



EMPLOYMENT TRIBUNALS

Claimant
Ms C Diavita

v

Respondent
Baker Hughes Ltd

PRELIMINARY HEARING

London Central: remote hearing by video

On: 22 July 2020

Before: Employment Judge Goodman

Appearances

For the Claimant: Ms L. Davies, solicitor

For the Respondent: Ms O. Dobbie, counsel

JUDGMENT

1. The claims against the second, third and fourth respondents are dismissed on withdrawal.
2. Claims of detriment and dismissal because of protected disclosures 1-9 on the grounds of claim are dismissed on withdrawal.
3. Claims for detriments occurring before March 2017 are dismissed on withdrawal.

CASE MANAGEMENT SUMMARY

Issues

1. There have been constructive discussions between the parties to narrow and refine the issues. As noted above, the claimant withdraws her claims against the individual respondents, leaving the employer only. She no longer pursues the disclosures numbered 1-9, leaving 10-22 for determination. She withdraws claims for detriments before March 2017.
2. There is now a table of disclosures setting out what information was disclosed and the basis on which protection is claimed. Two matters arise from the table of disclosures.
 - 2.1 First, disclosure 17, has been widened to include disclosure not just to Mr Boateng's legal team but also to the claimant's own. The latter is new. This

concerns the scope of section 43D. The claimant is required to apply to amend in respect of this addition. That will be decided at the preliminary hearing.

2.2 Second, disclosure 20 refers to “policies”. It was clarified today that these are HSE Emergency Elements documents, and there are 10 of them. The claimant must extract the passages containing the information relied on as a protected disclosure. She is ordered to do so as soon as possible and **no later than 31 July 2020**.

3. There will be an **Open Preliminary Hearing on 13 August (one day, remote)** to decide:

3.1 Whether claims based on protected disclosures 10,11,17 and 20 have little (order 39) or no (order 37) prospect of success in establishing as a matter of law that they are capable of qualifying for protection.

3.2 Whether the matter pleaded as protected disclosure 18 has little or no prospect of being found a protected act in a victimisation claim.

3.3 Whether reference to a matter in paragraph 52 of the grounds of claim for which privilege is asserted should be struck out.

3.4 The claimant’s application to amend paragraph 42 to plead that the disclosure of documents to Mr Boateng’s legal team was also a disclosure to her own legal team.

Preparation for Preliminary Hearing

4. The hearing bundle for the preliminary hearing must be finalised by 31 July.
5. If either party proposes to use a written witness statement at the preliminary hearing (which will not hear live evidence) that must be sent to the other party no later than 3 August 2020.
6. The respondent is send the tribunal a pdf bundle for the hearing by Monday 10 August, marked in the subject line with the case number and hearing date.

Final hearing

7. The reduction in claims and issues means the last two days of the final hearing in February are deleted, to an 8 day hearing.
8. Case management for the final hearing is postponed to 13 August.
9. The parties are to agree the final form list of issues 14 days are being sent the judgment on the [preliminary hearing issues].

Judicial mediation

10. The parties wished to explore judicial mediation. A remote mediation is listed for **25 September** and instructions for joining will be sent a few days before. If either side does not wish to proceed it is helpful to notify the tribunal in the next 14 days so the date can be released.

11. The parties are directed:

- 11.1 to provide a small pdf. bundle comprising the pleadings, list of issues, table of disclosures, case management orders, schedule of loss and counterschedule, and any documents essential to the mediating judge's understanding of the issues, at least 24 hours before the mediation.
- 11.2 To make sure a decision maker for each side participates in the mediation
- 11.3 To ensure that contact details for an identified ACAS conciliation officer are available on the day
- 11.4 Respondent to send the claimant a draft settlement agreement a week before, with a view to discussing the form of the agreement should a settlement be reached in principle.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Goodman

Date: 22nd July 2020

JUDGMENT and SUMMARY SENT to the PARTIES ON

.22/07/2020

FOR THE TRIBUNAL OFFICE