



Case Number: 2300775.2017

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr M Okoruwa

Respondent

1. London Borough of Bromley
2. Mr M Wilson
3. Mr J Reay

and

Held at Ashford on 29 September 2017

Representation

Claimant:

In Person

Respondent:

Ms S Keogh, Counsel

Employment Judge Kurrein

JUDGMENT

The Claimant's claims have no reasonable prospect of success and are struck out pursuant to Rule 37(1)(a) Employment Tribunal Rules of Procedure 2013.

REASONS

- 1 At a preliminary hearing on the 8 May 2017 I directed the Claimant to provide further particulars of his claim because it was difficult to understand the basis on which it was advanced.
- 2 Unfortunately the Particulars that were provided did not clarify matters but further obfuscated the nature of the claims.
- 3 At an Open Preliminary Hearing on 5 July 2017 EJ Corrigan clarified the facts on which the claims for direct race discrimination and race discriminatory harassment were based. Save for the identities of any comparators they incidents were in identical terms, as follows:-
 - 1 On 27 July 2016 the Claimant was invited to interview for a twelve month position which was then reduced to five months in the interview, then the Claimant was only offered a three month contract;
 - 2 Mr Matt Wilson told the Claimant to stop attending the weekly Tuesday Project Team Meetings in September 2016;
 - 3 On 7 October 2016 Matt Wilson asked the Claimant not to get involved with the project team any more;

4 On 14 October 2016 the Claimant was excluded from a meeting with the Project Board for a demo of the application the Claimant developed.

5 The Claimant having been invited to a meeting on 21 November 2016 and to reattend Tuesday Project meetings from 22 November 2016 due to Mr Wilson's absence for an appendix operation, Mr Wilson returned to work earlier than expected on 21 November 2016 and cancelled the meeting on 21 November 2016 and excluded the Claimant from the Tuesday meeting once again;.

6 On 24 November 2017 the Claimant was informed there was no budget and his contract (which had been renewed for five weeks) would end at the end of the five week period (the Claimant relies on another agency worker,.

7 On 29 November 2017 the Claimant was asked to handover in just one hour to someone who had not been involved in the project before.

4 EJ Corrigan also listed an OPH at which out of time, strike-out and deposits were to be considered. It has come before me today.

5 I have considered the skeleton argument of the Respondent, the documents I was referred to and the submissions of both parties.

6 I accept that it is only in the clearest cases that I should exercise the power to strike out a claim at this stage. This is, on my part, an exceptional decision. I have had regard to the decisions in Anyanwu v. South Bank Students Union [2001] 1WLR 638 and Ezias v. North Glamorgan NHS Trust [2007] ICR 1126.

7 I make the following findings in respect of each claim in turn.

Claim 1

On 27 July 2016 the Claimant was invited to interview for a twelve month position which was then reduced to five months in the interview, then the Claimant was only offered a three month contract;

8 I accepted that the agency used by the Claimant informed him that there was a 12 month contract on offer. In light of the papers before me, however, it is clear that:-

8.1 All the Respondent's paperwork, including that sent to the agency on 28 June 2016, contemplated a 5 month contract.

8.2 A different contract with the Respondent for a 12 month role was also with the agency at the same time.

8.3 The agency sent the Respondent a copy of the Claimant's CV on 22 July 2016 which specifically referred to a 5 month contract.

8.4 The interview notes show that a total term of 4 months was discussed. The Claimant accepts that he was told at interview that realistically the role would last for 4 months, which it did.

8.5 On 28 July 2016 the agency confirmed to the Claimant he had been successful for a 12 week initial period, which was later extended by a further 5 weeks.

- 9 The Claimant has been quite unable to suggest to me any basis on which a finding of less favourable treatment might be made, far less a basis to support that any such could be because of race.
- 10 The Claimant's previous assertion, omitted from his Particulars, that the Respondent wanted him out of the project as soon as possible is contradicted by the fact that the same people appointed him as are now alleged to want to remove him, and were very complimentary of his abilities.
- 11 The above matters are highly likely to be established in evidence at any hearing. The documentary evidence (as to which also see below) is entirely supportive of the Respondent's position, and in my view fatally undermines that of the Claimant.
- 12 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-
- 12.1 there was a difference in treatment; or
- 12.2 such a difference in treatment could have been because of race.
- 13 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.
- 14 This claim has no reasonable prospect of success and must be struck out.

Claim 2

- Mr Matt Wilson told the Claimant to stop attending the weekly Tuesday Project Team Meetings in September 2016;
- 15 The documentary evidence in respect of this claim shows:-
- 15.1 The Claimant was invited to and attended Tuesday Project Management Meetings until at least 11 October 2016.
- 15.2 The Claimant's assertion that he resigned on 30 September 2016 in response to being excluded from the Tuesday meetings cannot be correct.
- 15.3 He was also invited to and attended Thursday and, later, Friday Project Meetings.
- 16 The Respondent accepts that the Claimant was not invited to the Tuesday Project Management Meetings at a later stage, and full explanations for this were given in the course of investigating the grievance raised by the Claimant:-
- 16.1 The meetings were at Management level and were no longer dealing with matters in which the Claimant was involved.
- 16.2 The Claimant had previously misinterpreted hypothetical suggestion raised in such meetings as concrete proposals, and been diverted from his core duties in seeking to implement them.
- 17 In light of the above, the Claimant's assertion that the Respondent was seeking to "segregate" him is most unlikely to be made out as he continued to attend meetings on other days.

- 18 I consider the Claimant chosen comparators to be most unlikely to be appropriate because:-
- 18.1 Mr Gullick was a very long term (years) temp engaged as a Carbon Management Officer with specific responsibility for data cleansing. There is no similarity between his position and that of the Claimant.
- 18.2 His other comparators are employee members of Management. Again, there is no similarity.
- 19 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-
- 19.1 there was a difference in treatment; or
- 19.2 such a difference in treatment could have been because of, or related to, race.
- 20 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.
- 21 This claim has no reasonable prospect of success and must be struck out.

Claim 3

- On 7 October 2016 Matt Wilson asked the Claimant not to get involved with the project team anymore;
- 22 I accepted the Respondent's submission that this was demonstrably untrue due to the Claimant's continued work on the project and attendance at Thursday and Friday meetings.
- 23 This is the Claimant's interpretation of the reason given to him when he was asked not to attend the Tuesday meetings, for the reasons set out above. The Claimant was given a list of specific tasks he was to undertake to ensure he did not go off track.
- 24 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-
- 24.1 there was a difference in treatment; or
- 24.2 such a difference in treatment could have been because of, or related to, race.
- 25 This claim has no reasonable prospect of success and must be struck out.

Claim 4

- On 14 October 2016 the Claimant was excluded from a meeting with the Project Board for a demo of the application the Claimant developed.
- 26 The documentation is clear: this was a meeting of the Project Board, of which the Claimant had never been a member.
- 27 Mr Gullick, the Claimant's chosen comparator was not invited or present either.

- 28 Immediately following this meeting the Claimant was given very positive feedback on the work he had undertaken on the project.
- 29 Against that background I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-
- 29.1 there was a difference in treatment; or
- 29.2 such a difference in treatment could have been because of, or related to, race.
- 30 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.
- 31 This claim has no reasonable prospect of success and must be struck out.

Claim 5

- The Claimant having been invited to a meeting on 21 November 2016 and to reattend Tuesday Project meetings from 22 November 2016 due to Mr Wilson's absence for an appendix operation, Mr Wilson returned to work earlier than expected on 21 November 2016 and cancelled the meeting on 21 November 2016 and excluded the Claimant from the Tuesday meeting once again;.
- 32 It is the Claimant's case that the following documents were "made up":-
- 32.1 Mr Wilson's email of 17 November in which he stated he was working at home because of abdominal pain which his GP had advised him he should keep an eye on.
- 32.2 A hospital discharge form recording that Mr Wilson had been admitted on 18 November with suspected acute appendicitis and later discharged when a scan did not reveal a problem.
- 32.3 An email sent by Mr Reay on the morning of 18 November to a long list of staff informing them of Mr Wilson's admission to hospital
- 33 It would therefore seem to also be his case that Mr Wilson's ability to return to work, so that the planned meeting with Mr Baillie on 21 November to access the application, which was not a "Board" or "Project" meeting, was cancelled is also alleged to be somehow false.
- 34 In this context it is relevant to note that many of the documents seen by the Claimant at this hearing which undermined his case were not accepted by him. He said he could not accept them unless they were "verified" in some way.
- 35 Again, in this context, the Claimant denied that he had refused to accept emails and require "screen shots" of them for verification purposes, but the Respondent produced a email from the Claimant precisely to that effect.
- 36 I took the view that these allegations were so outlandish as to be fatal to the Claimant's credibility on any issue regarding documentary evidence produced by the Respondent. They also undermined his general credibility.

37 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-

37.1 there was a difference in treatment; or

37.2 such a difference in treatment could have been because of, or related to, race.

38 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.

39 This claim has no reasonable prospect of success and must be struck out.

Claim 6

On 24 November 2017 the Claimant was informed there was no budget and his contract (which had been renewed for five weeks) would end at the end of the five week period.

40 It is clear from all the documentation that the Claimant was aware from the start of his engagement that it was for a limited period. It was extended for 5 weeks.

41 It is clear that he was aware of the approaching end at least as early as 22 November when he emailed with the subject "My goal to end of contract on Friday 2nd Nov 2016" and set out that part of his intentions were to complete items of documentation and make modifications.

42 It is also clear from the grievance documentation that there were budget restrictions at this time that adversely affected the Claimant's post.

43 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-

43.1 there was a difference in treatment; or

43.2 such a difference in treatment could have been because of, or related to, race.

44 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.

45 This claim has no reasonable prospect of success and must be struck out.

Claim 7

On 29 November 2017 the Claimant was asked to handover in just one hour to someone who had not been involved in the project before.

46 The Claimant originally alleged that this time limit was imposed so as to set him up to fail. He gives no explanation as to why the Respondent would wish the project or part of it to fail. There has been no criticism of the work carried out by the Claimant, quite the opposite.

47 The Claimant has not repeated that assertion in his Particulars.

48 It is also clear from the interview that took place that the Claimant was informed he would have to hand over to an employed Developer at the conclusion of his engagement.

- 49 In the event the Claimant went of sick and did not handover save to provide substantial documentation shortly before this.
- 50 I have concluded that the Claimant has no reasonable prospect of adducing evidence from which a Tribunal might conclude that:-
- 50.1 there was a difference in treatment; or
- 50.2 such a difference in treatment could have been because of, or related to, race.
- 51 I also have difficulty in understanding the basis on which this alleged conduct could, objectively, give rise to a claim alleging harassment related to race.
- 52 This claim has no reasonable prospect of success and must be struck out.

Employment Judge Kurrein

4 October 2017