



EMPLOYMENT TRIBUNALS

Claimant
Ms N Neate

v

Respondent
Peterborough Regional College

(OPEN) PRELIMINARY HEARING

Heard at: Bury St Edmunds

On: 23 May 2018

Before: Employment Judge Laidler

Appearances:

For the Claimant: Professor J Kippin, Lay representative.

For the Respondents: Ms J Coyne, Counsel.

JUDGMENT

1. The unfair dismissal claim has no reasonable prospects of success and is dismissed.
2. Had the unfair dismissal claim not been dismissed the tribunal would have found that it had 'little reasonable prospects of success' such as to enable it to order a deposit as a condition of the Claimant continuing to advance that claim. The deposit would have been £100.

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

CASE MANAGEMENT SUMMARY

1. The Tribunal having given its decision on the issue of unfair dismissal which has been struck out there was discussion of issues in the sex discrimination complaint which had been issued on 27 April 2017.

2. It was clarified at this hearing that there is not a complaint of direct sex discrimination but only of sexual harassment contrary to the provisions of s.26(1) of the Equality Act 2010. The following are the matters relied upon:-
 - 2.1 Was the claimant looked up and down by Mr Sieling and Mr Mee at the meeting on 20 January 2017?
 - 2.2 Did Mr Mee adopt a posture when opening the door which displayed his crotch in the claimant's direction at the meeting on 20 January 2017?
 - 2.3 Was the claimant positioned between two men at the meeting on 20 January 2017?
 - 2.4 If so, did Mr Mee, by this conduct, have the purpose creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - 2.5 Alternatively, if so, did Mr Mee's conduct have the effect (taking into account (1) the claimant's perception, (2) all the circumstances of the case, and (3) whether it is reasonable for the conduct to have such an effect) of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - 2.6 Considering all the circumstances of the case will require the Tribunal to consider whether:
 - a. As the respondent avers, Mr Mee was present at the meeting because the claimant had previously been aggressive towards Mr Sieling, and Mr Sieling considered it useful to have his acting line manager there to support the meeting, or, as is the claimant's position, that Mr Mee was only at the meeting in order to reinforce a desire by Mr Sieling to undermine and intimidate the claimant; and
 - b. The conduct of the meeting.

Schedule of loss

3. The Tribunal obtained from Professor Kippin on the morning of this hearing a copy of a schedule of loss which it was said had been filed with the Employment Tribunal but was not on the Tribunal file. This sought to recover past loss of earnings from the date of resignation and one years' future loss of earnings coming to a total of £36,481. Professor Kippin however said that despite that figure the claimant was only seeking a compensatory award of one years' salary of £17,970.76. It was recommended that the claimant and/or Professor Kippin seek further advice on the schedule of loss as the unfair dismissal claim has now been struck out. The claim that remains is one of sexual harassment and it appears that this would give rise only to an award of injury to feelings if the claimant is successful. An order has been made for an updated schedule of loss to be filed.

Listing the hearing

4. As the sexual harassment claim proceeds the respondent anticipates only needing to call two witnesses, therefore the matter has been listed for 2 days. It has been listed into Bury St Edmunds as it could be heard sooner than listing it into Cambridge and neither party had any objection to that.

Other matters

5. There was discussion about the need for medical evidence and/or the claimant's medical records in view of the ill health she says she has suffered as a result of the alleged discriminatory conduct. The Judge suggested that in the first instance it might be more proportionate for the hearing to be of liability only and all parties agreed but a separate remedy hearing has been listed, in case it is required.
6. Professor Kippin stated however that the claimant did not wish her medical records to be used at a hearing as they were of a personal nature, but then the claimant intervened to say that she has no problem releasing her medical records for the relevant period. The matter of their relevance and for what period will be left to the Tribunal hearing the case to determine after it has given its decision on liability.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Statement of remedy/schedule of loss

By the **20 June 2018** the claimant to file and serve an updated schedule of loss.

2. Disclosure of documents

2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **13 June 2018**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.

2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

3. **Bundle of documents**

3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

3.2 To this end, the claimant is ordered to notify the respondent on or before **18 July 2018** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.

3.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **25 July 2018**.

3.4 The respondent is ordered to bring sufficient copies (at least five/three) to the tribunal for use at the hearing, by 9.30am on the morning of the hearing.

4. **Witness statements**

4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

4.5 It is ordered that witness statements are exchanged so as to arrive on or before **20 August 2018**.

5. **Listing the hearing**

5.1 The matter has been listed for a hearing on liability only over **2 days** at **Bury St Edmunds Employment Tribunal, 1st Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR** on **8 and 9 October 2018**.

5.2 A remedy hearing has been listed in case it is required, to be heard on **10 December 2018** also at **Bury St Edmunds Employment Tribunal, 1st Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR.**

CONSEQUENCES OF NON-COMPLIANCE

1. 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.
2. 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.
3. 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.

Employment Judge Laidler

Sent to the parties on:

20 June 2018

For the Tribunal:

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