



EMPLOYMENT TRIBUNALS

Claimant: Mr M Popescu

Respondent: Decidebloom Ltd t/a Stoneacre

JUDGMENT

The following complaints are struck out:

- (a) The allegation that the claimant was treated less favourably by the requirement that he either pay the insurance excess of £500 or work ten Saturdays instead as a consequence of causing damage to one of the respondent's vehicles in October 2019.
- (b) The allegation that the claimant was treated less favourably when the respondent withheld payment for overtime which the claimant worked on a Saturday in November 2019.
- (c) The allegation that the claimant was treated less favourably when forced to carry on driving despite being prescribed medication in December 2019.

REASONS

1. The claimant was ordered to pay a deposit of **£200** in order to pursue any of the above allegations following a preliminary hearing held on **16 March 2020**. The Order was sent to the claimant on **26 March 2020**.
2. The claimant has failed to pay this deposit. The complaints in question are therefore struck out under rule 39(4) of the **Employment Tribunals Rules of Procedure 2013**.
3. The list of issues for determination at the final hearing is now as set out in the Annex to this judgment.

4. The hearing remains listed for **9-11 February 2021**.

Employment Judge Franey

4 June 2020

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

5 June 2020

FOR THE TRIBUNAL OFFICE

ANNEX

Complaints and Issues

Harassment related to race – section 26 Equality Act 2010

1. Can the claimant prove facts from which the Tribunal could conclude that in July 2019 he was subject to unwanted conduct related to his race which had the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him when Mr Walton commented that the claimant was going on “intercourse”?
2. If so, can the respondent nevertheless show that there was no contravention of section 26?

Direct race discrimination – section 13 Equality Act 2010

3. Can the claimant prove facts from which the Tribunal could conclude that on any of the following alleged occasions he was treated less favourably because he is Romanian than the named British workers were treated, or alternatively less favourably than he would have been treated had he not been Romanian?

- (a) If it did not amount to harassment contrary to section 26, in the “intercourse” comment made by Mr Walton in July 2019;
- (b) In the claimant being denied in July 2019 the ability to use a courtesy car to attend a work related course at the weekend, in which respect the claimant compares himself with Roy Nixon;
- (c) [*Struck out*];
- (d) In the instruction given to the claimant by Mr Leigh in October or November 2019 that he should not park on site, in which respect the claimant compares himself with Liam Murray and Andy Mellia;
- (e) [*Struck Out*];
- (f) In the claimant being instructed to stop using his mobile phone at work, in which respect the claimant compares himself with Ken Slater and Andy Mellia; and
- (g) [*Struck Out*]?

4. Can the claimant establish that his resignation should be construed as a dismissal in that by reason of any or all of the treatment identified above the respondent committed a fundamental breach of his contract of employment which was a reason for his resignation, and that he had not lost the right to resign by affirming the contract whether through delay or otherwise after that breach?

5. If so, can the claimant also prove facts from which the Tribunal could conclude that the constructive dismissal was because he was Romanian?

6. If so, can the respondent nevertheless show that there was no contravention of section 13?

Time Limits

7. In so far as any of the matters for which the claimant seeks a remedy occurred on or before 16 September 2019 (three months before he presented his claim form, allowing for the effect of early conciliation), can the claimant show that it formed part of conduct extending over a period ending after that date?

Remedy

8. If any of the above complaints succeed and are within time, what is the appropriate remedy for injury to the claimant's feelings and interest on any such sum?