



EMPLOYMENT TRIBUNALS

Claimant Mr E Bell

Respondents

1. Prime Time Recruitment Limited
2. Cordant Dynamic People Ltd
3. Cordant Group PLC

HELD AT: Manchester

In chambers

ON: 31 March 2017

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimant: Written representations

Respondents: Written representations

RESERVED JUDGMENT

The respondent's application for a preparation time order is refused

REASONS

Issues to be determined

1. The respondents have made a written application for preparation time and expenses as set out in a formal costs application submitted at the preliminary hearing on 3 February 2017.
2. The parties agreed to that application being considered on the papers.
3. The claimant was given the opportunity to respond to the application.
4. The tribunal has considered the written representations received by the tribunal following the orders made on 3 April 2017.

Background

5. The claim was presented on 20 June 2016, naming Prime Time Recruitment Limited as the sole respondent. The claim form indicates an intention to pursue claims of discrimination on the grounds of race and "whistleblowing". The particulars of claim set out a fairly detailed chronology of events, allegations of detrimental treatment following an alleged protected disclosure to the respondent's employer, an assertion that the claimant had been dismissed because he had made that protected disclosure. No particulars of the claim of race discrimination were provided.
6. At the time of presenting his claim the claimant was not legally represented. He is not legally trained. He has remained a litigant in person throughout.
7. Prime Time Recruitment Limited entered a Response indicating an intention to defend the claim. The particulars of the response include:
 - 7.1 an assertion that the claimant was not employed by Prime Time Recruitment Limited but had been employed by a number of companies within the Cordant group of companies prior to his dismissal;
 - 7.2 an acknowledgement that the claimant had, in December 2015 submitted a grievance, indicating his belief that he had been dismissed due to making a public interest disclosure, and that he had been bullied by a Mr Barnes, Mark Znowski and that Peter Ban- Murray had been recruited to replace him;

- 7.3 an acknowledgement that an investigation had taken place in relation to the matters raised in the grievance and that the claimant was provided with copies of the companies' Equality and Diversity policy, Bullying and Harassment policy and Whistle blowing policy as part of that investigation;
- 7.4 an application that the claim be struck out because the named respondent Prime Time Recruitment Limited was not the claimant's employer;
8. At the time of presenting the Response the respondent was not legally represented. The Response was presented by Ms Tanya Vittorio, Group Employee Relations Consultant. Ms Vittorio, who has described herself as having over 15 years of legal experience, including work in the employment tribunals, has represented the respondents throughout.
9. A preliminary hearing took place before EJ Sherratt on 9 September 2016 when Case Management Orders were made and copies sent to the parties on 19 September 2016.
10. Orders were made that:
 - 10.1 the claimant provide Further Information in relation to his claim of race discrimination, and that he was subjected to a detriment and dismissed for making protected disclosures;
 - 10.2 the respondent would respond to the Further Information;
 - 10.3 that Cordant Dynamic People Ltd and Cordant Group plc be added as respondents
11. In response to that Order the claimant provided what have been described as three Scott Schedules, which contain detailed allegations in a somewhat haphazard format. It is not easy to understand, from reading that document, the full extent of the nature of the claims pursued.
12. In accordance with the terms of the Order of EJ Sherratt the respondent endeavoured to provide a Response to the Scott Schedules, repeatedly pointing out that the particulars of claim as set out in the Scott Schedules were incorrectly set out, that they were not clear.
13. By email dated 28 October 2016 the respondents asserted that the claimant had failed to fully particularise the issues to be determined, that the respondent was unable to fully understand the claim it had to answer.

It therefore make application that the matter be listed for a preliminary hearing to determine an application that the claim be struck out on the grounds it had no reasonable prospect of success or that the claimant be ordered to pay a deposit as a condition of being allowed to pursue the claims.

14. That application was listed for hearing.
15. In response to the respondent's application for strike out/deposit order the claimant prepared a further document, entitled "Particulars of Claim (amended 26.1.2017)" setting out, in a different format to the Scott schedules, the further particulars of his claim. He made application for leave to amend his claim to include those further particulars ("Further Particulars").
16. Correspondence on the tribunal file indicates that the parties were in dispute about the relevance of certain documents. The claimant indicated an intention to make application for Orders for disclosure of documents at the forthcoming preliminary hearing. The respondent indicated that it would contest those applications and would apply for costs arising against the claimant.
17. The parties were advised that all these applications would be considered at the preliminary hearing on 3 February 2017.
18. Orders were made at that preliminary hearing, as set out in the Case Management Order ("CMO"), including the Notes, dated 15 February 2017 and sent to the parties on 22 February 2017.

The Law

19. Under rule 76 Employment Tribunals Rules of Procedure 2013 a tribunal may award a preparation time order where a party has in either bringing the proceedings or in the conduct of the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably; or the claim or response had no reasonable prospect of success.
20. Rule 76 imposes a two stage test. The tribunal must ask itself whether a party's conduct falls within rule 76 if so, it must then ask itself whether it is appropriate to exercise its discretion to make the award.
21. The tribunal, in deciding whether to exercise its discretionary power under rule 76 should consider all relevant factors including the following:-
 - costs in the employment tribunal are still the exception rather than the rule;
 - the extent to which a party acts under legal advice;

- the nature of the claim and the evidence;
- the conduct of the parties

Determination of the Application

22. The respondent asserts that the claimant has acted unreasonably in the preparation of the case, the bringing of a specific disclosure application and an application to amend the claim.
23. The claimant is a litigant in person. He is not legally trained. In accordance with the order of EJ Sherratt he prepared the three Scott schedules. The tribunal agrees that these Scott schedules are confusing, did not set out in a clear format the nature of the claim being pursued by the claimant.
24. At the preliminary hearing on 3 February 2017 the tribunal considered first the claimant's application for leave to amend the claim (see paragraph 15 above). Following that application leave was granted as set out in the CMO and the three Scott schedules were to a large extent abandoned as forming any part of the proceedings in this case.
25. At the preliminary hearing, on 3 February 2017 after further clarification of the claim, the respondent's representative acknowledged that she did not know the case to be answered and the application to strike out/deposit order was not pursued.
26. There followed consideration of the claimant's application for disclosure of specific documents. After lengthy discussion certain orders for disclosure were made, some requests were refused.
27. The respondent's representative has gone to considerable time and trouble in preparing the response to the Scott schedules. Considerable time has also been spent in the preparation of the applications for strike out /deposit order and in consideration of the application for specific disclosure.
28. The question is whether the claimant has acted unreasonably and whether, as a result, the respondent has engaged in preparation time in relation to:
 - 28.1 the preparation of the Scott schedules and application for leave to amend the claim;
 - 28.2 the application by the respondent for strike out or deposit orders;
 - 28.3 the application by the claimant for the disclosure of specific documents.

29. There is no satisfactory evidence that the claimant acted unreasonably in the preparation of the Scott schedules and application for leave to amend the claim. There is certainly no evidence to support any suggestion that the claimant deliberately prepared the 3 Scott schedules in a confusing and unsatisfactory format. In essence, the claimant, a litigant in person without any legal experience, did his best in the preparation of the three Scott schedules, not always an easy task for an unrepresented party. Having been notified by the respondent of its difficulty in understanding the claim from those three Scott schedules, the claimant very reasonably "had another go". He set out his claim in a different format which was more understandable. There was considerable further discussion at the preliminary hearing. Although the particulars of the claim of race discrimination are not referred to in the claim form, the respondent was not taken by surprise by the allegations as particularised in the Further Particulars and discussed at the preliminary hearing on 3 February 2017. It is clear that the allegations of race discrimination were, in general terms, contained within the claimant's grievance and the investigation of that grievance. The claimant did not act unreasonably in the preparation of the Scott schedules and application for leave to amend the claim.
30. The preparation of the application to strike out/deposit order arose because of the respondents' confusion relating to the Scott Schedules. As stated above, the claimant did not act unreasonably in the preparation of the Scott schedules and therefore the time spent in the preparation of the application to strike out/deposit order does not arise from the claimant's unreasonable conduct.
31. The claimant raised numerous requests for disclosure of specified documents, and orders were made as set out in the CMO. Clearly some of the documents were relevant and the pursuit of disclosure of those documents by the claimant was not unreasonable. Some documents were found not to be relevant. However, there is no satisfactory evidence to support any suggestion that the claimant, a litigant in person, was pursuing his requests in an unreasonable manner. He put forward reasons for his requests.
32. It is unfortunate that the claimant was unable to prepare his more concise document, the Further Particulars, in response to EJ Sherratt's Orders, rather than in the three confusing Scott schedules. However, the tribunal is satisfied that the claimant, a litigant in person, was genuinely confused by the process and has not acted unreasonably.
33. The claimant did not act unreasonably in the conduct of his case.

34. In any event, it is not appropriate to make an award of costs, preparation time order, in this case. The claimant is a litigant in person, unfamiliar with the legal principles and procedure applied in tribunals. He has sought to research the relevant legal principles and to apply his research in his conduct of this claim. The claimant, as with many other litigants in person, has needed considerable assistance, and time has been spent in identifying the relevant issues in his claim. That is necessary to ensure a fair hearing for all. It is not by itself justification for the award of a preparation time order for the time spent by the respondents who, although not legally represented, have the benefit of the representation by a representative who has considerable experience in the tribunal.

Employment Judge Porter
Date: 21 April 2017

JUDGMENT SENT TO THE PARTIES ON
25 April 2017

FOR THE TRIBUNAL