



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Drinkov

v

Lidl Great Britain Limited

PRELIMINARY HEARING

Heard at: Watford

On: 11 June 2018

Before: Employment Judge Manley

For the Claimant: In person

For the Respondent: Mr M Creamore, solicitor

JUDGMENT

- 1 The claimant was not employed by the respondent for two years before dismissal and the tribunal has no jurisdiction to hear his complaint of unfair dismissal under s95 Employment Rights Act 1996 (ERA) which is dismissed.
- 2 The claimant has brought a claim that he was dismissed because he made public interest disclosures and his claim for automatic unfair dismissal under s103A ERA can proceed along with other claims as set out below.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that a further preliminary hearing is necessary because there are jurisdictional issues which arise as set out below. It is listed for two days before an employment judge (Employment Judge Manley if available) at 10am on **Thursday 1 and Friday 2 November 2018** at Watford Employment Tribunal, Radius House, Clarendon Road, Watford, WD17 1HP or such other venue as is notified to the parties. The issues to be determined are as follows:
 - 1) Whether the Equality Act claims have been brought within the applicable time limit. If not, whether it is just and equitable to extend time;
 - 2) Whether any of the claims have no reasonable prospect of success and should be struck out;

- 3) Whether any allegations or arguments have little reasonable prospect of success and a deposit should be ordered as a condition of those allegations or arguments being allowed to continue;
 - 4) Any other jurisdictional issues of which due notice has been given to the parties;
 - 5) Ant further case management matters.
2. The full merits hearing in this claim is provisionally listed for **four** days before a full tribunal at Watford Employment Tribunal, Radius House, Clarendon Road, Watford to start at 10am or so soon thereafter as possible on **Monday 28 to Thursday 31 January 2019**. The parties are to attend on the first day of the hearing by 9.30 am. A suggested timetable is that the oral and written evidence and submissions will be completed within three days leaving the remaining time for tribunal deliberations, the giving of judgment and remedy if appropriate.

The complaint(s) and issues

3. By a claim form presented on 27 December 2017, the claimant brought complaints of unfair dismissal, disability discrimination, unlawful deduction of wages and/or breach of contract. On 2 January 2018 he filed further documents, one handwritten and one typed. Together they extend to 10 pages. In the typed document the claimant made a clear reference to an alleged public interest disclosure on 13 April 2017 and linked his dismissal to it.
4. The claimant has sent other documents to the tribunal which may clarify the complaints he seeks to bring. One bundle of documents was handed in at the tribunal office on 12 February 2018 and I understood the claimant to say those documents included matters he wishes to claim. Those documents, which appear in the bundle he showed me between page 22 - 62, have headings such as "*Emergency Request for Witness Orders*"; "*Money claims*", "*Chronology of events*" and "*Witness statement of Aliaksander Drinkov for the 1PH*". We concentrated on pages 29 to 33 where the alleged public interest disclosures appear. We went through them together and those pursued are recorded below by reference to that document. It is not immediately clear when the respondent had sight of those documents after 12 February and they may well have had other copies of original documents (apparently) attached to them.
5. A further document was sent to the tribunal by the claimant on 9 April 2018 in response to an order that he provide particulars of his disability discrimination claim. This appears between pages 49 -55 of the respondent's bundle. Importantly, in that document, the claimant said "*Claimant does not consider himself as disable, but he felt discrimination on the basis of his ethnic origin by being continuously abuse by two deputy managers by the question: "Are you disable? Could you read English"*". The claimant clarified that this was the discrimination matter he wished to pursue.
6. The **claims and outline issues** for the purposes of consideration at the PH are now clarified and are recorded as being as follows:

Public interest disclosure dismissal

- 1) Did the claimant make the following qualifying disclosures (with paragraph numbers from pages 29 to 32 of the claimant's bundle):
 - i) On 26 November 2016 (para 8) – verbal to Robert Sutton re unlocked doors at night;

- ii) On 17 December 2016 (para 11) – 999 phone call to police re purported theft and inaction;
 - iii) On 17 December 2016 (para 12) – verbal to Robert Sutton re contaminated food outside;
 - iv) On 22 December 2016 (para 13) – in writing to pay roll re pay concerns;
 - v) On 21 February 2017 (para 15) – repeat of pay roll concerns;
 - vi) On 6 March 2017 (para 16) – verbal to Robert Sutton re food contamination;
 - vii) On 14 or 18 March 2017 (para 18) – verbal as in (iii) above;
 - viii) On 14 or 18 March 2017 (para 19) – verbal about “criminal offer” to assistant store manager;
 - ix) On 4 April 2017 (para 20) – phone conversation with pay roll hotline;
 - x) On 13 April 2017 (paras 22 and 23) – various about numerous matters raised before;
 - xi) On 8 May 2017 (paras 25 to 31) – various written to pay roll and others about numerous matters raised before;
 - xii) Between 1 May and 12 May 2017 (para 33) – verbal re bread section to 6 people including Robert Sutton;
 - xiii) On 12 May 2017 (para 34) – in writing re rota change;
 - xiv) On 25 May 2017 (para 39) – in meetings with KDL, SW and JS re problems with pay roll.
- 2) In particular, did he disclose information which, in his reasonable belief, was made in the public interest and tends to show one of the matters set out in s43B ERA 1996?
- 3) If so, was the reason or the principal reason for the dismissal that the claimant made a protected disclosure? The respondent’s case is that the reason for the claimant’s dismissal was gross misconduct.

Disability and/or race discrimination

- 4) Did the deputy manager BK say to the claimant on or around 12 February 2017: - “Are you disable? Could you read English?”
- 5) If so, was that less favourable treatment because of disability or race?

Unpaid wages

- 6) Did the claimant received all sums that were due to him over the course of his employment? The claimant says that it is impossible for him to calculate what he believes he is due because the pay systems are so difficult to comprehend.

NOTE of discussion

Audio recording of the public part of the hearing.

At the beginning of the hearing the claimant repeated a request that he had made earlier in writing that he be allowed to record this hearing. The respondent objected to that application. There was considerable discussion about it. After a break for the respondent to take instructions, it was agreed that a pragmatic solution, which

amounted to a reasonable adjustment taking into account that the claimant had received a diagnosis of a mental health condition (with which he does not agree) and his first language is not English, was that both parties would make an audio recording on their mobile phones during the public part of the hearing. This was agreed to on the explicit agreement by the claimant that there would be an order that he would not forward, disclose, disseminate or otherwise upload the recording to social media or to any third parties and that it could only be used in the course of these tribunal proceedings and any subsequent appeals to them. Both parties must also supply a transcript of the audio recording made by them to the other and ensure a digital copy is retained. The claimant was not allowed to make an audio recording of any part of the case management part of the hearing, despite a number of requests made by him. He was informed that he would receive a summary of that discussion in writing.

Future hearings

The claimant is very concerned that there should be audio and, if possible, video recording of future hearings. It is also possible that he may not be in the country when those hearings take place because he is currently at risk of deportation. I told the parties that I would look into the possibilities for recording and that it may mean a change of venue.

7. I made the following case management orders by consent.

ORDERS FOR THE PRELIMINARY HEARING

Made pursuant to the Employment Tribunal Rules 2013

1. Neither party must forward, disclose, disseminate or otherwise upload the audio recording to social media or to any third parties and it must only be used in the course of these tribunal proceedings and any subsequent appeals to them.
2. The respondent is given leave to present an amended response answering the now clarified claims as set out above by **2 July 2018**.
3. The bundles used at this hearing will be sufficient for the hearing in November. If either party has any extra relevant documents, copies must be sent to the other party by **31 July 2018** and then added to the appropriate bundle.
4. The respondent is ordered to provide a witness statement from an individual who can explain the pay systems, pay slips and any other documents relevant to the question of how pay is calculated and send it to the claimant by **28 September 2018**.
5. Any other witness statements containing relevant factual evidence can be prepared. They should be full, but not repetitive. The statements must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues for the preliminary hearing. They must not include generalisations, argument, hypothesis or irrelevant material. The facts must be set out in numbered paragraphs on numbered pages, in chronological order. The witness statements should be exchanged by **28 September 2018**.
6. The respondent is also ordered to send an outline of any legal argument to the claimant and the tribunal by **26 October 2018**.
7. The respondent should also prepare a short, neutral chronology for use at the preliminary hearing.

CONSEQUENCES OF NON-COMPLIANCE

1. 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.
2. 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.
3. 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.

Employment Judge Manley

Dated 14 June 2018

Sent to the parties on:

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For the Tribunal:

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