



EMPLOYMENT TRIBUNAL
England and Wales
London Central Region

Claimant: Ms I Iljkic
Respondent: Expedia.com Ltd
Before: Employment Judge Mr J Burns
Representation
Claimant: In person
Respondent: Mrs T Hussain (Solicitor)

JUDGMENT

The claims are struck out as having no reasonable prospect of success under Rule 37.

REASONS

Procedural matters

1. The Claimant referred in her ET1 to a previous claim under number 222011098200. The Respondent did not have any record of such a previous claim. The Claimant stated that she abandoned and withdrew any such previous claim and that the instant claim 2203242 2020 was the only claim that she wished to pursue.
2. The Claimant was employed by the Respondent from 1/9/2019 to 27/2/2020. She was dismissed before the end of her probation period with one month's pay in lieu of notice. The letter of dismissal which was written by the Claimant's manager Melissa Homer, and provided a detailed explanation (including several specific examples) of the performance and behaviour shortcomings which had led to the Respondent's decision.
3. The Claimant presented an ET1 on 31/5/2020 claiming unfair dismissal, race discrimination, religion or belief discrimination, a redundancy payment and "other payments" (which she identified as a 10% bonus).
4. The ET1 made a few generalised comments in section 8.2 of the form and referred to an attached letter. The attached undated letter is entitled "*Unfair Dismissal During Probation*". It is a lengthy letter disagreeing with the Respondent's criticism of the Claimant's performance.
5. The ET1 was served on the Respondent and on 22/9/2020 it filed an ET3 which complained that the ET1 did not disclose a cause of action and was completely unparticularised as regards the discrimination complaints. A copy of the ET3 was sent to the Claimant in the usual way.

6. On 9/10/2020 (under rule 27(2) of the Employment Tribunals Rules of Procedure 2013) the Tribunal sent two letters by email to the Claimant the substance of which was as follows: *“Employment Judge Brown has asked me to write to you the following; by 14 days you must write to the Employment Tribunal, and the Respondent, stating, of the things you have complained about on your claim form, which are acts of race discrimination, and which acts of religious/belief discrimination, who did them and when. You must also state what sums you claim for unpaid wages, breach of contract, or bonus, and how these are calculated. ...The hearing on 30 October 2020 will consider whether to strike out your claims because they have no reasonable prospects of success or to order you to pay a deposit order as a condition of continuing to advance any claim or allegation because it has little reasonable prospect of success.In your claim form you complain that you were unfairly dismissed. Under section 108 of the Employment Rights Act 1996 claimants are not entitled to bring a complaint of unfair dismissal unless they were employed for two years or more except in certain specific circumstances which do not seem to apply in your case. It appears from your claim that you were employed for less than two years. If so, the Tribunal cannot consider your complaint. As you do not appear to be entitled to bring this claim an Employment Judge is proposing to strike it out. You have until 23 October 2020 to give reasons in writing why the claim should not be struck out.”*
7. The Claimant first told me today that she had not received these emails dated 9/10/20 but she then told me she had forwarded them on receipt to a firm of lawyers she had been seeking to instruct. Ms Hussein confirmed that she had received a copy of the Tribunal's emails of 9/10/20 (sent by a Tribunal employee Z Epstein Tasgal) and that the emails show that they were sent to the Claimant's correct email address.
8. I find that the Claimant did receive them on 9/10/20.
9. No response or information, as requested on 9/10/20, was provided by the Claimant by 23/10/2020 or at all.
10. At 10.47am on 29/10/20 I sent an email to the parties in anticipation of the OPH CVP hearing (which was to commence at 11am on 30/10/20) as follows *“Dear Mesdames, This case is listed for an Open Preliminary Hearing by CVP (video) at 11am on 30/10/20. You should be sent joining instructions by separate email later today. I have the ET1 and ET3 but no other documents. I do not know what the purpose of the OPH is. Please send me any further documents or information I need for the hearing to this email address. thank you’*
11. In response Ms Hussein sent me (copied to the Claimant) at 15.31 on 29/10/20 correspondence from the tribunal confirming the preliminary hearing will be used to consider the Respondent's applications for strike out/deposit order (as set out in the Respondent's grounds of resistance); the emailed tribunal letters dated 9/10/20, copy of the Claimant's employment contract; and a copy of the Claimant's termination letter.
12. The Claimant sent me (not copied to the Respondent or Mrs Hussain) at 9.13am on 30/10/20 a copy of the dismissal/termination letter and a further copy of the ET1 letter referred to above.
13. I considered the above material and also the oral submissions of the parties during the hearing today.

14. The hearing started by CVP at 11am today 30/10/2020. At 11.14am, while the hearing was underway and I was receiving submissions from Mrs Hussain, the Claimant sent me (but not copied to the Respondent or Mrs Hussain) a further email with an attachment containing at least 14 additional pieces of material. She referred to unspecified “*technical issues*” as having caused the delay in her sending the material to me.
15. I decided that it would not be just or appropriate or in accordance with the overriding objective to admit that 11.14am email and any extra material it may contain because it was sent too late, and not copied to the Respondent, and to admit it would be very likely to delay and disrupt the OPH hearing and force an adjournment to a later day, and I told the parties that I would not consider it for that reason.
16. I do not believe that the Claimant has suffered technical issues which would have prevented her from sending the information by 23/10/20 or at least in good time before the hearing.
17. During the course of the hearing and after my extempore judgment which I gave at the end of the hearing, the Claimant stated that she had not provided the information and particulars in support of her claim so far because she was not a lawyer and did not understand legal concepts, and she wanted to instruct a lawyer and get more time to produce evidence and particulars. In effect she was asking for an adjournment.
18. I refused this because I found that the Claimant (who is an intelligent person and a good English speaker – who had been employed in a fairly senior and well-paid position by the Respondent), with or without a lawyer, had had ample opportunity to set out her claim clearly and provide the basic details as requested of her. I further explained to her that Claimants did not have to have lawyers, and that the tribunal system was set up to be user-friendly for those who either did not want or could not afford lawyers. In any event, if she wished to instruct a lawyer, she had already had ample opportunity to do so.
19. During the hearing I gave the Claimant an opportunity to provide orally any additional relevant information. I asked her pertinent questions about her claims, which she answered, and she also made whatever oral submissions she wished to, before I made my decision.

Consideration of the merits of the various claims

Unfair dismissal

20. The Claimant was not continuously employed for the period required by section 108 of the Employment Rights Act 1996 in order to qualify for the right not to be unfairly dismissed. The Claimant's period of continuous employment began on 01 September 2019 and ended on 27 February 2020 (i.e. less than six months continuous service).
21. She has not referred to or disclosed any facts or matters which would indicate an entitlement to claim unfair dismissal without such service.

Redundancy payment

22. She is not entitled to this as she did not work for two years for the Respondent and was also not dismissed for redundancy

Race and/or Religion or Belief Discrimination

23. The ET1 and letter attached to the ET1 makes no reference to nor does it reveal the Claimant's race or religion or belief, and nor does it contain any material which could found or suggest a claim of discrimination on those grounds.
24. The closest the ET1 letter gets to this is one paragraph which responds to one of the specific criticisms of the Claimant which had appeared in the dismissal letter. Part of the dismissal letter reads as follows *"Communication style and behaviour can be blunt and inappropriate. For example, you had a full briefing on EG's approach to compensation and benefits during your onboarding and the understanding that you were in a 6-month probation period however you contacted me via text message, out of hours, to request a pay rise. It would have been appropriate to have reread our policy on pay review and scheduled time to speak with me within office hours."*
25. The Claimant in her ET1 letter responded to this as follows : *"What is mentioned as "communication style being inappropriate and blunt." These kind of comments about employees can come off as a bit offensive if not racist. Just because someone is different or more direct than a certain individual, I believe they aren't supposed to be labelled with such comments or dismissed. One of the reasons I have joined Expedia because it is an international company that supports diversity. In addition, Expedia promotes honest and open communication."*
26. In answer to direct questions from me, during the hearing today, the Claimant said that she does not think of herself as a member of any race, but that she is a Croatian national and that she comes from a Catholic background, but nowadays *"believes in spiritual things"*.
27. She referred again to the fact that she had been criticised for being *"blunt and inappropriate"* in the termination letter, and she suggested that this was in fact the Respondent responding to her culture and background which *"made her different"*.
28. Apart from that, and despite my questioning the Claimant about this at some length, she unable to identify any specific act or omission claimed by her as discriminatory or to suggest any fact or matter which in her mind links her dismissal to her nationality or beliefs.
29. The comment about the Claimant's blunt and inappropriate communication style (as perceived by the Respondent's manager) does not constitute evidence of such a link. It is not shown and it would be impossible to show that any particular race or religion displays bluntness or inappropriate communication techniques.
30. The specific example given by Ms Horner under this heading (and the remainder of the dismissal letter for that matter) had nothing either expressly or by implication to do with the Claimant's race and or religion or belief.

31. I find that the Claimant has failed to identify facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent contravened the Equality Act 2010 in the manner alleged.

The claim for “other payments”

32. In response to question from me, the Claimant said that, but for her dismissal, she would have received various perks such as free medical insurance, and subsidised physio therapy. Even if true, this is simply a claim for the benefits she would have earned had she not been dismissed, and not a claim for benefits actually earned before dismissal.
33. The Claimant also claimed a bonus based on 10% of her salary. However, the relevant terms (clause 4.1 and 4.2) of her employment contract provided (i) that any bonus was purely discretionary and (ii) in order to be considered for it the employee had to be in active service on 1st March, (which the Claimant was not).

Conclusion

34. For these reasons the claims have no reasonable prospect of success and must be struck out.

Mr J S Burns Employment Judge
London Central
30/10/2020
For Secretary of the Tribunals

date sent to the Parties – 30/10/2020