



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Debbie Allen

v

- 1. Oxford Kilburn Youth Trust**
- 2. Mr Matt Parker**
- 3. Mr Matt Perry**
- 4. Mr Lowell Weir**
- 5. Mr Stuart McTurk**

Heard at: Watford

On: 13 March 2020

Before: Employment Judge Andrew Clarke QC

Appearances

For the Claimant: Did not attend

For the Respondent: Ms Laura Collignon – Counsel (acting pro bono)

JUDGMENT

1. The claimant's application under Rule 38(2) of the Employment Tribunal Rules of Procedure to have the striking out of her claim set aside is dismissed, it having been found that it is not in the interests of justice so to do.

REASONS

1. The preliminary hearing today was ordered after the claimant made an application to set aside the striking out of her claim. Details of the procedural history of this matter, so far as relevant, are set out below. The claimant has not attended. Therefore, it was necessary for me to consider, in accordance with Rule 47 of the Employment Tribunal Rules of Procedure, whether I should continue to hear the application in the claimant's absence. I decided to do so. My reasons for so doing are most conveniently stated after I have set out the procedural history of this matter which led to the striking out of the claim.
2. The claimant was employed by the First Respondent and is, as I understand the situation, still an employee albeit on long-term sick leave. Her claim was brought in May 2018 against not only the First Respondent, but four individuals within its organisation. Looking at the claim form, it asserts that she was claiming age, race, disability and sex discrimination. Some specific reference is made in the narrative parts of the claim to possible sex and race discrimination, but not to age or disability discrimination, although the appropriate boxes suggesting such a claim were ticked.

3. Even so far as the claim for race and sex discrimination is concerned, the claim form is almost entirely devoid of particularity. Paragraph 8.2, where a claimant is directed to set out the “background and details of your claim” begins as follows:

“I, Debbie Allen, make a claim against [the four individual respondents are then named] for not protecting me against bullying, harassment and racist and sexist behaviours”

4. She then makes reference to a complaint made to the Metropolitan Police, to her health and to her family circumstances. She then continues:

“It took me ages to bring this claim because I was waiting to see if the behaviour would improve. Instead it continued with staff leaving banana skins and poo around the building and singing about it, staff shouting at me and throwing work at me. Staff calling children black poo poo so much has gone on I have internalised it and made myself ill.”

5. Paragraph 15 of the claim form offers a claimant the opportunity to “provide additional information about your claim”. There she refers again to a report made to the Metropolitan Police and identifies the nature of the claims made against each individual respondent. So far as each is concerned the claim is described as one of “victimisation, bullying, harassment, racist and sexist behaviour”. As regards two respondents further information is given. In respect of one she adds “including bullying me to withhold information from trustees of person living in a commercial building and putting others at risk by tampering with and carrying out unnotified works to the building”. In the other case the words “and failure to protect me and others from behaviours of the above” are added.
6. Unsurprisingly, the respondents complained of a lack of particularity, said to be so severe that they did not know the case that they had to meet. Eventually, a request for further and better particulars was sent to the claimant dated 18 October 2018. It is a typed document of some three and a half pages. I am satisfied (as were other employment judges who have looked at this matter) that it is a clear and properly focussed request for the information essential for a respondent to know in order to deal with the claim against it.
7. A first preliminary hearing took place on 2 January 2019 before Employment Judge Manley. The claimant applied for an adjournment on the basis of her health, but this was refused. She had provided a fit note, but it did not indicate that she was unable to attend a closed preliminary hearing. At that hearing an order was made that the claimant respond to the request for particulars by 28 February 2019. She did not do so. She was also ordered to provide medical evidence, she did not do so in the time limited, but subsequently did provide it.
8. The claimant was reminded by a letter from the tribunal of 4 May 2019 that she should provide the particulars which she had been ordered to provide.

The context in which that letter was written is not material. However, it is clear that the claimant was being given a further opportunity to particularise her case.

9. In the absence of any particulars, the respondents applied to strike out the claimant's case. In an email to the tribunal of 14 July 2019, the claimant explained her position as being someone who was unrepresented, seeking advice and trying to overcome the trauma of the respondents' discriminatory behaviour. Her email was accompanied by a document of a little over four typed pages entitled "claimant's attempt to set out matter for preliminary hearing". Some limited further particulars were given in that document. However, the document did not amount to a provision of the particulars requested (and ordered to be given). Rather, it raised some new matters, including new allegations of breaches of legal duties. It was largely unclear as to who had done what and when and, in particular, how this was said to amount to an act of (for example) direct discrimination, or victimisation, or harassment.
10. That was the state of play when the matter came before Employment Judge Hyams for a further preliminary hearing on 1 August 2019. The claimant attended that hearing. In answering questions from the Judge, she indicated that she wishes to amend her claim (but precisely how remained unclear) and she gave some very limited further particulars of the nature of her claim.
11. At that hearing she was ordered by no later than 4pm, Thursday 26 September 2019, to clarify her claims by giving the further and better particulars requested on 18 October 2018 and ordered to be provided by Judge Manley. The order went on to provide that if the particulars were not given by that date then the claim was to be automatically struck out.
12. In order to assist the claimant, because she said that a great deal of information was contained on her work computer, the respondents consented to an order giving her access to that computer. For that purpose, the claimant attended at the First Respondent's premises on 29 August, examined her computer and printed out copies of various documents.
13. No particulars were provided by 26 September 2019. Hence, as a consequence of Judge Hyams' order, the claim was struck out in its entirety.
14. At the preliminary hearing on 1 August, Judge Hyams had both listed the hearing (for 12 days in September 2021) and listed a further preliminary hearing on 18 November 2019 in order to give appropriate directions for the conduct of the case up to that final hearing. At this point in time no directions had been given because it was unclear what case the respondents had to meet. There was no list of issues. A list could not be produced on the available material.
15. Despite the claim having been struck out, the hearing fixed for 18 November 2019 was not vacated. On 15 November the claimant provided another document to the respondents and the tribunal which purported to give some particulars of her claim. The document is headed "Respondent's request for

further particulars of the claim”. I have carefully examined that document. It does add a little by way of factual particularity, but it does not provide an answer to the request for particulars. In particular, it failed to set out who did what and when and, consequently, on what basis that which was alleged was said to amount to an act of unlawful discrimination. I shall give only one example. The request in relation to the allegation of “staff...throwing work at me” was in these terms:

“Please give details of the occasions on which this allegedly occurred including the date, time, location and people involved, including names of any witnesses. Please name the staff concerned. Please state what type of discrimination is alleged and how this alleged behaviour amounts to discrimination towards the claimant.”

16. The answer given is as follows:

“Lowell Weir

Shouting at me.

Throwing work at me.

Making derogatory remarks about my hair style.

Raising a large complaint about is living accommodation when he actually was not living there, but using it as storage (attach pictures)”

17. I have considered carefully whether, even though that document (taken together with the other material to which I have referred above) fails to respond comprehensively to the request for further particulars, it might nevertheless be said that the claimant has particularised adequately some part of her case. I am satisfied that no part of the claimant’s case is adequately particularised.
18. The third preliminary hearing took place on 18 November 2019. The claimant failed to attend. She explained her failure to attend by reference to her daughter having just been sectioned due to her mental health and her own health condition. Employment Judge Allott would have adjourned the hearing on the basis of that explanation (contained in an email) but noted that, the case having been struck out, there was nothing which the hearing could have achieved in any event. However, he reminded the claimant in his order of the possibility of making an application to set aside the striking out of the case, pursuant to Rule 38(2), the text of which was reproduced in his order. The time period (14 days) for the making of such an application runs from the date that the notice was sent. It does not appear to me, having examined the file, that a specific notice was sent, given that the order of Judge Hyams had specifically provided that the claim would be automatically struck out in the event of non-compliance of the order for the production of particulars. Whether any time point might arise is not a matter on which I was addressed and I have proceeded on the basis that the application to which I refer below was made in time.
19. On 7 December 2019, the claimant sent to the tribunal by email what she described as a “Stage 1 complaint against Watford Employment Tribunal and appeal to reinstate [this case] at a London Court”.

20. The reference to a "London Court" is a reference to an application which had previously been made to transfer this matter to the London Central Employment Tribunal. The document accompanying that email is in the form of a notice of appeal to the Employment Appeal Tribunal. It refers (in very general terms) to five matters to which reference had previously been made by the claimant, but could not be said to be the provision of appropriate particulars in respect of any of them, furthermore, it certainly failed to provide the particulars previously ordered. It went on to suggest that the claimant was suffering from depression and so was unable to provide copies of the various documents which the Employment Appeal Tribunal requires should accompany any notice of appeal. The grounds of appeal raised various points (including the ethnicity of the Judge who had made the strike out order) but did not supply any further particulars of the claim.
21. That document was put before Employment Judge Hyams who decided that it should be treated as an application under Rule 38(2) and he ordered that the parties should make written representations in respect of the application by 17 January 2019.
22. The respondents submitted a detailed document to the tribunal on 19 January (an extension of time was granted by Judge Hyams, because the short delay was satisfactorily explained). In essence, it pointed out that whilst the claimant might wish to have her claim reinstated, she had still failed to provide the appropriate particulars and had not explained in any sufficient way why she had so failed.
23. On 22 January the claimant sent an email to the employment tribunal and noting that she was still signed off from work and attending counselling, had recently lost her paternal aunt and the aunt's daughter and asked to put back the matter until "we bury my cousin". That email went on to repeat some of the very general particulars previously given.
24. Consequent upon the receipt of those documents Employment Judge Hyams decided that the claimant's application ought to be determined at an oral hearing, rather than on paper. Hence, he ordered today's hearing to take place.
25. Late in the afternoon of 12 March the claimant emailed the tribunal enquiring as to whether the hearing was to go ahead in circumstances of the coronal virus outbreak. She was informed that the hearing was to go ahead.
26. At 9:09 on 13 March 2020 (the day of the hearing) the claimant sent a two-page email to the tribunal, accompanied by a number of other emails from other individuals which were said to support her claim. She asked for the hearing today to be "put on stay" because "I have tight chest and too much anxiety to attend today."
27. The email of 13 March makes a number of new factual allegations, in the sense that they appear neither in the claim form, nor in any of the other

documents to which I have previously referred. It also repeats various complaints about the way in which the case has been conducted (both by the tribunal and by the respondents) and repeats certain matters which the claimant had already asserted. The accompanying documents do not themselves provide any greater degree of particularity of the claimant's case than her own documents, to which I have referred above. They do raise additional matters, but it is not clear whether these are matters upon which the claimant might wish to rely, other than by way of supportive background. By way of example, one individual says in an email that "Stuart [which I take to be a reference to the fifth respondent] and I had good relationship but sometimes he would make racist jokes". Another individual recounts a series of incidents (they appear to be four in number but the numbering is inconsistent). What occurred appears to have concerned the writer, but the relationship to the claimant is uncertain, as is whether it is said that the behaviour is discriminatory in some unlawful way. By way of example this writer notes: "The last two points was that during a youth session Stuart [again, I take this to be the fifth respondent] was joking with a young person and the young black male jokingly said, "black lives matter" and Stuart replied, "all lives matter". I was very shocked..."

28. Again, I have carefully considered whether, if I was to take that documentation together with the other documentation to which I have referred, it could be said that the claimant has adequately particularised some part of her claim against one or more of the respondents. I do not believe this to be the case. Indeed, I consider that each successive document from the claimant has added to, rather than helped resolve, the overall confusion in this case. No respondent (whether the First Respondent or any of the individual respondents) can know the case made against them in sufficient detail in order to be able to answer it. Furthermore, as it is wholly unclear when any of these events are said to have taken place, it is unclear whether this claim was presented within the primary limitation period.
29. I now turn to the claimant's application to adjourn today's hearing. In this context I have reminded myself of what was said by his Honour Judge Hand QC in Leeks v Norfolk and Norwich University Hospitals NHS Foundation Trust [2018] ICR 1257. The head note adequately summarises the proposition in question. As it notes, a party asserting that illness precluded compliance with an order or necessitated an adjournment bears the burden of adducing clear independent and cogent medical evidence in support. The claimant has not produced any medical evidence to suggest that she is unable either to provide the particulars required, or to attend today. I accept that fit notes submitted to the First Respondent do not extend beyond an absence to the end of August 2019. The claimant's absence is not covered by any subsequent fit note. I do not consider that a statement that the claimant has a "tight chest and too much anxiety" provides an adequate explanation for her non-attendance. Furthermore, I note that it would seem to follow from her email of 12 March that she was then intending to attend. Certainly, she was not then asserting that her health would prevent her attendance. Furthermore, I note that the claimant has, over the period of time since the first order made in January 2019, submitted various

documents to the tribunal (some of which I have referred to above) which cast doubt upon any assertion that she is incapable, because of her state of health, to produce the particulars required. Indeed, she was clearly well enough to produce the detailed email and its attachments which were sent to the tribunal on the morning of 13 March.

30. In those circumstances I decline to adjourn the hearing today. I have proceeded to hear the matter relying, so far as the claimant is concerned, upon the material to which I have already referred.
31. Looking at that material, it is quite clear to me that no sufficient particulars have been provided to enable any part of this claim to proceed further. In the absence of an adequate explanation for the non-provision of those particulars over the period from 2 January 2019 to today, I am of the view that that is fatal so far as the claimant's application to set aside the striking out of her claim is concerned. She has not explained to my satisfaction that she is and previously has been unable to particularise her case in accordance with the order because of her medical condition. She was able to correspond with the tribunal and give the very limited particulars referred to above. In all the circumstances (particularly having regard to the lack of any medical evidence) I am not satisfied that her failure properly to particularise her case in accordance with the various orders can be excused by reference to her medical condition.
32. In all of those circumstances this application under Rule 38(2) fails and the claim remains struck out in its entirety. The hearing dates in September 2021 will, as a consequence, be vacated.

10 April 2020

Employment Judge Andrew Clarke QC

Date:

Sent to the parties on: 23 April 2020

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For the Tribunal Office