



EMPLOYMENT TRIBUNALS

Claimant: Mr Alton

Respondent: Royal Caribbean Cruises

Heard at: London South Croydon

On: 24 November 2020

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Mr Kemp of Counsel

JUDGMENT

The tribunal does not have territorial jurisdiction to hear the Claimant's claim for discrimination by reason of Section 81 of the Equality Act 2010 when read with the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011. The Claimant's claim is therefore dismissed.

REASONS

Requested by the Claimant.

1. This hearing was listed by Employment Judge Truscott QC following a telephone case management discussion on 20 July 2020. This hearing was listed to consider the issues in relation to the territorial jurisdiction of the Employment Tribunal and whether it is just and equitable to extend time to pursue the claim.
2. The tribunal had before it witness statements from the claimant, his mother, Mrs Alton and Mrs Clements. The statements were read before the hearing and the claimant took the stand and gave evidence in relation to the above two matters.
3. The claimant was not cross-examined.

Findings of fact

4. The Respondent is a company registered in Liberia. It is a global cruise company. The documentation showed that the Headquarters is based in Miami.

5. The claimant told the tribunal that he was recruited by King's Recruit, (which is part of Kings Active Foundation, a registered charity) an agency used by the respondent to recruit cruise staff. It was not disputed that the agency was UK-based and was designated by the Respondent as the go-between. He stated that the agency offered him the position subject to medical checks. Kings Recruit set up the interview via Skype with the Respondent. He was successful at interview and was offered a position with the respondent company.
6. The tribunal saw the letter of offer from the respondent in the bundle at page 55, dated 9 November 2018. The letter confirmed that the claimant was offered employment as a member of cruise staff. He was to be paid in US dollars. The letter stated that the offer was contingent upon him passing pre-employment medical clearance and once that was done, he would be assigned to a ship.
7. The letter of employment was in the bundle at page 58 and was signed by Royal Caribbean Cruises Ltd and the letter was sent from the Head Office based in Miami. The letter confirmed that the claimant would be assigned to a ship called Explorer of the Seas, which was registered in the Bahamas (see page 39 of the bundle). The claimant was informed that he had to report to the port of Noumea, New Caledonia on 21 December 2018.
8. The claimant was not able to start his assignment and was escorted home. The reasons behind that decision are not relevant to the issues before this tribunal.
9. The Claimant told the tribunal that he received sick pay from the respondent company from 22 December 2018 to 2 January 2019 (page 87 of the bundle).
10. The tribunal asked the claimant about emails that he sent to the respondent on 16 January 2019 at page 84 where he stated that he understood that he would not be working for the respondent and that "*I will be taking [the respondent] to court for unfair dismissal and mental health discrimination*". On the following page 85, dated 17 January 2019, he again wrote the respondent asking for "*proof in an email why the director of medical for [the respondent company] has decided that I can't work for [the respondent company] because I used to have bipolar type III and I was asked in my medical do I have bipolar. I want to take [the respondent] to court (sic) and seek compensation for how I was treated*". At page 86 the claimant again wrote to the respondent an email dated 18 January 2019 asking for details of the legal team. It was asked whether he accepted he was aware by 16 January that he could no longer work for the respondent and he replied that he was waiting for what he described as 'official confirmation' of the decision as he explained that the 'whole thing could have been a hoax'.
11. It was the claimant's case that the respondent intentionally withheld notification of the termination of his employment to exceed the three month time limitation. The claimant stated that he had sent many emails to the respondent asking for official confirmation of the decision to terminate

his employment and he did not receive that formal notification until September 24, 2019. The claimant contended that the time did not start to run until he received confirmation in writing of his dismissal.

12. The claimant told the Tribunal that his employment had a sufficient connection to Great Britain because he was recruited by a company based in the UK and he saw a doctor in England. The Claimant also maintained that his employment terms did not state it was to be on a foreign flagged vessel and when he was appointed, he was not assigned to a ship. The Claimant told the Tribunal that the contract of employment only referred to a later assignment to a ship.
13. The Claimant presented his ET1 on the 15 December 2019 after entering into early conciliation on the 28 November until the 11 December 2019.

The Law

Section 81 Equality Act 2010 Ships and hovercraft

(1) This Part applies in relation to—

- (a) work on ships,
- (b) work on hovercraft, and
- (c) seafarers,

only in such circumstances as are prescribed.

(2) For the purposes of this section, it does not matter whether employment arises or work is carried out within or outside the United Kingdom.

(3) “Ship” has the same meaning as in the [Merchant Shipping Act 1995](#).

(4) “Hovercraft” has the same meaning as in the [Hovercraft Act 1968](#).

(5) “Seafarer” means a person employed or engaged in any capacity on board a ship or hovercraft.

(6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland

Regulation 4 Equality Act 2010 (Work on Ships and Hovercraft) Regulation 2011

Application of Part 5 of the Act to seafarers working wholly outside Great Britain and adjacent waters

(1) Part 5 of the Act applies to a seafarer who works wholly outside Great Britain and United Kingdom waters adjacent to Great Britain if the seafarer is on—

- (a) a United Kingdom ship and the ship's entry in the register maintained under [section 8](#) of the Merchant Shipping Act 1995 specifies a port in Great Britain as the ship's port of choice, or

(b) a hovercraft registered in the United Kingdom and operated by a person whose principal place of business, or ordinary residence, is in Great Britain,

and paragraph (2) applies.

(2) This paragraph applies if—

(a) the seafarer is a British citizen, or a national of an EEA State *other than the United Kingdom* or of a designated state, and

(b) the legal relationship of the seafarer's employment is located within Great Britain or retains a sufficiently close link with Great Britain.

Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1

Rule 8 Presenting the claim

(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction made under regulation 11 which supplements this rule.

(2) A claim may be presented in England and Wales if—

(a) the respondent, or one of the respondents, resides or carries on business in England and Wales;

(b) one or more of the acts or omissions complained of took place in England and Wales;

(c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or

(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.

Closing submissions

14. The respondent's closing submissions were in writing. These were taken into account and the further oral submissions were as follows:

15. Counsel dealt with the territorial jurisdiction first stating that the primary evidence is at page 55 of the bundle which is the offer letter which makes it clear that the Claimant is to work on board one of the vessels. Page 56 refers to an assignment to work on a ship. Page 58 is the letter of employment which confirmed that the work is on board a foreign flagged ship and page 39 showed the registry of that vessel.

16. Counsel referred to the factual matrix and referred the tribunal to section 81 of the Equality Act where work on a ship only comes within that statute

if they are within prescribed conditions. They are that the jurisdiction of the Equality Act only extends to UK registered vessels. He stated it was a moot point if what is being complained about is withdrawal of an offer or dismissal.

17. Counsel then referred to the regulations enacted under Section 81. Regulation 4 of the of the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 shows how the jurisdiction of the Equality Act is bought back in.
18. The facts in this case showed that this ship started from the port in New Caledonia, therefore, regulation 4 applies. The claimant is not bought back in by Section 1(a). It was not a UK ship. It was registered in the Bahamas.
19. The respondent stated that the claim should be dismissed. The tribunal was referred to the case of *Walker v Wallem Ship Management Ltd* and another [2020] IRLR 257 and the tribunal was referred specifically to paragraphs 36-8:

“36. Parliament chose, in section 81, to empower the Secretary of State to decide whether and to what extent Part 5 should apply in relation to work on ships, work on hovercraft and seafarers. In our judgment, the Secretary of State then decided to apply or disapply the whole of Part 5 of the 2010 Act as provided for in regulations 3 and 4 of the 2011 Regulations and to disapply part, but not all, of Part 5, in the circumstances provided for in regulation 5.

37. We consider that we cannot escape from that conclusion by invocation of a beneficent policy-driven construction, whether by applying the Marleasing principle or by invoking other general principles of interpretation such as the need for there to be a remedy where a wrong needs righting, or preservation of the right to work. It would strain the language of section 81, read with the 2011 Regulations, too far to do so.

38. For those reasons, we have come to the conclusion that the tribunal was correct to accept Wallem’s interpretation of the provisions and to reject its own jurisdiction to entertain the claims and determine them on their merits. We must therefore dismiss the claimant’s appeal. We do so with some misgivings. The respondent’s conduct has been reprehensible, but the tribunal below and this appeal tribunal are powerless to right the injustice done to the claimant.”
20. Counsel stated that Walker was a case where the claimant went for an interview but was told she could not be employed on the ship because of her sex. The issue in this case was did section 81 of the Equality Act apply for interviews for employment? Section 81 applies to all employment on ships and that is the knockout blow.
21. He went on to state that if the Tribunal was not with him on that point, he went on to deal with the Employment Tribunal rules rule 8(2), the respondent stated that none of these factors are engaged as the respondent is a company registered in Liberia. The agency is not a party to these proceedings and there is no act complained of in respect of the

agency. The decision was not taken in England and Wales, the decision to withdraw the offer or to terminate the employment was taken outside of England and Wales by a company registered in Liberia therefore there is no connection with England and Wales. This is a case where there is no territorial jurisdiction, either under section 81 or under rule 8(2).

22. Counsel then went on to deal with the just and equitable extension. He stated that the claim form was advanced on the basis of the employment terminating on the 10 January 2019, this is the last act complained of. That is telling and it goes to his awareness of when the contract was brought to an end.
23. Page 84 was sent days after the telephone conversation and he accepts that he will not be working for the Respondent and will be pursuing a claim for unfair dismissal and discrimination. He is aware of his employment rights and he knows his contract is at an end.
24. Page 85 deals with the same point and is dated the 17 January 2019, he accepts that the relationship is at an end and he wants to take them to court. These two emails demonstrate an awareness that the relationship has ended, and he is aware of his rights.
25. The Claimant has suggested that there is a lack of confirmation and that is the reason for the significant delay. That is a device. These two emails show that the Claimant knew he had been dismissed.
26. Page 86 has the subject line 'unfair dismissal' and he wanted to contact their legal team. This shows that he is aware of his statutory rights and means of redress.
27. This is powerful evidence and is contemporaneous. The Claimant is aware of his rights and shows that his claim is considerably out of time. There is evidential prejudice to the respondent which is inevitable as by the time the case comes to a hearing, which will be at the end of next year recollections will fade. The defence of objective justification is a broad test, the Respondent will be prejudiced by the 9-month delay. The Respondent said that taking all of the above into account it is not just and equitable to extend time.

The Claimant's closing submission.

28. The Claimant produced written submissions some of which were referred to above in the findings of fact and they were taken into account by the Tribunal in deliberations. The Claimant stated that it was just and equitable to extend time. The Claimant said he would be put at a greater disadvantage as compared to the Respondent. The respondent has been aware of this case in 2020. The failure to provide the official confirmation would be sufficient for him to have his claim found to be in time.
29. The Claimant stated that the letter confirmed that he was to be employed on a ship. He was employed by Kings Recruit; they were closely connected with the Respondent. When employed by the Respondent you are put in a Talent Pool, when you are in the Pool you can be put on any

ship. [the Claimant also referred in his list of issues that the respondent has received state aid therefore it is evidence that it is part of England].

30. In relation to the time point, he stated that the Respondent ignored his emails. He went on to state *“My mental health is more than enough to say I could bring it, that gives you enough to extend time. This is not a rule, it is a discretion. Let me go to the final hearing. This is a fact-based case. Their defence is a tactic, they don’t want the public to see the email. When they received information about my bipolar they put a slip under my door to say I was no longer required on board”*.
31. The Claimant stated that there needs to be a fair trial, their tactic was to ensure that his claim was out of time. He stated *“My mental health is central. You can extend time”*.

Case Law

Other cases referred to by the Respondent in connection with the time points were:

British Coal Corporation v Keeble [1997] IRLR 337

Robertson v Bexley Community Centre [2003] IRLR 434

Abertawe Bro Morgannwg University Local health Board v Morgan [2018] IRLR 1050

Decision

32. I will firstly deal with the issue of territorial jurisdiction, if it is found that the tribunal lacks jurisdiction that will be an end to the matter. I have been taken by the respondent to section 81 of the Equality Act, which makes it clear that jurisdiction in relation to working on a ship is excluded from part 5 of the Act (which deals with work). As section 81 excludes working on a ship from the definition of work I have therefore to look to the Equality Act (Work on Ships and Hovercraft) Regulations 2011 Regulation 4 which brings jurisdiction back under the Equality Act if two criteria are complied with. The first criteria is that the employee is employed on a UK ship and secondly that the ship under section 8 of the Merchant Shipping Act 1995 specifies a port in Great Britain as the port of choice.
33. I considered whether the claimant was employed (or offered employment) on a UK ship. The evidence before me is referred to above at pages 55 and pages 58. The offer letter confirmed that there was an offer to work on board a ship, but the identity of that ship was not clarified, it was confirmed that the claimant would receive his assignment to join one of their vessels. It was noted by the tribunal that the currency of payment was in US dollars.
34. The further document at page 58 show that the claimant was assigned to a vessel that was registered in the Bahamas; the tribunal saw the registration document at page 39 of the bundle. On the evidence therefore the ship was not a UK ship. It was one registered in the Bahamas.

35. The second point is, what was the port of choice and it is noted that the ship was in a port in New Caledonia. There was no evidence to suggest that the port of choice of this vessel was Great Britain.
36. The claimant was therefore employed to work on a ship that was not a UK ship and no evidence that the port of choice was Great Britain. The offer of employment was made by a Company registered in Liberia with a head office in Miami. There was no evidence to suggest that the Claimant's employment or his legal relationship was located within Great Britain or that it retained a sufficiently close link with Great Britain.
37. Although the claimant has suggested in his evidence and in closing submissions that the Kings Recruit agency which was based in Great Britain somehow conferred jurisdiction on the respondent. There was no evidence to suggest that this was the case. Kings Recruit was an agency and third party whose involvement was limited to assisting with the recruitment of staff. The Kings Agency was not a party to these proceedings and there was no evidence to suggest that they were guilty of any wrongdoing in this case. The evidence was clear that the offer of employment was made by the Respondent and the legal relationship was exclusively with the Respondent.
38. I have been taken to the case of Walker referred to above and to paragraphs 36-8. This case binds the tribunal. It is clear from this case that the tribunal is not entitled to adopt what is described as a beneficial policy driven construction when applying the regulations and section 81 of the Equality Act. The Secretary of State has decided to exclude those working on ships under certain criteria and as a tribunal we cannot go behind that or construe it in a way that goes against the natural and ordinary meaning of the statute. I must therefore conclude on the evidence that this tribunal has no jurisdiction to hear this case for the reasons I have stated above.
39. I endorse the comments made in paragraph 38 of the Walker case and that I conclude I have no jurisdiction with some regret, but I am powerless to conclude otherwise.
40. Having concluded, I have no jurisdiction I do not need to go further to consider whether the claim is out of time or whether it is just and equitable to extend.
41. The claimant's claim is dismissed.

Employment Judge **Sage**

26 November 2020