



EMPLOYMENT TRIBUNALS

Claimant
Mr R. Taiwo

v

Respondent
Mitie Ltd

PRELIMINARY HEARING

London Central Remote Hearing MS Teams

On: 3 March 2021

Before: Employment Judge Goodman

Appearances

For the Claimant: Ms Esther Godwins, consultant

For the Respondent: Ms E. Johnstone, solicitor

JUDGMENT

The claim of unlawful deductions from wages is dismissed on withdrawal pursuant to rule 52.

CASE MANAGEMENT SUMMARY

The complaints

1. By a claim form presented on 16 July 2020, the claimant brought complaints of race and disability harassment, discrimination because of something arising from disability, detriment for asserting rights under the Working Time Regulations, and unlawful deductions from wages. These were not clear at the case management hearing on 26 November 2020 when the claimant was unrepresented, but have now been made clear in further information supplied 5 February 2021. The respondent defended the claims, and has served an amended response dated 25 February 2021.
2. Today the claimant withdrew the claim of unlawful deductions from wages which relates to disputes about shift changes and pay cuts which ended in April 2019.
3. The claimant had prepared a list of issues for today. Omitted from this is a victimisation claim. The protected act is the grievance of 12 or 13 March 2020. The unfavourable treatment alleged is the 6 weeks from then until the hearing on 23 April, and the 2 month delay until the outcome on 28 July 2020. The respondent agreed with amendment of claim to add this, noting that victimization was

mentioned on the claim form, although the claimant had not been able to explain it at the earlier case management hearing.

Proposed second claim

4. Last week the claimant indicated there would be an amendment of claim, prompting a request by the respondent to postpone the hearing until the amendment was made clear. In fact the claimant will be bringing a second claim, arising from his dismissal for gross misconduct on 15 December 2020, having been disciplined for an episode on 7 November 2020 (this background as supplied by the claimant himself who was on the call). He has not yet been to ACAS for early conciliation.
5. I decided to allocate a hearing of five days to include both the present claim and the anticipated claim arising from dismissal, as the conflict the supervisor (Aslan) seems to go back to events of the previous March, which are included in this claim, and it will be convenient for the same panel to hear the evidence. At the same time, some of the events in this claim go back to 2018 and the hearing should take place this year if possible.
6. To avoid administrative delays with the second claim, I asked the claimant's representative to make sure that the claim number and case management orders in this claim are specified on the new claim form, so that the cases can be linked.
7. I asked both parties to seek to amend the list of issues in this claim so as to include issues arising from the dismissal claim. I indicated that they will not be a further case management hearing in the second claim unless either party requests one because there is difficulty agreeing the issues, or because there is delay disclosing documents relating to the dismissal, or any other matter that needs to be decided by the tribunal to make sure that the cases can be heard together on the date now set. For clarification, the orders for the hearing bundle and exchange of witness statements apply to the intended second claim as well as this one.

Hearing

8. This claim, and the anticipated dismissal claim, will be heard over five days starting **1 October 2021**, on all issues including remedy.
9. There are issues as to time limits in the current claims under sections 15 and 26 of the Equality Act 2010, and the claim of detriment under section 45A of the Employment Protection Act 1996. The respondent does not wish to have these decided at an open preliminary hearing; they will be decided at the hearing in October 2021.

The issues

10. The list of issues in this claim is attached to this order and is based on the claimant's draft (note that *gandu* is pleaded as race only). It is to be updated by the parties after service of the response to the intended second claim.

Judicial mediation

11. The respondent does not wish to enter into a judicial mediation. The parties are reminded that if there are settlement negotiations the tribunal should not be told about them unless and until a settlement has been effected through ACAS.

Other matters

12. If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.
13. Ms Godwins is not legally qualified and has previously held herself out as a non-barrister advocate at 3 Bolt Court Chambers, and at this tribunal as at Equip-Law, of which she is a director, which is not regulated by the SRA. In the light of concern among judges about compliance with the Financial Services and Markets Act 2000 and the Claims Management Activity Order 2018, I asked if she was employed by Broad Street solicitors, the origin of her correspondence. She replied that she was. I understand from this answer that she provides employment advice and advocacy at or under the direction or supervision of a legal practitioner who is her employer or fellow employee as required by regulation 89N(1)(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, as amended.
14. I made the following case management orders. These supersede any earlier directions which have not yet been complied with.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information

- 1.1 The claimant is ordered to give further information of the race discrimination and harassment allegations no later than **11 March 2021**:
- (1) the date of the line manager's comment that the claimant could not read
 - (2) who signed the get well soon card
 - (3) names of colleagues who laughed at the claimant's disability
- 1.2 The claimant is ordered to give further information of the working time detriment allegations no later than **11 March 2021**:
- (1) the dates when the claimant requested holiday between October 2018 and July 2020
 - (2) the date when the claimant "refused to forego the right to annual leave"
 - (3) the person to whom he said he refused to forego the right
 - (4) identify by date the disciplinary processes referred to in paragraph 17 (e) of the further and better particulars served February 2021

(5) identify by name the person responsible for the detriments complained of in paragraphs 5.2.2, 5.2.3 and 5.2.4 of the list of issues.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **11 March 2021**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 2.4 The parties shall comply with the date for disclosure given above. If following service by the claimant of the further information ordered the respondent is able to find other documents in better focused searches, such documents must be disclosed no later than **7 April 2021**. In any event, the parties are reminded of the duty of continuing disclosure.

3. Bundle of documents

- 3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the Hearing.
- 3.2 The respondent is ordered to provide to the claimant a full, indexed, page numbered electronic bundle to arrive on or before **23 July 2021**

4. Witness statements

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

- 4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 4.5 It is ordered that witness statements are exchanged so as to arrive on or before 3 September 2021.

5. Materials for the Final Hearing

The respondent is ordered to send the tribunal the hearing bundles one week before the hearing in PDF format.

Documents Bundle

Either the index to the bundle should be sent separately, or the index should itself be numbered in sequence, such that the page numbers of the hearing bundle align with the thumbnail page numbers of the pdf. Any late additions to the bundle must be inserted at the end, not in the middle.

Witness Statements

Send the witness statements as a separate pdf bundle. It is helpful if the bundle is bookmarked with the name of each witness.

NOTICE

Public access to employment tribunal decisions

1. Except for records of private case management hearings, all judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Consequences of Non-Compliance

2. Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.
3. Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

Employment Judge Goodman

Date: 3rd March 2021

JUDGMENT and SUMMARY SENT to the PARTIES ON
03/03/2021.

FOR THE TRIBUNAL OFFICE