Prior to doing this I explained to the claimant what the effect of a dismissal on withdrawal would be. The claimant further agreed that her remaining claims of unfair dismissal and unpaid notice pay were bought against R1 only. It was agreed that the respondent's name should be amended to Birmingham Women's and Children's NHS Foundation Trust.

2 I discussed the unfair dismissal claim with both the claimant and the respondent. We were able to identify the following as issues in the claim:

2.1 The respondent accepts that it dismissed the claimant and that it did so in July 2016. It is the respondent's case that the claimant was dismissed for some other substantial reason - namely certain conditions of practice were imposed by the NMC on the claimant which meant that the respondent could no longer continue to employ her because it could not accommodate the conditions. The claimant disputes that this was the reason for dismissal albeit she does not have another alternative reason for why the respondent dismissed her.

2.2 The claimant's case is that her dismissal was unfair for the following reasons:

(a) Her dismissal was premeditated. It is the claimant's case that the respondent had decided by October 2015 to dismiss her. The claimant relies in particular on a letter from R2 to R1 in October 2015 in which the respondent is referred to as the claimant's "previous employer".

(b) No policy was followed. The claimant accepts that she was invited to a meeting to discuss her situation prior to her dismissal and that she was given a right of appeal but she complains that no formal process was followed and/or she complains that her appeal was conducted under the disciplinary procedure.

(c) It is the claimant's case that her dismissal was outside the reasonable range bearing in mind that her ability to work in her chosen career has been adversely affected by the dismissal.

(d) It is the claimant's case that dismissal was outside the reasonable range because the conditions of practice imposed on her by the NMC were that she would need to be supervised for 9 months not that she could not practice and/or in the alternative the respondent could have downgraded her for this period.

Witnesses

The claimant proposes to give evidence herself. The respondent will call 3 or possibly 4 witnesses. The parties agree that the Hearing will last 5 days.

ORDER

Upon hearing the parties (and by agreement) I made the following orders:-

Further particulars

1 The respondent will file an amended Response to the issues set out in paragraph 2 above by no later than 21 February 2017.

Documents

2.1 By no later than 28 February 2017 each party shall send to the other copies of all relevant documents which are or have been in that party's control including documents on which that party relies and documents which adversely affect that party's case. The claimant shall disclose all documents the claimant relies on to prove loss and attempts to mitigate loss (i.e. efforts to find alternative work and earnings since dismissal).

2.2 By no later than 14 March 2017 the parties shall agree the contents of a single bundle of documents. The bundle should contain only those documents that will be referred to in evidence. Any "without prejudice" communications must be excluded.

2.3 The respondent shall be responsible for the production of a properly paginated and indexed, agreed bundle of documents, which should be tagged or contained in a ring binder. A copy shall be sent to the other party by 21 March 2017.

Witness Statements

3.1 By no later than 4 April 2017 the parties shall mutually exchange witness statements (including statements of the parties themselves). The witness statement of the claimant must deal with the loss claimed and efforts to mitigate that loss (i.e. efforts to find alternative work and earnings since dismissal). No further statements may be served without the consent of the tribunal.

3.2 No witness will be permitted to give evidence, (without leave of the tribunal), unless a witness statement has been prepared and exchanged in accordance with this order.

3.3 Each witness statement must contain all the evidence upon which that witness wishes to rely. Each paragraph should be numbered. Events should be described in the order in which they happened. Witness statements must refer to documents by their page number in the bundle but are not to be bound into the bundle itself. In accordance with Rule 43 witness statements will be taken as read. Witnesses may be cross-examined. The parties must bring three copies of their statements to the tribunal for use at the hearing (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with Rule 44.)

Timetable for the Hearing

4.1 We agreed the following timetable. The parties informed me that there is likely to be a significant amount of pre-reading and after discussions we agreed that 1 day should be set aside for this. We agreed 3 hours for cross-examination, re-examination and questions from the tribunal of the claimant, 1 day for cross-examination, re-examination and questions from the tribunal of the respondent's witnesses, a maximum of 1 hour for closing submissions (30 minutes each), 5 hours for deliberations and delivering the judgment orally if appropriate and 1 day for remedy if needed.

4.2 Unless the tribunal is informed well in advance of the hearing, and subject to the discretion of the judge dealing with the hearing, the parties will be expected to keep to this timetable.

4.3 Every time estimate must make a realistic allowance for pre-reading by the Employment Judge. The time within which a case must be concluded will thus run from the beginning of the pre-reading. Should the period allowed for pre-reading prove inadequate, the time available in tribunal will be shortened correspondingly. The same principle will apply if too little time is allowed for the judge to read any written closing submissions.

Lodging of Documents

5.1 The parties shall lodge with the tribunal office by 09.30 a.m. on 8 May 2017 four copies of:-

(a) The bundle

(b) Witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with Rule 44.)

(c) Schedule of loss

5.2 The documents shall be lodged by the party made responsible for their preparation under the foregoing Orders

Hearing

6.1 The case will be heard on 8 – 12 May 2017 (5 days), commencing at 9.45 am or as soon thereafter as the case can be heard. No postponement will be allowed on the application of a party save in exceptional circumstances. The Hearing will include the issue of remedy. The respondent has 7 days to write in should these dates be unavailable for its witnesses.

6.2 If either party subsequently considers that the time allocated by the tribunal for the hearing of this case is insufficient or too long, that party should notify the tribunal immediately, explaining why they consider the allocation to be insufficient and giving their estimate.

Further Orders and variation of existing orders

7 All applications for further orders or for variation of these orders are to be made immediately upon receipt of this Order or as soon as is practicable thereafter.

The Overriding Objective

8 In accordance with the overriding objective, set out in Schedule 1, Rule 2 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, this case will be managed so as to ensure a fair hearing. This may include limiting the time for witnesses' evidence, cross-examination and the making of submissions.

Failure to comply with this Order

9 Failure to comply with any part of this Order may mean that the tribunal has insufficient time to hear the application on the hearing date and may give rise, upon application by a party who has incurred extra costs as a result, to an Order for Costs or preparation time against the offending party. Further, the tribunal may regard any failure to comply with this Order as unreasonable conduct of proceedings in the event of an application for costs or a preparation time order against the party who has failed so to comply.

Case No:1302946.16

Employment Judge Harding

Dated: 7 February 2017

Date issued: 10 February 2017

Notes

1 The parties or their representatives should ensure that all documentary evidence and statements of the witnesses on whom they rely are supplied to the other party and the tribunal in accordance with this Order.

2 Only in exceptional circumstances will the tribunal consider:

(a) the evidence of witnesses whose statements have not been exchanged,

and/or

(b) documents which are not included in the single bundle, in accordance with this Order.

3 *It should also be noted that any correspondence between the parties endorsed "without prejudice" or correspondence between the parties and ACAS may not be admissible and should not be included in the agreed bundle of documents or disclosed to the tribunals until agreed by the parties, or ordered by the tribunal, to be included.*

4 *The parties' attention is also drawn to Rule 2 (the overriding objective). The overriding objective is to enable tribunals to deal with cases justly. By Rule 2, the parties shall assist the tribunal to further the overriding objective.*

5 *Failure to comply with this order may result in the striking out, before or at the Hearing, of the whole or part of your claim if you are the claimant or the whole or part of your response if you are the respondent.*

6 *Failure to comply with this order may also result in a fine being upon you under the provisions of section 7(4)*