



EMPLOYMENT TRIBUNALS

Claimant
Mr D Singh Basra

v

Respondent
Flogas Britain Limited

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Nottingham

On: Wednesday 25 October 2017

Before: Employment Judge P Britton (sitting alone)

Appearances

For the Claimant: In Person

For the Respondent: Mr J Fisher, Solicitor

JUDGMENT

The claims of religious discrimination and unlawful deduction from wages (the sick pay issue) are dismissed upon withdrawal.

CASE MANAGEMENT SUMMARY

Introduction

1. Having conducted a lengthy case management discussion, carefully going through the various elements of the Claimant's ET1 with him because he is not legally represented, I am now going to summarise where the case now is at in terms of explaining the directions I am going to make. Thus as to the claim Mr Basra has brought in relation to religious discrimination, and as there is only the scantest reference to it in his otherwise extensive particulars of claim, after discussion the Claimant has decided to withdraw that claim which is dismissed upon withdrawal.

2. Furthermore as to discussion progressed and in relation to the claim relating to what I would analyse to be for non payment of wages/breach of contract relating to sick pay, the Claimant decided to also withdraw that claim and so it is also dismissed.

3. As to the remaining heads of claim I will deal with them briefly in turn:-

Race discrimination

3.1 There is a claim for race discrimination which the Claimant pleads as continuing throughout his employment at the Respondent's large call centre. from 12 September 2016 to his resignation on 6 July 2017. Suffice it to say that

the graphic descriptions he has made of what was said if proven would clearly constitute Section 13 direct discrimination and/or harassment pursuant to Section 27 pursuant to the Equality Act 2010 (the EQA). The response (ET3) in relation to most of the matters he complains about is that this is a fabrication. Some findings were made in his favour in terms of the grievance he raised at the time of his resignation, which was with immediate effect, but they are of a limited nature. Furthermore it is pleaded that he did not raise the pleaded allegations which prima facie are very serious until that grievance. The Claimant doesn't agree with that proposition. Obviously these are all issues that will require findings of fact before the Tribunal at the main hearing.

Age discrimination

3.2 The Claimant was 38 by the time of the end of the employment. This not an age one would normally associate with ageist practices. But he makes reference to remarks made about him which prima facie would be age related; and of course it is going to depend on the context in which they were said and the age composition of the team he worked in and particularly the authors of the remarks. Does it in other words show an ageist mindset; and if not were these remarks, if proven, having been directed at him such as to constitute harassment pursuant to Section 26? But the problem is that the last pleaded events are December 2016. The Claimant very honestly confirmed to me today that not only was this correct but that when he complained about the remarks to his line manager this was in the same period; and he didn't raise the issue thereafter until of course the grievance which comes just after his employment has ended. Therefore as it does not link to the race claim there is no "continuing act", and therefore this head of claim is out of time as there is a 3 month time limit for bringing such a complaint from the date of the last act complained of. Therefore the Tribunal will not have jurisdiction to deal with that head of claim unless it has first ruled that time should be extended, it being just and equitable so to do; and the Claimant of course is going to need to give reasons why that should occur including ignorance of such as time limits. But he is quite knowledgeable of employment law having brought a previous claim to a Tribunal. So in relation to this head of claim there needs to be further and better particulars explaining why he only presented this head of claim when he did, and I provide for that in my directions. At present there will clearly need to be a Preliminary Hearing at which an Employment Judge will decide whether or not the claim should be permitted to proceed. Thus I also provide for that.

Breach of contract

3.3 This is about non payment of commission/bonus as a first limb and second as to whether the Claimant can claim for hours worked by him outside his normal working hours. If so, then he has quantified that element of his compensation. And as to the bonus structure, from what he has said today it may not have been clear or transparent and there may have been an element of perversity in the way that it was operated by the Respondent. But his claim therefore does need further written particularisation and I provide for that.

The disability claim

3.4 The Claimant pleads a failure to make reasonable adjustment during his employment and which primarily work relates to his work station. Thus of course he would be in a call centre using VDU monitors linked to an IT system and therefore also typing onto the screen either during telephone calls with customers or immediately thereafter. I am well aware that call centres are

pressurised environments and that the continuous use of the telephone head set, VDU, and the keyboard, can cause problems in terms of such as vision, headaches and repetitive stress type injuries and back problems. Hence with my extensive experience of hearing cases relating to call centres I am well aware for the need for such enterprises to undertake regular risk assessments and accordingly make adjustments such as special seating or larger display screens with different lighting or wrist supports or bigger propped keyboards; work stands and matters of that nature. And the Claimant says that having raised his problems repeatedly relating to eye strain, headaches, problems using his wrists, (he eludes to carpel tunnel syndrome), back problems etc, that the Respondent not only never undertook any form of risk assessment but ignored his request for reasonable adjustments. So that would be a claim for failure to make reasonable adjustment pursuant to Section 20-21 of the EQA as a continuing act throughout the employment. But the fundamental is whether the Claimant by way of his stated health conditions or one or other of them was disabled at the material time as defined at Section 6 and Schedule 1 of the EQA. The Respondent first pleads that it had no knowledge of disability, but that of course is a matter for findings of fact; but more important at this stage it does not accept that the conditions that he pleads do constitute a disability; and so that matter requires directions which I provide for. And I am going to also factor determination of the disability or not issue into the Preliminary Hearing which I am listing on the out of time issue.

Current timetable

4. I am staying all current directions as there is plenty of time before the main hearing which is currently scheduled for 16-18 July 2018 at Leicester. And even if it is eventually post the directions I am making only the race claim that continues, given the number of witnesses that would be involved and the documentation, I am of the opinion that it would not be got through within 3 days; and so I am providing for reading in time and extending the hearing.

Final points at this stage

5. The Claimant has now started new employment but he doesn't know if it will be only temporary. Thus he flags up that he may be adjusting downwards the schedule of loss he has provided depending on what happens.

6. Second he had already raised with the Tribunal in correspondence that he anticipates another employee will be bringing a claim: Ms Tejal Jadavi. She very much supported him in his internal complaints and indeed also did so in the grievance investigations. I gather that she has now left the employment and that her claim will focus on some of the same issues as the Claimant. However no such claim has yet been issued to the Tribunal. **I make it plain that if it is, then the Claimant and/or Ms Jadavi must inform the Tribunal in order that the claim can be linked up with Mr Basra's claim and consideration of consolidation made by an Employment Judge.** Against that background I make the following directions.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further and better particulars

a) The Claimant will provide by **10 November 2017**, full particulars of his age discrimination claim including the date of the last act complained of. As he

has conceded that the last act was sometime in December 2016 and thus the claim is out of time, he will also set out why it was not brought by him before 25 July and what factors he would rely upon in asking the Tribunal to rule that it is just and equitable to allow time to be extended.

b) By the **same deadline** he will provide the full particulars of his breach of contract claim.

c) In relation to these two elements of the claim the Respondent will then reply by way of an amended response by **15 December 2017**.

2. The disability claim

a) By **24 November 2017** the Claimant will first send to the Respondent's solicitors a copy of his medical notes which must include the prescription history and any side letters from specialists.

b) By the **same deadline** he will provide an impact statement setting out when each of the conditions he relies upon manifested itself; how it affected him in terms of ability to undertake normal day to day activities; when the next condition came into play and its effect again on normal day to day activities including whether it exacerbated difficulties already in being because of the first disability, and so on and so forth with the other conditions he relies upon. In dealing with this issue he will set out what treatment he was prescribed from time to time, its beneficial effects and conversely what happened without that treatment.

3. Having received the above the Respondent will reply by **15 December 2017** stating whether or not it concedes disability and if not briefly its reasons. It will also respond to the out of time particulars. If it requires any further directions it will make that plain.

4. Other matters

a) All current directions are stayed.

b). I discussed with the parties Judicial Mediation suffice it to say that at this stage it is not a viable proposition.

5. The existing main hearing

The existing main hearing is **extended so that Friday 13 July 2018 becomes a reading in day and the live hearing is now extended so that it runs between 16 and 20 July 2018 at Leicester inclusive**. Other directions will be given at the end of the Preliminary Hearing which I now direct.

5. The preliminary hearing

There will be an **attended Preliminary Hearing at the Leicester Hearing Centre, Kings Court, 5A New Walk, Leicester LE1 6TE on Friday 5 January 2018 commencing at 10 am**. The current agenda is:-

a) To determine whether the claim of age discrimination should be permitted to proceed by way of the just and equitable test.

b) If disability remains an issue to determine whether or not the Claimant was a disabled person at the material time.

c) To otherwise give further directions for the main hearing including such as chronology, cast list, reading in list, list of remaining issues, timetable for the trial bundle and exchange of witness statements.

NOTES

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.**
- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.**
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.**
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>**
- (v) The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.**

Employment Judge Britton

Date: 2 November 2017

Sent to the parties on:

4 November 2017

For the Tribunal: