



EMPLOYMENT TRIBUNALS

Claimant: Mr N Valley

Respondent: HSBC Bank Plc

PRELIMINARY HEARING

Heard at: Leicester (in public)

On: 4 May 2021

Before: Employment Judge Camp

Appearances

For the claimant: in person

For the respondent: Mr A Ohringer, counsel

JUDGMENT & DEPOSIT ORDER

- (1) By consent, all complaints (including all harassment, victimisation, race discrimination, direct discrimination and reasonable adjustments complaints) apart from the following are dismissed upon withdrawal, in accordance with rules 51 and 52 of the Rules of Procedure:
 - a. unfair dismissal under section 98 of the Employment Rights Act 1996;
 - b. 3 complaints of unfavourable treatment because of something arising in consequence of disability under section 15 of the Equality Act 2010 ("EQA"), respectively about the following treatment –
 - (i) the claimant's suspension on 26 February 2020;
 - (ii) his dismissal with effect on 26 March 2020;
 - (iii) the failure to uphold his appeal against dismissal in April 2020.
- (2) The above complaint about the claimant's suspension has no reasonable prospects of success and is struck out pursuant to rule 37 of the Rules of Procedure.
- (3) The above complaints of unfair dismissal and of disability discrimination under EQA section 15 about dismissal and the appeal against dismissal have little reasonable prospects of success. The claimant is ORDERED to pay a deposit of **£50** by **25 May 2021** as a condition of being permitted to continue to advance

those complaints, in accordance with rule 39 of the Rules of Procedure. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

- (4) Full reasons for the above decisions were given orally at the hearing. Written reasons will not be provided unless they are asked for by any party by a written request made within 14 days of the sending of the written record of the decision.
- (5) In accordance with rule 39(3), these are, in summary, the reasons for making the deposit order.
 - a. In relation to unfair dismissal, the claimant has no procedural arguments with any real prospects of success. Unfair dismissal and disability discrimination will in practice stand and fall together, on the basis of the reasonableness of the respondent's decision to dismiss notwithstanding the possibility that the claimant committed the misconduct for which he was dismissed in consequence of his disability of depression and anxiety.
 - b. The claimant substantially admitted and admits the 5 allegations of misconduct for which he was dismissed. On any sensible view, the 5 allegations taken together amounted to serious misconduct and, absent any suggestion of disability discrimination, it would almost certainly have been within the band of reasonable responses to dismiss.
 - c. In relation to disability discrimination, the respondent is highly likely to succeed in showing that dismissal was a proportionate means of achieving a legitimate aim under EQA section 15(1)(b), on the basis that it could not reasonably be expected to tolerate someone in the claimant's role behaving in the way the claimant admitted he had behaved, whether that behaviour was a consequence of disability or not.
 - d. To win on disability discrimination, the claimant would also have to prove a causal link between his misconduct and his disability. That is going to be a hard thing to do – although a deposit order would not have been made on this basis alone.

CASE MANAGEMENT ORDERS

1. The claimant must email the Tribunal and the respondent's representatives by **26 May 2021** to confirm whether or not the deposit has been paid.
2. The following case management orders will take effect if the claimant pays the deposit on time.
3. The time estimate for the final hearing is increased to 4 days and it will now take place from **29 November 2021 to 2 December 2021**.

4. The case management orders set out in the second page of the “*Notice of a Claim*” dated 4 June 2020 are amended with new dates as follows:
 - 4.1 the date for the statement of remedy is now **7 June 2021**;
 - 4.2 the date for lists of documents is now **28 June 2021**;
 - 4.3 the date for the respondent to provide a hard and electronic copy of the file to the claimant is now **26 July 2021**;
 - 4.4 the date for exchange of witness statements (including a statement from the claimant himself) is now **6 September 2021**.

About these orders

5. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
6. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

7. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

8. All judgments and any written 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 claimants and respondents.
9. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
10. The Employment Tribunals Rules of Procedure are here:
www.gov.uk/government/publications/employment-tribunal-procedure-rules
11. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:
www.gov.uk/appeal-employment-appeal-tribunal

4 May 2021

EMPLOYMENT JUDGE CAMP

SENT TO THE PARTIES ON

7 May 2021

.....

.....

FOR THE TRIBUNAL OFFICE

NOTE ACCOMPANYING DEPOSIT ORDER

Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.

2. If that party persists in advancing that complaint or response, a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the complaint or response to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.

5. If the deposit is not paid within that time, the complaint or response to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation or argument against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

- 7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.
- 8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.
- 9. Payment must be made to the address on the tear-off slip below.
- 10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

- 11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.
- 12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 976 3033. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

DEPOSIT ORDER

To: HMCTS Finance Support Centre
Temple Quay House
2 The Square
Bristol
BS1 6DG

Case Number _____

Name of party _____

I enclose a cheque/postal order (delete as appropriate) for £_____

Please write the Case Number on the back of the cheque or postal order