



EMPLOYMENT TRIBUNALS

Between:

Mr M Chiuta
Claimant

and

Sofidel UK Ltd

At an Open Attended Preliminary Hearing

Heard at: Leicester

On: Thursday 3 May 2018

Before: Employment Judge P Britton (sitting alone)

Representation

For the Claimant:

In person, Assisted by Mr T Peart, friend

For the Respondent:

Ms R Magdani, Solicitor

JUDGMENT

1. The claims of religious discrimination is dismissed upon withdrawal.
2. The claims in relation to unfair dismissal and race discrimination as set out below will proceed.
3. They are however stayed for the time being to allow Judicial Mediation to take place.
4. Directions as to Judicial Mediation are set out under a separate record of a further case management discussion.

REASONS

Introduction

1. This is the third preliminary hearing in this case. There was on the agenda consideration for strike and/or the ordering of a deposit on the basis that these claims might either have no reasonable prospect of success or only little reasonable prospect of success.
2. I come to this case with a fresh face so to speak, having until yesterday not been aware of it. I occupied myself yesterday afternoon by reading it cover to cover. I am most grateful for a bundle which has been

put before me by Ms Magdani this morning but it covers the territory which is in the file. I have read her submissions which echo in effect the history of the case.

3. However, having discussed this matter with the Claimant, who I appreciate has little or no knowledge of the law and has tried to get help (ie the Leicester CAB) without success, in accordance with the overriding objective and also having considered the schedule he put in circa 24 April 2018 I have identified his claims as follows. I should make it clear that I essentially follow the line that was taken by my colleague, Employment Judge Heap some time ago.

3.1 On the face of it, there is a protected disclosure, namely the original grievance alleging a discriminatory regime in favour of the Asian majority of the workforce. Prima face (and no more than that), it would come within Section 43B of the Employment Rights Act 1996 (ERA); specifically 43B(1), ie failing to comply with any legal obligation to which the Respondent is subject, one of which of course is in this day and age is to prevent a discriminatory regime. That part of the claim would then effectively mean that the extensively factually pleaded territory, so speak, of the Claimant, up to and including his dismissal, could engage that he was detrimentally treated prior to the dismissal in terms of the alleged scenario pursuant to Section 47B. If it is then causatively the fruit of the poisoned tree, again so to speak, the dismissal would engage Section 103A, thus it would become an automatically unfair dismissal and 2 years' qualifying service would not be needed. I say that because the Claimant is just below the 2 year threshold in terms of the date of the commencement and ending of the employment. I should make it clear that this is not a Section 98 ERA unfair dismissal so in that sense the ACAS Code of Practice is not engaged. However, I remind the parties that it is engaged under Section 207A of the Trade Union and Labour Relations (Consolidation) 1992 (TULRCA) and by cross-referencing to Schedule A2.

3.2 On the Claimant's pleaded scenario it is plain, as is clarified by the schedule the Claimant put in and to which I have referred, that there is a claim of Section 13 direct discrimination pursuant to the Equality Act 2010 (the EqA). This is on the basis that the majority of the workforce was of Indian sub-continent ethnicity and was allowed to get away, so to speak, with practices in contrast to the minority non-Indian sub-continent workforce. This contention is supported today, only for the purposes at this stage of this preliminary hearing of course, by Mr Peart and was something which happened on a regular basis and only got worse once they raised a collective grievance on the working regime. If that be correct, and I appreciate the Respondent would vigorously contest this allegation, or that thereafter there was so to speak victimisation, then if the Claimant was dismissed, again by the fruit of a causative poison tree flowing from the raising of the grievance, then again it becomes engaged and therefore you have the Section 13 direct claim. I should make it plain that it would of course include all the alleged detriments that the Claimant raises up to and including his dismissal and thereafter in the

rejection of his appeal. I wish to again observe that I am making no findings today one way or the other.

3.3 Self-evidently on the scenario then engaged would be victimisation pursuant to Section 27 EqA because the making of the original complaint would on the face of it constitute a protected act; and furthermore the Claimant tells me that he spelled out similar allegations in his grievances thereafter, which again would be protected acts.

3.4 Finally, as again is self-evident and from the allegations that the Claimant has raised in his 20 page statement and the schedule to which I have now made reference, there would be harassment engaged pursuant to Section 26.

4. I am acutely aware of the line of authority commencing with ***Anyanwu and anor v South Bank Students Union and anor 2001 ICR 391 HL*** and flowing through to inter alia ***Balls -v- Downham Market High School and College 2011 IRLR 217 EAT***. This is a case which will be very much dependent upon an analysis of the documentation (which will be extensive) and the making of findings of fact in terms of hearing from the witnesses, not least because the Claimant says that the investigation of the various complaints was one sided. . It follows that these claims are such that they will require findings of fact to decide whether they succeed or fail: the province of the tribunal and not a judge at a preliminary hearing. I cannot therefore conclude that they have no prospect of success or only little reasonable prospect of success. Therefore I neither strike them out or order a deposit.

5. Religious discrimination – this is really more an isolated issue and having discussed it with the Claimant it is more about another manifestation of the direct discrimination on the protected characteristic of race front than it is religious discrimination. He has therefore withdrawn the claim of religious discrimination and I therefore dismiss it.

6. Finally, for the avoidance of doubt, the Claimant agrees that the span of his case in terms of allegations and issues is as per the schedule submitted to the tribunal on 24 April.

Judicial Mediation

6. I discussed this with the parties because to me it was self-evident that this case could benefit from Judicial Mediation. Suffice it to say that the parties are willing to participate and accordingly I have listed the same.

8. In those circumstances, I am accordingly not making any directions for a main hearing at this juncture. There is currently no listing. This will be revisited should the Judicial Mediation fail and at the end of the same.

Case No: 2600556/17

Employment Judge Britton

Date: 11 May 2018

JUDGMENT SENT TO THE PARTIES ON

11 May 2018

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