



EMPLOYMENT TRIBUNALS

Claimant Ms D Richardson
Represented by In person

Respondent B & Q plc
Represented by Mr D Piddington, Counsel

Before: Employment Judge K Andrews

**Preliminary Hearing held on 9 & 10 May 2017 at
London South Employment Tribunal**

JUDGMENT

1. The claim of unfair dismissal was submitted out of time and is dismissed.
2. The claims of discrimination particularised by the claimant at allegations 3-53 inclusive in her additional information document submitted on 14 December 2016, were submitted out of time and are dismissed.

CASE MANAGEMENT ORDERS

CLAIMS AND ISSUES

1. The claims that remain following the Judgment above are allegations 1 & 2 identified on the claimant's additional information document. Those claims were also submitted out of time but I exercised my discretion to extend time to allow them to proceed on the basis that it is just and equitable in all the circumstances to do so.
2. In relation to allegation 1, the date of the incident should read 8 March 2016.
3. In relation to allegation 2, the date of the letter stating the outcome of the grievance was 18 March 2016 but the claimant became aware of that letter on 25 June 2016. The scope of the allegation that will be determined by the Tribunal relates only to (i) whether the outcome letter was fabricated/backdated and (ii) the investigation process on the grievance – i.e. was it tainted by disability, age or race discrimination - rather than the underlying events that were the subject of the grievance.

4. The fact of disability remains in issue. Orders are made below and it may be that the respondent revises its position on that once it has considered the medical evidence.
5. All other preliminary issues identified at the previous preliminary hearing are not pursued by the respondent (except that I make observations below regarding disclosure of privileged evidence).

CASE MANAGEMENT ORDERS

Disability

- 1 Unless it is agreed by the respondent that the claimant was at the relevant time a disabled person then the responsibility is on the claimant to show that she was a disabled person. That is a matter which will have to be decided by the Tribunal on all the evidence which the claimant provides to it. The definition of a disabled person is in section 6 of the 2010 Act which insofar as material is as follows:

6 Disability

(1) A person (P) has a disability if—

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect.

- 2 The claimant says that she has a number of impairments (identified at the previous hearing). On the assumption that that is the case, the claimant still has to satisfy the respondent or the Tribunal that the impairment(s) has or have a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. There is further information in '*Guidance on matters to be taken into account in determining questions relating to the definition of disability*' which is available on the website of the Equalities and Human Rights Commission.
- 3 The claimant says that she has already sent to the respondent copies of medical evidence in relation to her alleged disabilities. If she has any further evidence she wishes the respondent to consider she will send copies to the respondent on or before **24 May 2017** together with a disability impact statement in respect of each of her alleged disabilities.
- 4 That statement should in particular answer the following questions:
 - 4.1 Does the claimant have a physical and/or mental impairment?
 - 4.2 If so, does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
 - 4.3 If so, is that effect long term? In particular, when did it start and:
 - 4.3.1 has the impairment lasted for at least 12 months?

4.3.2 is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?

(N.B. in assessing the likelihood of an effect lasting 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood.)

- 4.4 Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
- 5 On or before **14 June 2017** the respondent is to notify the claimant and the Tribunal whether it is conceded, in respect of each alleged disability, that at all material times the claimant was such a disabled person. If only a partial concession is made, the claimant shall indicate to the respondent on or before **21 June 2017** whether she intends to pursue her case in respect of the other alleged disabilities.
- 6 If any disability is not conceded and it is still in issue, the respondent shall identify three independent experts and send a list of them to the claimant together with a draft letter(s) of instruction by **28 June 2017**. The claimant shall identify which expert(s) she wishes to see and approve or amend the letter(s) of instruction by **12 July 2017**. The independent expert(s) shall be jointly instructed by both parties with the costs being born equally. The report(s) by the independent expert shall be provided to the claimant and the Tribunal no later than **29 September 2017**.

Schedule of Loss

- 7 The schedule of loss already filed by the claimant will be updated and sent to the respondent by **24 May 2017** and seven days before the Hearing together with copies of any new supporting documents. I gave some general guidance to the claimant about realistic levels of compensation to claim.

Disclosure of Documents

- 8 On or before **24 May 2017** the parties shall send to each other copies of all documents which are or have been in their possession or power relating to the matters in issue in these proceedings including any documents relevant to the remedy sought.

Bundle of Documents for Tribunal Hearing

- 9 On or before **6 October 2017** the respondent shall send to the claimant a copy of the proposed bundle for the Hearing for the claimant to agree if possible. If it cannot be agreed the claimant shall indicate her disagreement and the reasons why on or before **13 October 2017**.
- 10 The bundle shall contain a copy of each document both parties intend to use at the Hearing, together with a list of contents, with each page numbered, avoiding duplication and be so bound or otherwise held together, so as to open flat.

- 11 The respondent shall bring five identical copies of the bundle to the Hearing.

Witness Statements

- 12 The parties shall prepare a written statement for each witness (including the claimant or respondent who will give evidence personally) who it is intended will be called to give evidence on their behalf at the Hearing. The witness statements shall:
 - 12.1 be typed in double spacing;
 - 12.2 contain the evidence of the witnesses;
 - 12.3 be laid out in short consecutively numbered paragraphs;
 - 12.4 set out in chronological order, with dates, the facts which the witness can state;
 - 12.5 omit any matter not relevant to the issues in this case;
 - 12.6 identify the source of any information which the witness does not know first hand;
 - 12.7 refer by page number in the bundle of documents to any document mentioned in the statement; and
 - 12.8 be signed.

- 13 Each party shall ensure that there are six copies of each statement of their own witnesses available at the Hearing and not contained in the bundle of documents.

- 14 No evidence may be given or expanded upon by a witness other than the evidence contained in the written statement of that witness without the leave of the Tribunal. No witness may be called by a party to give evidence at the Hearing unless a written witness statement has been prepared and exchanged or with the leave of the Tribunal.

- 15 On or before **27 October 2017** each party shall provide to the other one copy of each witness statement for each of the witnesses that party intends to call to give evidence at the Hearing. If any party does not receive the witness statements of another, that party must immediately inform the Tribunal in writing together with any reason given by that other.

- 16 In light of the claimant's failure to prepare a witness statement for this hearing, I specifically reminded her that this is an important step that she must complete for the full Hearing.

Privileged Evidence

- 17 At the request of the respondent I explained to the claimant that when preparing documents and witness evidence for the Hearing, no reference should be made to any privileged information which would include any discussions/correspondence with ACAS made with a view to resolving this claim. She understood the position.

Hearing Date

- 18 The Hearing will take place at London South Employment Tribunal, Montague Ct, 101 London Rd, Croydon, CR0 2RF before a full Tribunal

for **3 days** commencing on **4 December 2017**. No postponement of this date will be granted unless there are exceptional unforeseen circumstances.

- 19 It is noted that the claimant expects to call herself and the respondent expects to call 3 witnesses to the Hearing. The Tribunal will endeavour to hear the case within the allocated time. Time restrictions may have to be placed on questioning of witnesses and on closing speeches if it appears that the time allocation might be exceeded.

Employment Judge K Andrews
Dated 10 May 2017

NOTES

- 1 *Reasons for the Judgment and Orders having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.*
- 2 *This Order constitutes a notice of hearing under the Employment Tribunals Rules of Procedure 2013. At the Hearing all parties will have the opportunity to submit written representations and to advance oral argument. If a party wishes to submit written representations for consideration to the hearing s/he shall present them to the Employment Tribunal Office not less than 7 days before the Hearing and shall, at the same time send a copy to all other parties.*
- 3 *Failure to comply with an Order relating to the disclosure or inspection of documents may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.*
- 4 *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 dismissed without further order.*
- 5 *An Order may be varied or revoked upon application by a person affected by the Order or by an Employment Judge on his or her own initiative.*
- 6 *This Order confirms orders made/directions given at a hearing on 9 & 10 May 2017.*
- 7 *No further notice of hearing will follow.*