



EMPLOYMENT TRIBUNALS

Claimant: Mr N Sumula

Respondent: CBRE Managed Services Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: London Central Employment Tribunal **On:** 1 October 2018

Before: Employment Judge Keith (sitting alone)

Appearances

For the claimant: the Claimant represented himself.

For the respondent: Mr O Holloway, Counsel

JUDGMENT ON PRELIMINARY ISSUE

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claims of discrimination contrary to the Equality Act, which are dismissed.
2. The claims of unfair dismissal and breach of contract continue.

REASONS

Background

1. The Claimant presented a Claim Form on 12 May 2018. An early conciliation certificate was issued on 4 May 2018. In the Claim Form, the Claimant referred to a claim of unfair dismissal, unpaid notice pay and in box 8 of the Claim Form, he ticked the box that he had been discriminated against on grounds of his disability and had been victimised. However, in box 8.2, where it indicated that he should provide details of what he was complaining about, he referred, at some length, to a large number of his colleagues being illegal migrants, but without length to his disability. On review of the Claim Form, Employment Judge Pearl directed on 14 September 2018 that there should be a preliminary hearing to determine whether the disability claim should be struck out as the Claimant had failed to give any particulars from which a claim could be understood.

2. The Respondent filed a response on 10 September 2018, asserting that the claims of disability discrimination and victimisation should be rejected in accordance with rule 12(1)(b) of the Tribunal Rules and indicating in the grounds of resistance that it did not understand the claims of disability discrimination and victimisation which had been referred to.
3. On 19 September 2018, the Claimant presented what he described as 'further particulars' of his claim. Broadly speaking, the further particulars provided substantial additional details of his claims running to 71 paragraphs in which he asserted discrimination arising as a consequence of his disability contrary to section 15 of the Equality Act, victimisation under Section 27 of that act, and a failure to make reasonable adjustments.

The Preliminary Hearing

4. At the hearing before me, the Claimant asserted that he had intended to submit, and believed that he had submitted his further particulars with the Claim Form, although he accepted that he had no evidence to this effect. In the alternative, the Claimant wanted his further particulars to be treated as an application to amend his claim.
5. The Respondent objected to the addition of the further particulars. The burden was on the Claimant to show that he had presented his Claim in time and in the absence of any evidence, it was clear that he had not provided sufficient details for the Respondent to meaningfully have responded to the Claim Form, pursuant to rule 12 of the Tribunal Rules. Therefore, the only alternative course was for him to seek leave to amend his claim, which was also objected to. The further particulars constituted entirely new factual assertions. I should consider whether it was just and equitable to extend time. Given that the EC certificate had been issued on 4 May, 4 June 2018 would have been the deadline for presenting claims. The further particulars had been presented on 19 September 2018. In any event, it was hard to understand from the further particulars what the basis of the claims were.

Decision and reasons

6. I considered the authorities of Secretary of State for Business, Energy and Industrial Strategy v Parry and anor 2018 EWCA Civ 672, CA, in relation to the question of rule 12(1)(b) of the Tribunal Rules and whether the Claim Form could be responded to on the basis that it was not in a form that could sensibly be responded to or was otherwise an abuse of process; and British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT, on the issue of whether the it was just and equitable to extent time to permit the new allegations.
7. The Claim Form as originally presented did not indicate any claim to which the Respondent was able to respond and there was nothing to suggest that from the background of the case, the Respondent could be expected to be aware of the details of the allegations in relation to the Claimant's visual impairment, particularly when even at this hearing, the nature of the allegations remained unclear. As a consequence, and applying the authority of Parry, the Claim

Form was not a valid claim. The fresh details received on 19 September 2018 amounted to a fresh claim.

8. The question was whether it was therefore just and equitable to extend time for presentation of the Claim Form. I concluded that it was not. The new allegations, even as now presented, were unclear as to what was claimed. In terms of the complaint of victimisation, when asked about the relevant protected act, the only matter the Claimant was able to refer to, was his taking eye-drops in his lunch-break, although even that was unclear. The claim of failure to make reasonable adjustments was said to relate to his limited mobility in using stairs, although in oral discussion it was unclear how such stair use related to a claim, or the circumstances of his dismissal; and the reference to stair use was only in oral discussion with the Claimant at this Hearing and nowhere in the document containing the new allegations. The remaining claim of discrimination arising from the claimant's disability remained unclear.
9. In the circumstances, the scope of the Claimant's additional discrimination claims which he wishes to add vary between his 19 September document and his oral assertions to this Tribunal; and remain unclear. The deadline for presenting claims was 4 June 2018. The Claimant does not suggest that he was unaware of the deadline, but has not been able to articulate the claims that he now seeks to add. In the circumstances, the Respondent would continue to be unable to address the (unclear) claims against it and in the circumstances I considered that it was not just and equitable to extent time to allow presentation of the claims contrary to the Equality Act.

Signed by _____ on 4 October 2018

Employment Judge Keith

Judgment sent to Parties on

8 October 2018