



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Hossain

**Respondent:** ASDA Stores Limited

**Heard at:** Nottingham

**On:** 3 December 2020

**Before:** Employment Judge Butler (sitting alone)

## Representation

Claimant: Mr J Wallace, Counsel

Respondent: Ms J Duane, Counsel

# JUDGMENT

The Judgment of the Tribunal is:

1. The claim of unlawful deductions from wages/breach of contract is not struck out and no deposit order is made;
2. The contention that some allegations of discriminatory conduct extended over a period such as to form part of a continuing act is not struck out and no deposit order is made; and
3. The question of whether it is just and equitable to extend time for the presentation of the claims of direct race discrimination shall be determined at the final hearing.

# REASONS

## The Claims

1. This preliminary hearing was listed by EJ Clark at a preliminary hearing by telephone on 5 August 2020. EJ Clark concisely set out the claims and issues and I do not rehearse them further here.

## The Applications before me

2. The applications before me were made by the Respondent under rules 37 and/or 39 of the Tribunals Rules of Procedure. They were made on the basis that the claims had either no reasonable prospects of success and should be struck out (rule 37) or that they had little reasonable prospect of success and should be made subject to a deposit order (rule 39).

### Submissions

3. Both counsel made detailed and concise submissions. I was grateful for their assistance throughout the hearing. They both produced a written skeleton argument and made submissions to it. I do not rehearse the submissions here in great detail but took them fully into account in reaching my conclusions. Ms Duane highlighted the perceived lack of detail in the Claimant's allegations of discrimination and what she saw as these claims being out of time which would result in unfair prejudice to the Respondent if they were allowed to proceed. She further submitted that any hint from the Claimant of institutional racism by the Respondent's staff was a bare assertion only and the alleged acts of discrimination relied upon by the Claimant were the actions of different employees and so could not amount to a continuing act.

4. Mr Wallace countered these submissions by pointing out that the specific claims were now adequately set out. The claims were not fanciful and it is clear the Tribunal would have to consider the evidence before making its findings of fact. There was evidence of a wave of hostility towards the Claimant which might suggest the allegations of racism by different individuals could amount to a continuing act.

### Conclusion

5. I made clear at the hearing that I did not consider the claims to be particularly strong. The issue is that they are intertwined to the extent that evidence in relation to one claim may well influence the decision in one or more of the others. This is particularly relevant to the question of whether there were continuing acts of discrimination. The authorities are clear in saying that it is inappropriate to strike out a claim when there are facts which should properly be considered and decided by a Tribunal. Moreover, these questions cannot be answered without hearing evidence from the Respondent's witnesses. Accordingly, I judge this to be a case where it is not appropriate to strike out any of the claims or make a deposit order.

### Costs application

Mr Wallace was instructed to make a costs application if the Respondent's applications were dismissed and he did so. I dismiss that application. This is a case where the Claimant has had a significant amount of time to particularise his claims, including a postponement of a previous hearing to allow him time to take legal advice. Further, there are still potential issues in relation to time limits and continuing acts. I cannot conclude, therefore, that the Respondent's applications were in any way unreasonable.

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Employment Judge Butler

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Date 11 December 2020