

THE INDUSTRIAL TRIBUNALS

CASE REF: 367/14

CLAIMANT: Philip Thomas

RESPONDENT: Belfast Health and Social Care Trust

DECISION ON A PRE-HEARING REVIEW

Constitution of Tribunal:

Employment Judge (sitting alone): Employment Judge McCaffrey

Appearances:

The claimant was represented by Mr Michael Potter, Barrister-at-Law, instructed by Thompsons NI Solicitors.

The respondents were represented by Mr Connor Hamill, Barrister-at-Law, instructed by Mrs Eadaoin Ward of the Directorate of Legal Services.

1. The issues before me in connection with this pre-hearing review were
 - (1) To consider the claimant's proposed amendments to the ET1 form as set out in his representative's letter of 10 September 2014.
 - (2) To consider the joining of Mr Steve Cooke and Mr Roy McConnell as additional respondents to this claim.
2. Having heard the submissions of both parties and taking into account the arguments made by their representatives and in particular
 - (1) The content of the claimant's solicitor's letter of application to amend the proceedings and to join additional respondents dated 10 September 2014 and
 - (2) The points made by the respondents' solicitor in her email of 16 September 2014,

I considered it appropriate to join Mr Steve Cooke and Mr Roy McConnell as respondents to this claim under Rule 10(2)(j) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 (“the 2005 Rules”) and to permit the claimant to amend paragraph 7.4 of his claim as set out in his solicitor’s letter of 14 September 2014 under Rule 10(2)(p) of the rules. I do so with some hesitation and conscious that the evidence in relation to all matters regarding these claims will be tested at the full hearing of the matter. However I am of the view that these additional respondents may properly be considered as individual respondents to the claim. It will be a matter of evidence as to whether they made all of their comments and contributions in this matter in the course of their employment and whether they have any individual responsibility or liability towards the claimant or not. In the circumstances I am satisfied that there is no undue hardship to the respondents in them being joined and that the timing and manner of the application is appropriate, given that it was made reasonably promptly after the claimant became aware of the identity of the individuals concerned. I order that Mr Steve Cooke and Mr Roy McConnell shall be joined as respondents to this claim, and that the claimant is permitted to amend his claim form as set out in the letter of 14 September 2014.

3. Having made the parties aware of this ruling I moved to consider any revision to the timetable for a hearing. The case is currently listed for hearing on 10-18 November 2014. This will not now be feasible, and I order that these dates shall be vacated.
4. The parties have considered and agreed amended legal and factual issues, a copy of which is attached to this decision and record of proceedings.
5. The claimant is to provide an amended claim form which shall be lodged in the Office of the Tribunals by 5.00 pm on 20 October 2014 and Mr O’Neill undertook to ensure that this was done.
6. In light of this and that the claim forms would need to be served on the new respondents who have been joined, I directed that any request for Additional Information and Discovery which any party wished to serve on the other should be served by 12 December 2014 and that replies should be furnished by 16 January 2015.
7. I directed that the claimant and any witnesses he wishes to call must provide a witness statement to the respondents’ representatives by 5.00 pm on 30 January 2015. The respondents and any witnesses they wish to call must provide a witness statement to the claimant’s representative by 20 February 2015.
8. The parties are reminded of the directions in relation to witness statements set out in the record of proceedings of the Case Management Discussion held on 3 July 2014. The parties confirmed that the word limit of 5000 words was sufficient and appropriate.
9. Mr Potter confirmed that this case was essentially a victimisation claim and the claimant would cover issues relating to injury to feelings and alleged loss of opportunity in his witness statement.

Bundles

10. An agreed bundle of all relevant documents along with three copies of a separate folder containing witness statements must be lodged in the Office of the Tribunals by 1.00 pm on 20 March 2015. Any documents referred to in the witness statements must be identified by page number in the bundle. Three further sets of the bundle and the witness statement folder must be brought to the Office of the Tribunals not later than 9.30 am on the first day of the hearing:-
 - (a) the bundle must contain only those documents which are necessary for the tribunal to hear and determine the claim. The bundle is not meant to contain all documentation which has been disclosed between the parties, documents should appear only once in the bundle;
 - (b) the bundle must contain a detailed index and each page in the bundle must be clearly and consecutively numbered;
 - (c) each document must appear in chronological sequence;
 - (d) the bundle may not without the consent of the tribunal contain more than 250 pages.

Date of the Hearing

11. The hearing will be from 23-27 March 2015. The parties indicated that they would need to confirm these dates with their witnesses. I ordered that if there was any difficulty with these dates, the parties shall agree alternative dates and notify the Office of the Tribunals of the agreed alternative dates within seven days of the date of this Case Management Discussion.
12. The tribunal will read the witness statements between 10.00 am and 12 noon on the first day of hearing and the substantive hearing will commence at 1.00 pm. The parties and witnesses must be in attendance at that point.
13. Parties and their representatives should note that if any matter arise which require further direction or order by the tribunal, they should immediately notify the Office of the Tribunals of that matter so that a Case Management Discussion can be arranged.

Employment Judge:

Date and place of hearing: 20 October 2014, Belfast.

Date decision recorded in register and issued to parties:

OFFICE OF THE INDUSTRIAL TRIBUNALS
& FAIR EMPLOYMENT TRIBUNAL

Case Reference Number: 367/14 IT

BETWEEN

Dr. Philip Thomas

Claimant

-and-

Belfast Health & Social Care Trust

First Respondent

Steve Cooke

Second Respondent

Roy McConnell

Third Respondent

DRAFT STATEMENT OF ISSUES

The parties reserve the right to amend this Statement of Issues upon receipt of replies to Notices for Discovery and Notices for Additional Information.

FACTUAL ISSUES

1. What was the reason for the First Respondent stating in their letter of 11 December 2013 to the Claimant that he could not return to clinical practice in Neurosurgery in Belfast?
2. Exactly when and by what process did the First Respondent arrive at the conclusion that the Claimant could not return to clinical practice in Neurosurgery in Belfast?
3. What persons, including the Second and Third Respondents, were involved in and/or influenced the decision of the First Respondent that the Claimant could not return to clinical practice in Neurosurgery in Belfast and what was the nature and extent of any such involvement and/or influence by each such person involved?

4. To what extent, if any, did the outcome of the investigation under Maintaining High Professional Standards in the Modern IIPSS (MHPS) influence the decision of the First Respondent that the Claimant could not return to clinical practice in Neurosurgery in Belfast? If so, how?
5. To what extent, if any, did the outcome of the Assessment of the Claimant by the General Medical Council influence the decision of the First Respondent that the Claimant could not return to clinical practice in Neurosurgery in Belfast? If so, how?
6. To what extent, if any, did the ongoing discussion and correspondence between the Claimant and the First Respondent and NCAS about his proposed return to clinical practice and related discussions within the First Respondent's staff influence the decision of the First Respondent that the Claimant could not return to clinical practice in Neurosurgery in Belfast? If so, how?
7. To what extent, if any, did the Claimant's actions in pursuing grievances and claims of race discrimination against the First Respondent and its staff, including the Second and Third Respondents, influence the First Respondent and/or particular members of the First Respondent's staff, including the Second and Third Respondents, in relation to the decision of the First Respondent that the Claimant could not return to clinical practice in Neurosurgery in Belfast? If so, how?

LEGAL ISSUES

(A) ALLEGED DISCRIMINATION

1. Was the Claimant subjected to Victimisation by the First Respondent contrary to Article 4 of the Race Relations (Northern Ireland) Order 1997 by way of its decision of on or about 11 December 2013 that he could not return to clinical practice in Neurosurgery in Belfast?
2. Was the Claimant subjected to Victimisation by the Second and Third Respondents contrary to Article 4 of the Race Relations (Northern Ireland) Order 1997 by way of the statements they each provided to the First Respondent at meetings of 2 October 2013 and 4 October respectively?
3. What is the protected act/s relied upon by the Claimant in relation to his claim of Victimisation?

(B) BURDEN OF PROOF

4. Pursuant to Article 52A of the Race Relations (Northern Ireland) Order 1997, can the Claimant prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that each of the Respondents acted in a way which is unlawful under the of the Article 4 of the Race Relations (Northern Ireland) Order 1997. If so, can each of the Respondents prove that it did not commit an unlawful act?

(C) REMEDY

5. In the event that liability is established against the Respondents or any of them, what is the appropriate remedy? Remedy may include the following:
 - (i) Declaration;
 - (ii) Recommendation;
 - (iii) Loss of earnings;
 - (iv) Injury to feelings;
 - (v) Interest on any award.

20 October 2014