



## EMPLOYMENT TRIBUNALS

**Claimant**

Mr P Chiriac

**Respondent**

London Tara Hotel Limited

v

## PRELIMINARY HEARING

**Heard at:** London Central Employment Tribunal **On:** 6 September 2018

**Before:** Employment Judge Davidson

**Appearances**

**For the Claimant:** in person (assisted by Mr M Chiriac, his son)

**For the Respondent:** Mr B Jones, Counsel

## JUDGMENT

**Issues**

The Issues for the hearing were as follows:

1. The Respondent's application for an order for
  - a. a strike out of the unfair dismissal claim on grounds that the claimant was still in employment at the time the claim was submitted and, in any event, had less than two years' service;
  - b. a strike out of the discrimination claims on grounds that the claims have no reasonable prospect of success and/or
  - c. deposit orders on the grounds that the claims have little reasonable prospect of success and,
  - d. in relation to the claim relating to the NVQ course (sex and race discrimination) and the claim relating to accommodation (race discrimination), that the tribunal had no jurisdiction because they were out of time.
  
2. The Claimant's application for
  - a. an extension of time in relation to out of time claims on the basis that it would be just and equitable to extend time,

- b. an amendment to his Originating Application to include a claim for discrimination relating to the payment of gratuities, and
  - c. an amendment to his Originating Application to include a claim that the respondent sabotaged his work because of his nationality.
3. Clarification of the correct Respondent to the claim.

### **Determination of the Issues**

The tribunal determined the issues as follows:

#### **RESPONDENT'S APPLICATIONS**

1. The unfair dismissal claim is struck out as it has no reasonable prospect of success. There was no dismissal at the time that the claim was submitted.
2. The sex discrimination claim relating to the claimant not taking the NVQ course is struck out as it is out of time. The claimant was aware of the facts which give rise to his claim by August 2017. He did not contact ACAS until 18 January 2018, beyond the statutory limitation period. I have considered whether it would be just and equitable to extend time and I find that it would not be. I have taken into account the facts relied on by the claimant and the response put forward by the respondent together with the claimant's explanation for the delay. I find that the prejudice to the respondent in having to defend a claim which appears to have little prospect of success outweighs the prejudice to the claimant in not being able to pursue this claim which, in any event, is not his primary claim.
3. The claim of race discrimination relating to the failure to offer the claimant accommodation in the hotel after long working hours is out of time by a few days. I consider that it would be just and equitable to extend time to allow this claim to proceed. I refuse the respondent's application for a strike out or deposit order on the basis of the prospects of success of this claim because the claimant has asserted facts which require consideration by a tribunal on the evidence.
4. In relation to the claim of race discrimination relating to the dirty kitchen, although the claimant has failed to provide an explanation why he considers his nationality to be the reason for the alleged unfavourable treatment, he asserts that he was the only Romanian chef (disputed by the respondent) and the only person subjected to this detriment. I find that this claim needs to be explored by hearing evidence.
5. The claim relating to the claimant not taking the NVQ course is out of time and it struck out. It is based on the same facts as the sex discrimination claim.
6. The various allegations relating to the claimant's uniform, where the claimant alleges he was treated in common with other Romanians and in contrast to other nationalities, should go ahead to a full hearing so that the evidence can be considered.

7. The allegation that the claimant was kept working in the vegetable section of the kitchen requires to be considered after hearing evidence.
8. The claimant's claim regarding payment of gratuities is a complaint that kitchen staff were treated less favourably than waiting staff. It does not relate to the claimant's nationality and, indeed, his comparator is Romanian. It therefore has no reasonable prospect of success and is struck out.
9. The claimant's allegation that he was demoted by being given lower grade work to do, even though he remained on the same job title and pay rate should be heard at the full merits hearing so that the evidence can be considered. This will include the background evidence alleged by the claimant that his work had been sabotaged by the respondent, resulting in the change of duties to lower grade work.

#### CLAIMANT'S APPLICATION

10. The claimant's application to include a claim that he received lower gratuities than other chefs because of his nationality is refused. I have considered that the prospects of success are low, that the amendment is out of time and the fact it is a wholly new claim, not a relabelling exercise. It is apparent from the Originating Application that the claimant's grievance about gratuities relates to the differential between kitchen staff and waiting staff, not about nationality.
11. The claimant's application to include a claim that the respondent sabotaged the food he worked with so that he would underperform leading to his demotion is refused. This is an entirely new allegation and the facts relied on were known to the claimant at the time he submitted his detailed Originating Application. I note that these facts will fall to be considered in any event as part of the allegation relating to the claimant's alleged demotion.

#### IDENTITY OF THE RESPONDENT

12. The claim was originally brought against Copthorne Tara Hotels. It now appears that this is the trading name of the hotel, not the employing company, which is London Tara Hotel Limited. The tribunal had sight of a contract of employment between London Tara Hotel Limited and the claimant and London Tara Hotel accept that the claim is against them. I therefore find that London Tara Hotel Limited is the correct respondent.
13. The claimant also wishes to pursue a claim against Millennium and Copthorne Hotels, which is the parent company of London Tara Hotel Limited. This is the name of the employer as it appears on his payslips and P60. The reasons he put forward for wishing to include Millennium and Copthorne Hotels as a respondent are that he thinks they are his employer as they are on his payslips, some of the alleged discriminators are their employees and, if successful, he will be seeking re-engagement and would want this to be within another hotel within the group, not his previous workplace.
14. I find that London Tara Hotel Limited was the claimant's employer and is the correct respondent.

15. Whilst there are situations where it can be appropriate to name another party as an additional respondent to a discrimination claim, I do not find that any of the reasons relied on by the claimant meet those circumstances. In particular, I have found that London Tara Hotel Limited was the employer, not Millennium and Copthorne; I find that none of the allegations of discrimination put forward by the claimant relate to Millennium and Copthorne employees and re-engagement is not a remedy available for discrimination claims.

16. I therefore refuse the request to join Millennium and Copthorne. The claimant may, within 14 days, request a reconsideration of this decision by providing cogent evidence why, bearing in mind my findings, it would be appropriate to join them as a party to these proceedings.

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Employment Judge Davidson

Date: 7 September 2018

JUDGMENT and SUMMARY SENT to the PARTIES ON

10 Sep. 18

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FOR THE TRIBUNAL OFFICE