



EMPLOYMENT TRIBUNALS

Claimant: Mr A Minin

Respondent: Ringway Hounslow Highways Limited

RECORD OF A PRELIMINARY HEARING

Heard by video

On: 5 September 2022

Before: Employment Judge Corrigan

Appearances

For the claimant: In person

Lithuanian Interpreter: Ms Olga Krysa

For the respondent: Mr S Sanders, Counsel

RESERVED JUDGMENT

1. The claimant's claims are struck out as they have no reasonable prospects of success.

REASONS

1. Today's hearing was listed to consider the following:
 - 1.1 Whether or not the various heads of claim have been lodged within the statutory time limits for each claim and if not whether time should be extended pursuant to the relevant tests set out in the Equality Act 2010.
 - 1.2 Whether the Claim should be struck out as the Claims or any of them have no reasonable prospect of success.
 - 1.3 Whether any claims should be dismissed on account of Judicial Proceedings Immunity.

2. At a previous hearing, in his absence, the claimant was ordered to pay deposits in respect of his claims and the parties' understanding was these had been paid. The issue of whether the claims should be struck out was not decided on that occasion but was listed for today's hearing. Normally the issue of strike out and deposits are considered together. It is unusual to be considering an application to strike out when deposits have been paid. I accepted the respondent's submission that the payment of the deposits should not prevent me considering strike out and any unfairness to the claimant can be addressed in deciding what to do about the deposits if I decide to strike out the claims.
3. The claimant remains employed by the respondent. He is employed as a Street Cleaner having TUPE transferred in 2013. ACAS Conciliation took place between 14 August 2020 and 7 September 2020. His first claim was lodged on 10 September 2020, he submitted addendums on 26 October 2020 and 13 January 2021 and then his second claim on 30 July 2021. Employment Judge Self has dealt with the addendums in the Case Management order dated 30 March 2022.
4. The claimant confirmed that the Case Management Order dated 30 March 2022 at pages 85- 93 of the bundle correctly identified the claims and issues in his case save that he asserts that the requirement to seek permission to go to the toilet was continuing up to 16 September 2020. He also said there was a complaint about being required to request permission to drink water in 2015, also continuing up to 16 September 2020. During the hearing he said these rules were even continuing now though it is recorded that Mr Hurley told him he could drink water and use the toilet without asking for permission in the meeting of 16 September 2020.
5. The issues in his complaints are therefore:
6. Did the respondent do the following acts?

Claim 1 (2305031/2020)

June -October 2020

7. On 19 June 2020 Mick Carter verbally attacked the claimant in front of work colleagues;
8. The respondent unreasonably failed to follow its grievance procedures adequately or at all in relation to the claimant's complaint about the above incident;
9. On 20 August 2020 the respondent disciplined the claimant for taking sick leave between 22 June 2020 and 17 July 2020;
10. The respondent sabotaged the claimant's appeal of the above by scheduling the hearing for a date during his annual leave;
11. The respondent failed to inform the claimant of the outcome of his appeal until 15 October 2020.

2014- 16 September 2020

12. On 10 April 2014 ordered the claimant to request permission from line managers for every visit to public toilets during his working hours, and later that the claimant request permission to quench his thirst a situation that continued until Mr Hurley informed the claimant otherwise on 16 September 2020;

2014 - 2017

13. On 22 June 2014 two supervisors of the claimant attacked the claimant at his workplace, shouting and kicking different things.
14. On 18 July 2014 Mr Budd drove up and down the street in which the claimant was working to make sure he did not step into the shade.
15. On 18 July 2014 Mr Budd shouted at the claimant that he had violated labour discipline since he left for a break at 9.59am (rather than 10am).
16. By a letter dated 16 July 2014, received on 26 July 2014, the respondent demanded that the claimant urgently improved his performance failing which a decision would have to be made on 25 July 2014 as to his further stay in the company.
17. The respondent suspended the claimant without pay on 5 January 2015 for one week.
18. The respondent wrote to the claimant on 23 January 2015 during a period of sick leave relating to an upcoming disciplinary investigation into his poor performance.
19. The respondent scheduled a meeting for 8 October 2015, when the claimant would be on annual leave, about the claimant's complaint dated 11 September 2015 relating to an alleged requirement to ask supervisors for permission to quench his thirst during working hours.
20. The respondent refused the claimant's request dated 3 January 2017 for an independent committee of local councillors to assess the condition of the streets which the claimant was responsible for cleaning.

Claim 2 (2303276/2021)

21. Through its Grounds of resistance to Claim 1, stated to be received by the Claimant on 26 May 2022, the respondent knowingly defamed the claimant by asserting that he had refused to come to a hearing on 30 June 2020 relating to his complaint of harassment dated 19 June 2020;
22. The respondent failed to deal with the claimant's grievance dated 28 May 2021, relating to the alleged defamation, adequately and/or at all.

Jurisdiction

23. Did the above acts occur before 15 May 2020?
24. If so, did any or all of those acts form part of a continuing act extending up to 15 May 2020?
25. If not, would it be just and equitable to extend the time limit?

Direct age discrimination (s13 Equality Act 2010)

26. In doing such acts complained of as are found to have occurred, did the Respondent treat the claimant less favourably than it did or would have treated others?
27. If so, was that less favourable treatment because of age.
28. The claimant identifies his own age group as over 53 years and his comparator age group as under 50 years.

Harassment related to age (s26 Equality Act 2010)

29. In doing such of the acts complained of as are found to have occurred, did the respondent engage in unwanted conduct?
30. If so, was such unwanted conduct related to age?
31. If so, did such conduct have the purpose or effect of
 - (a) Violating the claimant's dignity or
 - (b) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Relevant law

32. A case can be struck out under rule 37 of the Tribunals Rules of Procedure 2013 if it has no reasonable prospects of success. The respondent recognises this is a high hurdle and that a tribunal should be slow to strike out a fact sensitive discrimination claim. However a dispute of fact does not preclude strike out where I am satisfied there are no reasonable prospects of necessary facts being established. For example where the claim is speculative or highly implausible (*Ahir v British Airways plc* [2017] EMCA Civ 1392).
33. S123 Equality Act 2010 states that proceedings may not be brought after the end of the period of three months starting with the date of the act of discrimination or such other period as the tribunal considers just and equitable unless earlier acts are part of a continuing act which is within the time limits. The burden is on the claimant to show a continuing act and he must show a continuing state of affairs rather than a succession of unconnected or isolated acts (paragraph 7 of the respondent's skeleton argument).

Conclusions

34. In the second claim, the allegation arises from a mistake in a statement prepared for tribunal proceedings and the respondent's subsequent grievance decision about that. This was clearly not an act of either less favourable treatment or harassment nor based on the claimant's age but an error and in any event I accept the respondent's submissions about the parties' being covered by privilege for the content of pleadings during proceedings. The grievance outcome accurately reflected this and was plainly not an act of discrimination or harassment based on age. Those claims should be struck out as having no reasonable prospect of success.
35. In respect of the first claim a number of matters were very out of time, occurring in 2014-2015. The claimant has not established any connection with the later incidents. The exception is the instruction to request permission to use the toilet/drink water which the claimant says was ongoing up to 16 September 2020.
36. In respect of the other acts in 2014-2015 (excluding the issue in respect of toilet use/drinking water) these are many years out of time. Initially the claimant believed that the reason for his treatment was a conspiracy between his employer and the Belarusian government. He wrote to the police about this. He then believed it was because he had complained to the Parliamentary Commissioner for Standards about his MP. He says that after about six months he changed his mind and formed the view the reason was his age (from October 2014). Nevertheless a year later in 2015 he wrote to the Chief Executive of the parent company and an MP raising that he was being subjected to detrimental treatment because he was contemplating or had brought legal proceedings (p164).
37. The claimant said that despite being initially mistaken about the reason for his treatment, and despite raising a different motivation with the Chief executive and an MP, from October 2014 he was convinced that his treatment was related to age as he could not see any other reason. He said he had thought bringing a tribunal claim would have taken too much emotion and he would cope until pension. He made a conscious decision not to pursue a claim. The incident on 19 June 2020 changed his mind. He also referred to health issues and not being fit enough to bring a case to tribunal. However he was able to take the other actions described above such as writing to the police, the Parliamentary Commissioner for Standards and the Chief Executive of the parent company.
38. It would not be just and equitable to extend time. The claimant was aware of the claims at the time, took a number of other actions in respect of these as described above and made a conscious decision not to bring a tribunal claim. Mr Hurley gave evidence that a number of the employees referred to in the correspondence dating back to 2014- 2017 have left the respondent, for example Nayna Patel, Elaine Piper and Ian Lennox, so the respondent would be prejudiced both by being deprived of the three month time limit and in respect of defending the claim now.
39. Turning to the allegation that on 10 April 2014 the respondent ordered the claimant to request permission from line managers for every visit to public toilets during his working hours and whether that was a situation than continued until Mr Hurley

informed the claimant otherwise on 16 September 2020. If the claimant was singled out in respect of this and the instruction was ongoing throughout the period then this could be a continuing act, as the respondent accepts. However the evidence suggests the difference in treatment was not ongoing as during the internal process he was informed and shown that a similar letter was sent to others within 6 months of his letter. The claimant now suggests this letter was created during the internal process rather than was actually sent to other employees. He bases this on the fact the respondent has not produced the actual letter, even though it is something that was done a number of years ago. This is far-fetched and I accept the respondent's position that the evidence suggests any less favourable treatment ended at the date that letter was sent and this claim is therefore also out of time.

40. The claimant's evidence about the instruction about drinking relates to a one off oral instruction which he recorded on 11 September 2015 (p54) when he says he was told he had "no right to sit down on a bench and drinking water without the permission of my manager because I left my workplace". This does not equate to an ongoing instruction that he cannot quench his thirst without permission and appears to be a one off event on 11 September 2015 and well out of time.
41. Moreover Mr Hurley's clarification that he was not aware of such an instruction (either in respect of toilets or drinking water) as the claimant's line manager since January 2018 and that water bottles are at times issued to staff as they need to be able to drink water, along with the claimant's evidence in paragraph 33 of his statement that he stopped following the instruction as early as September 2015 suggests it ceased to be an active instruction well before September 2020 (or May 2020). I find this allegation is also out of time.
42. As the instructions were made back in 2014 and 2015 it is also not just and equitable to extend time as the claimant consciously decided not to bring a claim earlier and the respondent is prejudiced in defending that case for the same reasons as set out above.
43. Turning now to whether in any event there are no reasonable prospects of the claims succeeding. The claimant asserts that he changed his mind and decided he was treated as he was because of age because he witnessed a number of examples of the treatment of colleagues of a range of ages. He says in his witness statement "around October 2014, when I saw how the employer, under various pretexts, fired my fellow [colleagues], who were about my age and older, one by one, I realized that there was no politics here, and the employer just wanted to get rid of me because of my age". Each of the 5 cases he names in his statement appear to relate to the employee's own particular circumstances rather than age. It is not evidence of a pattern in respect of age. He does not point to any other evidence to suggest that the reason for any of his treatment was age. He says instead that he can't see any other reason. This is not sufficient.
44. In response to the respondent's request for further information about the age groups relied on the claimant said "this question should be addressed to my employer, and I was only expressing my assumption that I was being discriminated against not on the basis of gender or race but because of my age". When it was put to him in the hearing that his case is based on an assumption he

corrected this and said it was based on his “conviction” that the reason is age. When it was put to him there was no evidence that shows any treatment was related to age he said “my opinion is very different to yours”. Despite this the claimant asserts that there is a conspiracy in the respondent to discriminate against older workers which as the respondent argues by implication involves a number of different managers, albeit it is not an effective one given the number of older employees that remain in the respondent’s employment. The claimant addresses this in his statement where he speculates that a reduction in street cleaners meant that that “the [older] street cleaners need to be replaced by young and healthy ones, retaining a certain number of [older] ones so that age discrimination does not manifest itself with great obviousness” [statement paragraph 2]. The claimant’s case therefore depends on a far-fetched, illogical and implausible premise.

45. The respondent has provided statistics which show that more younger colleagues have been dismissed than older colleagues. The respondent has evidence that during 2014-2022 there were the following joiners by age bracket and that therefore well over half of all joiners are over 45 and over 25% are over 55:

| | |
|-------|----|
| 25-29 | 1 |
| 30-34 | 1 |
| 35-39 | 5 |
| 40-44 | 9 |
| 45-49 | 11 |
| 50-54 | 9 |
| 55-59 | 6 |
| 60-64 | 7 |
| 65+ | 1 |

46. Of the 60 members of staff who left the employment at the respondent’s initiative in 2014-2022 the majority were under 44 years and only 20% were over 55. The same number of under 44 year olds left of their own accord than were dismissed. Only 20% of leavers over 50 left at the respondent’s initiative. The claimant agrees he had no access to employee records. It is difficult to see how he can challenge the statistics and how the statistics overall are evidence that the treatment of the claimant was based on age.
47. The claimant himself remains in the respondent’s employment despite his case that for 8 years now they have been trying to “get rid of him” because of age.
48. I agree that the claimant puts forward no basis for his conviction/assumption that his treatment was because of his age. I agree with Employment Judge Self that there is nothing to lead to an inference that the treatment is based on age rather than another protected characteristic, or indeed his political activities or anything else. I find the claimant’s case is both highly speculative and includes assertions that are far-fetched and illogical. There are no reasonable prospects of the necessary facts being established from which it could be inferred that the treatment was because of age.

49. I explored whether any part of his claim was an indirect age discrimination claim (in particular the instruction in relation to permission to use the toilet) but he insisted he was the only person subjected to the rule about using the toilet and that all his colleagues, if they had been subjected that rule, would complain about it as it is sensitive for anyone. He also said that if he was not the only one subjected to the rule about the toilet he would not be bringing the claim and that all he wants to highlight is the letter was only sent to him, not other employees. He said this instruction only appeared after he had been in hospital and informed the employer he had stomach issues and was personally directed at him.
50. I explored with the claimant whether he was bringing a disability discrimination claim as he mentioned that his health was the reason for two allegations (He says in 2014 his stomach issues triggered the regulation about toilet use and in 2020, when he told the respondent the GP told him he should avoid stress, he then suffered an unprovoked attack by a supervisor). He said he was not claiming disability discrimination and indeed objected to a reference to that type of claim being included erroneously by Employment Judge Self in the Case Management Orders.

Employment Judge Corrigan
9 December 2022

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