



EMPLOYMENT TRIBUNALS

Claimant
Mr. J. McPherson

Respondent
Empowerhouse Ltd

v

Heard at: Watford

On: 20 January 2020

Before: Employment Judge Heal

Appearances

For the Claimant: in person (with Ms J. Stanford, colleague)

For the Respondent: Mr. S Nicholls, counsel

Preamble

1. By a claim form dated 22 March 2019 the claimant made complaints of unfair dismissal, race discrimination and unauthorised deductions from wages. He has told me that in fact he intended to bring a claim of wrongful dismissal instead of unfair dismissal.
2. Notice of claim (giving the date by which a response must be presented as 15 May 2019) was sent to the respondent's correct registered office address on 17 April 2019. With this was sent the claim form and notice of a preliminary hearing listed today: 20 January 2020.
3. No response has been received by the tribunal, in time or at all.
4. By letter (with a copy to the respondent's correct registered office address) notice that the claim would be heard today was sent to the parties.
5. Today the respondent appeared and (with my permission) made representations through counsel.
6. Mr Nicholls confirmed service on the correct address for the respondent, but said that this address was a private house which is now leased to a tenant. The respondent has not altered its registered office address at Companies House, however. It says that it has a forwarding arrangement with the Post Office (I have not been told for what period this arrangement lasted), but the respondent became aware that not all post was reaching it.

7. The respondent had been contacted by ACAS in February or March 2019 so knew that proceedings were contemplated (the respondent has an email extending time for conciliation dated 14 March 2019.)
8. Documents, including a bundle for today sent by the claimant to the respondent at one of its homes for service users at Tudor Gardens, London were returned in the post.
9. Mr Brown of the respondent says that he went to the registered office address on probably 14 December 2019 because he was aware that post was not being received by the respondent. On that occasion he discovered the claim form, notice of the claim and the notice of the preliminary hearing. He says that he did not receive the notice that the claim would be dealt with at this hearing.
10. Mr Nicholls was instructed on last Friday afternoon (17 January 2020) although those instructing him were instructed earlier.
11. I am told that no action was taken between 14 December and last week because the respondent is inexperienced in litigation and believed that this hearing was a preliminary hearing.
12. No response has been drafted or presented to the tribunal. I do not know the strength of any defence to the proceedings.
13. The claimant told me that he has found proceedings so far stressful and he wishes them to be concluded. He asked me to go ahead and hear his claim today.
14. However, I have postponed to allow the respondent to produce a response in the light of the issues identified below. The hearing on 13 March 2020 will be used to decide the respondent's application to extend time.

JUDGMENT

1. The complaint of unfair dismissal is dismissed because the claimant does not have two years' service.
2. The hearing is postponed to 13 March 2020 at 10.00 am (listed for 3 hours) to enable the respondent to make an application for an extension of time for the presentation of its response.
3. If the application is refused the tribunal will continue to determine the claims at that hearing.
4. If the application is successful, the tribunal will give case management directions.
5. I record that – to save the risk of further delay - there is a full merits hearing 'pencilled in' for **7 to 10 December 2020**.

CASE MANAGEMENT SUMMARY

The issues

1. I now record that the issues identified by the claimant which will fall to be determined by the tribunal are as set out below. These issues define **authoritatively** what the case is about, from the claimant's point of view: if the claim proceeds, they show the parties what their evidence should cover, they will help the tribunal decide what evidence is relevant and they will govern the matters to be covered by the tribunal's decision.

Section 26: Harassment on grounds of race.

2. Did the respondent engage in unwanted conduct as follows:
 - 2.1 A service user, PH accused the claimant of telling PH to 'go back to your own country';
 - 2.2 After an investigation and hearing the outcome letter added the words, 'racist', 'racist terminology', 'racist graffiti' and 'verbal teasing.'
 - 2.3 An entry of a minute of a meeting used the expression, 'rassclart, go back to your country', although that expression did not appear in NK's statement.
 - 2.4 Suspending the claimant.
 - 2.5 Failing to deal with the incident and/or grievance about the incident of 9 May 2018 when a service user (JJ) called the claimant a 'Pakistani'.
 - 2.6 Failing to deal with incidents of racism, i.e.:
 - 2.6.1 NK told PH to go back to his own country in about June 2018;
 - 2.6.2 Two weeks later NK again told PH to go back to his own country.
 - 2.7 On 19 November 2018 the claimant sent a 'direct' claim and unfair treatment letter to Christopher Brown and the respondent has not responded to that letter.
 - 2.8 Dismissing the claimant
3. Was the conduct related to the claimant's protected characteristic?
4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
5. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6. In considering whether the conduct had that effect, the tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Section 13: Direct discrimination on grounds of race.

7. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely:

Any of the treatment above not found to have been harassment.

8. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated actual or hypothetical comparators?
9. If so, has the claimant proved primary facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
10. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Unauthorised deductions from wages.

11. The claimant says that he was not paid while he was suspended.

Breach of contract

12. Was the claimant dismissed without notice?
13. If so, to how much notice was he entitled?
14. Was the respondent entitled to dismiss him without notice by reason of his gross misconduct?

ORDERS

I have made the following orders by consent:

1. On or before **10 February 2020** the respondent shall send to the claimant and the tribunal its draft response to the claim as set out above together with its full application to extend time for the presentation of its response and all supporting evidence.
2. The respondent shall make a search for the bundle and witness statements sent by the claimant. If it cannot find them the claimant shall re-send them only upon the respondent's agreement to pay in full the claimant's reasonable costs of copying and postage.

Employment Judge Heal

Date:22/01/2020

Sent to the parties on: 06/02/2020

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For the Tribunal Office