



EMPLOYMENT TRIBUNALS

Claimant: Mr K C'tunge

Respondent: Fabric Life Ltd

Heard at London Central Employment Tribunal On: 10 January 2023

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: Ms C Jennings, Counsel

JUDGMENT FOLLOWING A PRELIMINARY HEARING

The claimant's claims are struck out as having no reasonable prospect of success.

Employment Judge Davidson
Date 10 January 2023

JUDGMENT SENT TO THE PARTIES ON

.. 16/01/2023

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

REASONS

Background

1. The claimant had submitted at ET1 in which he alleged large scale bullying by the whole of the respondent's organisation based on malicious rumours that were being spread about him by people in his past. He ticked the discrimination boxes but did not include specific allegations of discrimination on the grounds of any protected characteristics. He went on to describe how he had been stalked and slandered for the past ten years and that wherever he works the same thing happens.
2. The respondent denied the claims and pointed out that the claimant had failed to describe any connection between the allegations he made and his protected characteristics.
3. This hearing was listed to consider any amendment application the claimant might make and the respondent's application to strike out the claims or, alternatively, to impose a deposit order.

Amendment application

4. The claimant attended a preliminary hearing before EJ Keogh on 12 October 2022. She told him that the claim form as presented was difficult to understand and that there were no details given of the various discrimination claims, even though he had ticked various discrimination boxes in section 8.1 of the ET1 form. He also indicated at the preliminary hearing that he wanted to pursue a whistleblowing claim. EJ Keogh allowed him until 9 November 2022 to make an application to amend his claim to include the relevant information in relation to the discrimination allegations and to include a whistleblowing claim, with a further hearing being listed to consider the application (this hearing).
5. On 3 November 2022, the claimant sent to the respondent a link to a Dropbox file which contained a document entitled 'Fabric 4.1 REVA'. This ran to four pages and repeated the general allegations in the ET1, going into more detail and developing the claimant's narrative of being persecuted and being maliciously slandered as a paedophile and being bullied for various reasons including being homophobic, a Nazi, a drug addict and a racist.
6. Two days before this hearing, the claimant sent the respondent another link to a Dropbox file with a document with the same name 'Fabric 4.1 REVA' running to 12 pages. The claimant accepted that he may have attached the wrong document in November 2022 and asked the tribunal to take account of the longer document. The longer document repeated the first four pages of the previous document but also had numbered paragraphs setting out the claims in respect of the protected characteristics of age (45), race (Asian Sri Lankan), sexual orientation (heterosexual) and belief (formerly Buddhist now spiritual). It also included a section on disability discrimination (not previously mentioned)

and a section headed 'Whistleblowing'. The whistleblowing claim amounted to allegations of wrongdoing by the respondent. Although the final sentence reads 'I raised these concerns and was persecuted and victimised further', no specific alleged protected disclosures or detriments are mentioned.

7. Notwithstanding that the document had been served on the respondent late, the respondent's representative made no objection to me reading it and taking it into account when considering the claimant's application, although she reserved the right to rely on the time point in her submissions.

Claimant's case

8. The claimant relied on his written document as his application to amend his claim. He explained that he had not included the information on the original ET1 because he is a layman and he thought the purpose of the preliminary hearing was to explain his case.
9. He repeated his central allegation that the respondent was orchestrating the treatment of him by staff and customers and that the respondent itself was being orchestrated by a higher power, possibly the police, as evidenced by the fact that he experienced this treatment at all his workplaces.
10. In relation to the whistleblowing allegation, the claimant mentioned that he had raised concerns about being harassed with Burzan Arsov on 1 May 2020 but, according to the document relied on, his complaint was that he was ignored and fobbed off, rather than that he was subjected to detriments for making the alleged disclosure. In submissions he stated that the bullying after this became extreme and that it was carried out by everyone – staff, management and customers.
11. In some instances, the claimant mentioned specific names of people he alleged were orchestrating the harassment, but he accepted none of them were employed by the respondent. These were individuals who were named in his background narrative setting out the history of his allegations, going back several years. He alleged that he had seen them in the respondent's nightclub.
12. During the hearing, when asked to explain the religious or philosophical belief he relied on, he suggested that the reason for his treatment was his philosophical belief as a Brexit supporter. There is no record of the claimant having raised this earlier.

Respondent's case

13. The respondent objected to the amendment application on the time point and because it did not amount to an application to amend in any event. The document was still hard to understand and the respondent would have difficulties in defending the allegations as there is nothing for it to respond to. An amendment application needs to be clear and this application does not meet that requirement.

14. Additionally, the respondent operates a night club with high turnover of staff and the passage of time makes it harder to investigate any specific allegations, which causes significant prejudice to the respondent.
15. The allegations are serious but vague and the case remains unclear, even after the claimant has had an opportunity to clarify his case.
16. In making this amendment application, the claimant has, for the first time, attempted to link the treatment he has been complaining of consistently to his protected characteristics. Previously he has attributed the alleged treatment to rumours started by people from his past, as set out in his narrative, and there is no link to the protected characteristics relied on.

Decision

17. Taking the representations from both parties into account, I drew a distinction between three claims, which I considered set out a complaint which could be responded to, and the remainder of the claims. The three claims were A6 (for which further and better particulars would be required), A9 and D5 (insofar as it related to the claimant being singled out) and A15 (for which further and better particulars would be required).

A6: *“They belittled me for not wanting to work two 12am -6am shifts in a row. And boast to me how they had done ‘x’ hours that week. Implying I am old, lazy and weak. They then gave me more back to back shifts. Stereotyping and discriminating against my age”.*

A9/D5: The claimant alleges he was singled out and not allowed to wear promotional T-shirts due to his age and sexual orientation.

A15: *“They would put me under supervision of younger people they thought would aggravate me and that they thought I had a problem with. These people would be purposely condescending, patronising and outright rude. I rose above it. It’s just a bar job. I was simply there for the money and hopefully to find out why I am being victimised. Discriminating against me for my age.”*

18. I allowed the amendment in relation to the three claims set out above, subject to the claimant providing further and better particulars.
19. I gave reasons at the hearing in respect of each of the other claims for my decision not to allow them to go forward. In summary, the remaining claims amounted to wide-ranging, unspecific allegations which were not linked to the claimant’s protected characteristics. The disability claim had not been raised before and is out of time. The whistleblowing claim did not include details of any protected acts or links to any detriments.
20. Taking into account the nature of the proposed amendments, the fact that the new claims are well outside the statutory time limit and the lack of clarity in the

discrimination claims, I balanced the injustice and hardship of allowing the amendments against the injustice and hardship of refusing them. I find that there would be greater injustice and hardship if I were to allow them.

21. The amendment application in relation to these claims fails.

Respondent's strike out application

Respondent's case

22. The respondent acknowledged that there is a high hurdle to overcome in order to strike out a discrimination claim without hearing evidence, but that there are situations in which it is appropriate, including this case.

23. In this case, the claimant does not seem to know what reason to rely on as the reason for the treatment he alleges. At today's hearing he mentioned being a Brexit supporter as a reason, something he has never mentioned before. He has made wide ranging allegations against every individual within the respondent, including customers, with no evidence to support these. The allegations are not realistic.

24. The claimant's narrative makes allegations that his treatment has been orchestrated at a high level and has extended to other workplaces. His background narrative does not link this to any protected characteristics recognised under the Equality Act 2010 and he has only alleged discrimination because there are no other claims he can bring before the tribunal.

25. Looking at the specific claims which have been allowed to progress, the respondent's representations are as follows:

26. A9/D5: if the claimant was not given a promotional T-shirt (which the respondent denies) it was not on the grounds of his sexual orientation as other heterosexual employees wore the T-shirt. He has not indicated any link with his age and there is no prospect of this claim succeeding.

27. A6: the claimant has not mentioned the issue of back to back shifts before and has given no particulars. If he does give particulars, the most he will do is give names and dates but none of the names he has mentioned are employed by the respondent. There is nothing to suggest that he was much older than other employees and, in any event, he has not described any less favourable treatment.

28. A15: this claim is vague and requires particularisation. There is nothing to suggest that any alleged treatment is due to a protected characteristic.

29. In essence, the claimant is using the tribunal to pursue a claim which is for another forum, stating that he wants the 'truth' uncovered in relation to the rumours about him and the treatment he has received from all his employers, the government, the police and St Mungo's charity. This is an abuse of

process, particularly in bringing a claim against the respondent as the claim cannot include these other bodies even though the allegations are aimed against them as much as against the respondent.

30. The claim is also vexatious as it has no discernible basis in law and scandalous as it uses a legal process to vilify others.
31. The respondent submits that this claim has no reasonable prospect of success and should be struck out.
32. In the alternative, the respondent submits that the claim has little reasonable prospect of success and it would be appropriate to make a deposit order. If the claims go ahead the respondent will be put to considerable expense to defend claims which are unlikely to succeed as, at heart, the claims are not against this respondent.

Claimant's case

33. The claimant maintained that he had been treated scandalously and he was using the employment tribunal to get justice, as is his legal right.
34. He said that the historical background narrative was not relevant to this tribunal claim as his treatment had been orchestrated by the respondent who had, in turn, been orchestrated by higher powers. However, he maintained that he would be relying on the background narrative at a hearing and that the issues would not be confined to what happened to him while working with the respondent.
35. He resisted the making of a deposit order on the grounds that he has no income and is unable to work because he is exposed to bullying and harassment in every workplace. The same people are harassing him and orchestrating his employers to harass him. He assumes that this is being done by the police.

Decision

36. I find that, although it is unusual to strike out discrimination claims, this is not a usual situation.
37. It is clear that the claimant has grievances against all the institutions he has contact with and his complaints are that the respondent is being manipulated by the police and other agencies. He confirmed that he had made similar complaints against other former employers, which were not related to his protected characteristics.
38. The claimant has been open in stating his position that the background narrative is central to his claims against the respondent and the other former employers he has brought claims against.
39. There is no stand-alone claim for his real complaint that he is being persecuted and slandered as part of a long-running campaign against him, carried out by

agencies with whom he has no employment relationship and which are therefore outside the scope of the employment tribunal jurisdiction. He is therefore trying to shoe-horn his complaint into discrimination claims so that he can be heard, even though there is no link between the allegations he makes and his protected characteristics.

40. In relation to the limited claims which I allowed to proceed, he has not provided particulars and it appears that he would be in difficulty in finding a comparator or in linking his treatment to his protected characteristic.
41. I have taken into account that the claimant is a litigant in person and I have looked at all the material available to me to ensure I understand his case as well as I can. It is clear to me that his claim is an attempt to seek, in his words, *'truth and justice'* and, in particular *'I want to know what these rumours are, Who has said these things and how they have been spread [on] such a large scale'*. His claim is not about his protected characteristics.
42. Taking the claimant's case at its highest, all the respondent's management, staff and customers are conspiring against him because of rumours which are being spread about him. The lack of detail makes it hard to see how the respondent could defend the claims or how a fair trial could proceed.
43. Taking all these factors into account, I conclude that the claimant's claims have no reasonable prospect of success and that there is no discernible claim in law for his actual complaint.
44. I therefore strike out the claimant's claims.