



EMPLOYMENT TRIBUNALS

Claimant: Mr A Akhimie
Respondent: Samworth Brothers Limited
t/a Walker and Son and others
Heard at: Leicester
On: 29 November 2018
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person
Respondent: Mr Chris Finlay, Solicitor

JUDGMENT AT A PRELIMINARY HEARING

The judgment of the Tribunal is that:-

1. The Claimant's complaints of direct discrimination and harassment in relation to the allegation against Mr Simon Wells is struck out.
2. The allegation of direct race discrimination and harassment in relation to Mr David Robinson is not struck out but is subject to the Claimant paying a deposit of £20.00.
3. The complaint of unfair dismissal is not struck out nor is a deposit order to be made in relation to it.

REASONS

1. In these proceedings Mr Akhimie brings complaints of unfair dismissal and direct race discrimination. At a Preliminary Hearing on 20 September 2018, at which the Claimant was not represented nor in attendance, an Order was made by my colleague Employment Judge Heap that the Claimant provide further and better particulars of his complaint of race discrimination. The complaints of outstanding holiday pay and a sum owed in respect of a payment in lieu were the subject of an

'Unless Order'. The Claimant has not complied with the Unless Order and therefore it is noted that those two complaints are automatically struck out, not by virtue of any Order today, but simply because of the failure to comply with the Unless Order.

2. In relation to the race discrimination complaint the Claimant was as it is said ordered to provide further and better particulars. The task was made simpler for him in that all he had to do was complete a document prepared by Employment Judge Heap and sent to him with the Order.

3. The Claimant has completed the document, the material parts of which say states:-

3.1 *(That) Dave Robinson humiliated me and insulted me by pushing me during working hours which is against company policy and used offensive language at me.*

3.2 *That Simon (Team Leader) [now identified as Mr Simon Wells] told me that I am useless and that the company don't need me anymore and asked me to clock out and go home.*

4. The Claimant completed the form in such a way as to indicate that the above two allegations were advanced as both complaints of direct race discrimination and harassment. No issue is taken today as to whether harassment was part of the Claimant's original pleaded case. Accordingly and without objection from Mr Finlay, the Claim is amended to include a complaint of harassment based on the protected characteristic of race in addition to the complaint of direct race discrimination.

5. Mr Akhimie gave further details at this hearing as to the first of the two allegations he has identified. He said that in addition to what he wrote in the further and better particulars, Mr Robinson went on to say to him: *"You are a black bastard, this is not your country. I know where you live and I will sort you out"*. He alleges that this happened on 31 October 2017. Mr Akhimie said he remembers the occasion clearly because he was working on a specific line in the workplace (Fugi 1) and that this was an incident he mentioned both at the subsequent disciplinary hearing (in relation to allegations against him of gross misconduct) and at the subsequent appeal hearing.

6. In relation to the incident concerning Mr Simon Wells, Mr Akhimie says in addition to what he wrote in the further and better particulars Mr Wells had an altercation with him. He says this followed an instruction he had received to pass on a message to Mr Wells from a Team Leader. Instead of simply accepting the message Mr Wells became angry at the Claimant and used offensive language. Mr Akhimie confirms Mr Wells did not use any racial language but did use the "F" word and that Mr Wells' attitude towards him on that occasion was generally was one of hostility. As Mr Akhimie put it, *"Mr Wells just doesn't like me"*.

7. I can deal with the latter allegation fairly simply. I do not identify any matter on which the Claimant can rely on in support of his complaint of race discrimination or racial harassment. There is no suggestion of any racial language being used and nothing which would suggest that Mr Wells treated the Claimant the way he did because of his race. Even if the Claimant's version was true, and the version is disputed, there is nothing to suggest such treatment was because of race. It may be that the relationship between the two was an unhappy one but there does not appear to be any racial element. The Claimant has not raised a prima facie case

of race discrimination or harassment because of race. Accordingly, the allegation has no reasonable prospect of success and is struck out. There are no other allegations against Mr Wells.

8. So far as the allegation against Mr Robinson is concerned there is clearly a dispute on the facts that cannot be determined today without evidence. It is fact-sensitive and therefore not appropriate to strike it out. However I do take into account the following matters in deciding whether a deposit should be ordered:-

8.1 The Claimant does not appear to have made any reference to this allegation in the notes of the disciplinary and appeal hearing. Mr Akhimie does not accept that the notes are accurate but on the face of it it appears that this allegation was not raised previously during the Claimant's employment;

8.2 The allegation is a very serious one yet it does not appear anywhere in the Claimant's ET1 Claim Form;

8.3 The allegation was not specifically mentioned in the further and better particulars ordered by Employment Judge Heap.

8.4 The allegation has been made fairly late in the day.

9. In all of the circumstances I consider that the allegation has little reasonable prospect of success. A deposit order is appropriate.

10. In making a deposit order I must take into consideration the Claimant's financial means. He is presently seeking full time permanent work, has no savings and says he is experiencing financial difficulty following the loss of his employment with the Respondent. He works sporadically but the work is irregular. He has had to clear several of his bank accounts. He confirms however that he would be able to pay a deposit of £20.00. Whilst that is a very a modest sum, it is one that he can pay and not something that will not impede access to justice.

11. Accordingly the Claimant will be ordered to pay a deposit of £20.00 in respect of the complaints of race discrimination and harassment, which for the avoidance of doubt are both based on the same facts and both limited to the one allegation as set out at paragraph 3.1 only.

12. Full details of how to pay the deposit will be set out in the papers accompanying this judgment when it is sent to the Claimant. There are strict time limits on payment. If the Claimant is unable to pay in the time allotted he can seek a short extension. If the deposit is not paid within the time allocated or any subsequent extension granted the complaints of race discrimination and harassment will be struck out automatically without any further order.

13. I should add that the Respondent, quite reasonably and realistically, makes no application for the unfair dismissal claim to be struck out or for any deposit to be ordered. That complaint will therefore proceed to a final hearing in the usual way.

14. Orders in relation to case management of the proceedings are given separately.

Employment Judge Ahmed

Date: 4 January 2019

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE