



EMPLOYMENT TRIBUNALS

Claimant
Mr P Snell

v

Respondent
Greene King Services Limited

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Nottingham

On: Thursday 26 July 2018

Before: Employment Judge Britton (sitting alone)

Appearances

For the Claimant: In Person assisted by his wife Anita Snell

For the Respondent: Ms L Pharez-Zea, Solicitor

JUDGMENT

1. The claim related to disability discrimination pursuant to the Equality Act 2010 is dismissed upon withdrawal.
2. Insofar as there might have been a claim based upon the provisions relating to whistleblowing, it is also dismissed upon withdrawal.
3. For the avoidance of doubt the only claim that will now proceed is one of unfair dismissal pursuant to Section 98 of the Employment Rights Act 1996.
4. There is hereby listed a further, at present, attended Preliminary Hearing at the Nottingham Hearing Centre, 50 Carrington Street, Nottingham NG1 7FG on Friday 5 October 2018 at 10:00 am, time estimate 3 hours.
5. Directions are hereinafter set out.

CASE MANAGEMENT SUMMARY

Introduction

1. There was a comprehensive case management discussion in this case held by my colleague Employment Judge E Heap on 18 June 2018. She set out what she saw to be the issues and made directions. Subsequent upon that by Anita Snell's letter to the Tribunal of 6 July 2018, the Claimant withdrew the claims other than unfair dismissal. But the Claimant attempted to add into the narrative another claim, that is to say "Greene King Services Limited failure to act upon the concerns raised by the

employee in an appropriate and timely manner". But that is not a claim for which there is a label that could be put upon it in terms of the jurisdiction of this Tribunal. In other words in so far as it is relevant, it is part and parcel of the unfair dismissal scenario. I pointed that out to the Claimant and he now appears to accept that position. What it means is the only claim proceeding is one of unfair dismissal.

2. I then studied the agendas the parties submitted for today, and given issues that flagged up I undertook a thorough consideration of the pleadings. Suffice it to say that the Claimant wants to call some 25 witnesses, all of which he has listed. But I made plain that I identify the core issues as follows:-

2.1 In terms of the scenario which led to the Claimant's dismissal he admitted being at fault and apologised at the first opportunity.

2.2 According to the Claimant and as particularly articulated in the agenda that Mrs Snell has produced for today, there was what I might refer to as a sloppy environment which allowed things to go unpunished in terms of such as dismissal rather than a warning so to speak and in particular relating therefore to the events on the material date namely 29 June 2017. This brings in the disparity of treatment point which the Respondent has answered in detail in its response. But what the Claimant is effectively saying is that looking at the particulars of some of those particular incidents they are analogous to what happened on 29 June 2017 and thus the Respondent acting unfairly in imposing the sanction of summary dismissal. In other words there should have been a lesser sanction: And to me that is the core issue in this case. The Claimant does not disagree.

3. I therefore query why in accordance with proportionality and the overriding objective the Claimant needs to call all the witnesses that Mrs Snell has referred to. And therefore what I am going to do is to make a direction in that respect which is covered by my orders and is the reason why at this stage I am listing for a further attended Preliminary Hearing; because if she does wish to persist with that roll call of witnesses then the Respondent will oppose and therefore there will need to be the Preliminary Hearing to make a determination as otherwise it would have a major impact on the time estimate of this case. That leaves the investigating officer in this particular case: Wayne Brownlow. The Respondent would not intend to call him as of course he did not make the decision to dismiss the Claimant. The Claimant wants him to give evidence. The Respondent will consider whether or not it will in those circumstances call him as its own witness.

4. Also in terms of proportionality, I then looked at the schedule of loss. I bear in mind that the Claimant obtained alternative employment; furthermore I pointed out to the Claimant that he cannot claim for more than 52 weeks of losses plus the basic award were he to win. I drew the Claimant's attention to the ready reckoner for redundancy payments because a basic award is the same, and made plain that it is subject to the statutory cap and that therefore I saw the basic award as being significantly lower than as claimed by the Claimant. Finally giving credit for the earnings that he has obtained in his alternative employment, and factoring in loss of statutory rights and employer pension contributions, the claim is worth £16.5 k max. The Claimant was not aware of the provisions in the Employment Rights Act to reduce an award for contribution. Given the Claimant accepts he was at fault in terms of the incident which led to his dismissal this is likely to have a significant reductive impact on the amount of compensation he will obtain should he win.

5. Finally I indicated that given the likely length of this hearing but where stripped away the core issue is whether a lesser sanction should have been imposed, that this case appears suitable for Judicial Mediation. So I am inviting the Respondent to consider whether it would now agree to Judicial Mediation as the Claimant has already made plain that he would. I of course make plain that the Respondent is under no obligation to enter into Judicial Mediation and there is no opprobrium if it decides not so to do.

6. Otherwise what I have done is to relist the matter for a main hearing which will now of course be before a judge sitting alone rather than a panel. I have decided that to be on the safe side, given that the Respondent would be calling 4 witnesses and of course the Claimant will give evidence and then there is this question mark about other witnesses, that I will give the case a 5 days slot. The presiding judge will first determine liability; second if the claimant succeeds, contribution; finally the residual quantum.

7. Current directions have been stayed. I extend that direction as it can be re-visited once the issue of the Claimant's witness requirements has been determined.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

Schedule of loss

1. By **Friday 3 August** the Claimant will supply a revised schedule of loss to reflect the observations I have made.

Judicial mediation

2. By **Friday 3 August** the Respondent will inform the Tribunal as to whether it is willing to participate in a judicial mediation. If it is, then save for preserving the hearing fixture in this matter all the directions set out below are cancelled. Instead there will listed ASAP a short TCMPPH to confirm the arrangements, for the judicial meeting and list the same.

If no judicial mediation

3. By the **same deadline** the Respondent will confirm whether or not it is calling Wayne Brownlow.

4. By **31 August 2018** the Claimant will by way of a schedule, list each witness that he would require to attend. Obviously if the Respondent is not calling Wayne Brownlow, he will be in the schedule. The Claimant will set out in summary the evidence each could give relevant to the core issues in this case; thence state whether or not they have been interviewed by the Claimant and if so whether they have provided or are willing to provide a statement; and finally indicate whether or not a witness summons is required and why and if so an address for service even if it be their current place of work with Greene King if they remain so employed. The Respondent will then reply within **14 days** of the receipt of the schedule. I anticipate at present that there would be an objection in terms of proportionality, that is why I have listed **the attended Preliminary Hearing for 5 October 2018**. The Respondent will be expected to provide a core bundle in terms of its submissions and for the consideration of the trial Judge.

5. The main hearing of this matter is now relisted before a Judge sitting alone at The Nottingham Tribunal Hearing Centre, 50 Carrington Street, Nottingham NG1 7FG for the 5 days commencing **Monday 24 June to 28 June 2019**. The first morning will be a reading in period for the Judge and the parties will not be required to attend until 2:00 pm.

6. I am currently continuing to stay all other directions. These can be re-visited at the PH on 5 October.

7. This case is **SCM'd** to Employment Judge Britton for the time being.

NOTES

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.
- (ii) 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.
- (iii) 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.
- (iv) 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. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>
- (v) The parties are reminded of rule 92: “*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Employment Judge P Britton

Date: 26 July 2018

Case No: 2600475/2018

Sent to the parties on:

28 July 2018

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For the Tribunal:

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