



EMPLOYMENT TRIBUNALS

Claimant

Mr H Muhammed

Respondent

v University College London

PRELIMINARY HEARING

Heard at: London Central Employment Tribunal

On: 31 October 2017

Before: Employment Judge Wade

Appearances:

For the Claimant: Ms N Mallick (Counsel)

For the Respondent: Mr E Williams (Counsel)

JUDGMENT

1. The respondent did not pursue applications for the claims to be struck out. Instead it is ordered that the claims be split. The first hearing will decide issues arising from the date the claimant moved into the Finance team managed by Mr H Choudhury in late 2014.
2. A second hearing may be listed at the end of the first hearing if the claimant is successful, see the Reasons and orders below.

REASONS

1. This preliminary hearing was originally listed to consider whether the claims should be struck out because there was no reasonable prospect of success and/or they were out of time.
2. The respondent wisely decided not to pursue the point on prospects of success and, whilst they were prepared to argue the time points, asked the tribunal to split the hearing so that the issues which were either in time, or potentially connected to events which were in time, were tried first.

3. It is always difficult to consider time points in discrimination cases at preliminary hearings because often context is required to decide whether a matter is a continuing act or it is just and equitable to extend time. If a decision is controversial it can result in an appeal which results in time and expense for both sides. Therefore, I gave the application for the hearing to be split serious consideration.
4. Whilst pointing out that it was unusual for a split hearing to take place and that the benefits were sometimes illusory, Underhill J in *HSBC Asia Holdings BV v Gillespie* [2011] ICR 207 pointed out that there was no reason in principle why cases should not be split and that secondary claims could be considered at a subsequent hearing, which might ultimately not take place.
5. This is a case where there is a clear divide between allegations made about the claimant's time in the Estates Team run by Ian Cordrey and those made about his more recent membership of the Finance Team run by Habibur Choudhury. The allegations against Mr Choudhury begin when the claimant joined his team in late 2014 and continue after 16 December 2016, the date from which claims are in time. He ceased to have any contact with Mr Cordrey in 2014.
6. The claimant says that the claims against Mr Cordrey form part of a continuing act in that he influenced Mr Choudhury to discriminate. Therefore, the tribunal can first decide the claims against Mr Choudhury and, if it is decided he did discriminate, whether his attitude was infected by Mr Cordrey's influence. If necessary it can then go back to the more historic allegations at a second hearing.
7. The questions for the first hearing are therefore:
 - a. Did Mr Choudhury either directly discriminate against or harass the claimant?
 - b. Is it just and equitable to extend time in respect of the allegations against Mr Choudhury occurring before 16 December 2016 or was there a continuing act?
 - c. If Mr Choudhury did discriminate was he influenced by Mr Cordrey?
8. If the answers to 7 above are "yes" a second hearing is likely although that is a decision for the judge at the end of the first hearing. It might, for example, be decided that since Mr Cordrey is no longer employed by the respondent it is not possible to have a fair hearing. Also, issues of strike out might be considered at that stage in the light of the information available.
9. If the answers are "no" then that is the end of the case as the earlier claims will inevitably have been filed out of time.
10. This is a proportionate approach given that:
 - a. The claimant is not barred from pursuing his early claims but, given that some date back to early 2013, those which are more obviously either in time or potentially in time have been given priority.
 - b. There must be a chance that the very old allegations which relate to a different manager have a lower prospect of success. This is particularly relevant because this is not a high-value claim since the claimant remains

employed and success or failure in relation to allegations dating from 2013 and 2014 will not add considerably to the value.

- c. This makes the first hearing a proportionate length which is particularly important given the claimant's lack of resources and the fact that he has been off unwell for a long time and may need to represent himself at the hearing.
- d. The claimant raised a grievance in 2014 so those claims have been the subject of an internal justice system from which he did not appeal when the grievance failed. He also did not issue a tribunal claim.

11. Depending upon the outcome case management orders will be given at the end of the first hearing, including perhaps a listing for a second hearing.

Employment Judge Wade
1 November 2017