



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr G Vincent

And

Citizens Advice Elmbridge (West)

PRELIMINARY HEARING

Preliminary Hearing held at the Employment Tribunals, Montague Court, 101 London Road, West Croydon, Surrey, CR0 2RF on 13 December 2016

Representation

Claimant:

In person

Respondents:

Mr M Hallen, Solicitor

Employment Judge Harrington

JUDGMENT

1. The Claimant is permitted to amend his claim to include a complaint relating to an incident on 23 March 2016 which he alleges amounted to direct race discrimination, direct sex discrimination and harassment on the grounds of race or sex .
2. The Respondent's application for a deposit order is unsuccessful.

REASONS

1. The Claimant was employed from 1 January 2016 until 29 April 2016 as an Advice Session Supervisor. The Claimant brings claims of race discrimination, sex discrimination and harassment.
2. At the Preliminary Hearing, a considerable amount of time was spent defining the issues with both parties. In addition, the Tribunal was required to consider two applications: an application from the Claimant to amend his claim to add an additional allegation about an alleged incident on 23 March 2016 and the Respondent's application for a deposit order.

Application to Amend Claim

3. The Claimant made an application to amend his claim to add an additional complaint set out in a one page document referring to an incident on 23 March 2016. The Respondent objected to this application.
4. In considering the matter, I read the additional complaint in detail. I also reminded myself that regard must be had to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it. I must carry out a careful balancing exercise of all of the relevant factors, having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment. Relevant guidance is set out in the Presidential Guidance on Amendments to the Claim and Response issued under the provisions of Rule 7 of the first schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013.
5. The Claimant sought to amend his claim by the addition of entirely new factual allegations. In essence the Claimant brought a new complaint of direct race discrimination, direct sex discrimination and harassment.
6. I took into account the fact that the complaint was out of time and therefore whether the time limit should be extended to allow the new complaint to proceed. I noted the timing and manner of the Claimant's application. The Claimant told me that the new complaint did not form part of his ET1 or the further information provided pursuant to EJ Baron's order because he felt unable to present the complaint without documentary evidence in support of his allegations. He felt the complaint was of such a nature that it would be inappropriate to complain without ensuring he had evidence to support his assertions. He has lately found the memorandum identified in the complaint and had that with him at the hearing.
7. For the Respondent, Mr Hallan queried why the Claimant had been unable to plead the complaint at an earlier time particularly when he had been given two opportunities to set out his case. Mr Hallan submitted that, taking account of the nature of the allegation, it must surely have been at the forefront of the Claimant's mind and that the Claimant's explanation of wanting to ensure he had documentary evidence in support of his allegation did not seem to have applied to other complaints which the Claimant had previously detailed in the ET1 and further particulars.
8. In my judgment, it was appropriate to allow the additional claim which is complained of as direct sex discrimination, direct race discrimination and harassment. I decided to exercise my discretion to allow the Claimant's amendment taking into account the test for extending time limits in the case is the just and equitable formula.

9. I particularly took note of the early stage these proceedings have reached and I considered that the balance of prejudice in the case was in favour of allowing the amendment. I was not satisfied that the Respondent suffered a greater prejudice if I allowed the claim to continue as compared to the Claimant if I did not allow the claim to proceed.

Application for Deposit Order

10. The second application was made by the Respondent for deposit orders in respect of the entirety of the Claimant's claims of direct race discrimination, direct sex discrimination and harassment.
11. Mr Hallan on behalf of the Respondent referred me to the ET3 and in particular, paragraphs 13, 14 and 15. It was submitted that the claims were undermined by the fact that the Claimant did not raise a grievance after the meeting on 22 April 2016. He did not complain of harassment or discrimination prior to bringing this claim. Further, to the contrary, the Claimant wrote letters on 22 and 25 April 2016 thanking the Respondent and referring to his positive experience working for the Respondent.
12. The Claimant told me that he was extremely reluctant to bring a claim of discrimination and that is why he initially brought a separate tribunal claim for unpaid wages and holiday pay in which he made no reference to the detailed allegations set out before me today. He also refers to his professionalism to explain the lack of a grievance and the contemporaneous correspondence from him which was broadly positive in its content and tone.
13. For the purposes of Rule 39 I have to consider whether any specific allegation or argument in the Claimant's claim has little reasonable prospect of success and I must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response (Van Rensburg v Royal Borough of Kingston Upon Thames [2007] All ER (D) 187, EAT).
14. I specifically asked the Claimant to address three allegations which he had outlined at the commencement of the hearing, as follows:
- 14.1 In March 2016 Ms Mein instructed the Claimant to deny a client with mental health issues a service namely advice in respect of that client's medical treatment he was receiving.
- 14.2 In April 2016 Ms Mein instructed the Claimant to advise a client who had been accused of domestic violence by his wife and not to advise the wife.
- 14.3 During March and April 2016 the Claimant was instructed by Ms Mein not to work directly on 3 – 4 cases including the domestic violence case referred to at paragraph 14.2 above.

15. When asked to address those matters, the Claimant told me that he wished to withdraw those matters as complaints of harassment on the grounds of race and direct race discrimination. I asked the Claimant to turn his mind to those allegations because I considered it arguable that those specific matters had little reasonable prospects of success. As stated, those matters no longer form part of the claim which the Tribunal shall proceed to consider at the full merits hearing.
16. In respect of the remaining matters, I am not satisfied at this stage that they have little reasonable prospects of success. The Respondent understandably refers me to the fact that the Claimant did not indicate any concerns with regards to harassment and / or discrimination either during his employment or when resigning. Further, the correspondence written by the Claimant at the time of his resignation and shortly afterwards is apparently positive in its contents and tone. These are strong arguments which the Respondent will no doubt wish to raise at the full merits hearing of this claim. I entirely understand that they may potentially undermine the Claimant's claim. However at this stage and on the submissions made today I am not satisfied that this translates into the Claimant's claims having little reasonable prospects of success such as to make a deposit order appropriate. It is to be noted that, at this Preliminary Hearing, I have not been shown the correspondence referred to above.
17. At the conclusion of giving my judgment in respect of the application for a deposit order, I reminded both parties that my judgment on this matter should not be taken to indicate that the Claimant's claims are bound to succeed and indeed it would be quite wrong to do so.

CASE MANAGEMENT SUMMARY

1. The following claims and issues, as agreed by the parties, will be considered by the Tribunal at the hearing. No other claims or issues will be considered without the permission of the Tribunal.
2. **Section 26 Equality Act 2010: Harassment on grounds of race**
 - 2.1 Did the Respondent engage in unwanted conduct as follows:
 - 2.1.1 Approximately every fortnight during February, March and April 2016, Ms Mein would reprimand the Claimant in front of advisors he was managing in respect of the advice he was giving the advisors as to specific case files. Ms Mein regularly used the expression 'That's a fail' to describe the quality of the feedback the Claimant was giving to advisors he managed.

- 2.1.2 In or around late February 2016 or early March 2016, when the Claimant was having discussions with advisors he was managing and another supervisor, Ms Chris Allen, Ms Mein stood behind the Claimant's back gesturing that the Claimant's head was too big to fit through the door. The Claimant was alerted to this by Ms Allen. On a subsequent occasion shortly afterwards, Ms Mein repeated the gesture in front of the Claimant.
- 2.1.3 From March 2016 until the end of the Claimant's employment, Ms Mein refused the Claimant a lunch break. The Claimant was instructed he could eat lunch at his desk but he was not permitted to leave his desk or to leave the premises at this time.
- 2.1.4 Towards the end of March 2016, in the Claimant's review meeting, Ms Mein noted down that the Claimant was taking short 'fresh air' breaks and that that was unacceptable.
- 2.1.5 On 29 March 2016 Ms Mein emptied the contents of the Claimant's desk drawers across two tables before the Claimant arrived at work. Ms Mein told the Claimant that she was checking as to whether he had any confidential information in his desk drawers.
- 2.1.6 Around mid March 2016 Ms Mein accused the Claimant of meeting with a client when it was not his role to do so and of working on two cases. The Claimant had not met with the particular client as he was not in work on the relevant day and considered that he had been instructed to work on the cases by Ms Mein and Ms Bourgeois.
- 2.1.7 Ms Mein, the Claimant's line manager, made unfounded allegations to Margaret Bourne, Chief Executive and Mr Roper, Chair of the Board which were discussed at a meeting with the Claimant on 22 April 2016.
- 2.1.8 Ms Mein wrote a negative and false review document, dated 12 April 2016, for the meeting on 22 April 2016.
- 2.1.9 Mr Roper conducted the meeting on 22 April 2016 in a hostile and intimidating manner particularly by asking inappropriate questions about what the Claimant had done with a client at the Respondent's premises on 19 April 2016 and by making references to the Police.
- 2.1.10 On 23 March 2016 at a work event organised by the Claimant's line manager, the Claimant was handed a memorandum (by the chief executive) which stated that his name had been added to a list of employees who could benefit from being 'raped' or infected with a sexually transmitted disease. It also stated that 'the company took pride in the amount of shit employees received' and that 'your

immediate superior [is] specially trained to make sure you receive all the SHIT you can handle’.

- 2.2 Was the conduct related to the Claimant’s protected characteristic of race?
- 2.3 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 2.4 If not, did the conduct have the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 2.5 In considering whether the conduct had that effect, the Tribunal will take into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Section 26 Equality Act 2010: Harassment on grounds of sex

- 3.1 Did the Respondent engage in unwanted conduct as follows:
 - 3.1.1 On 23 March 2016 at a work event organised by the Claimant’s line manager, the Claimant was handed a memorandum (by the chief executive) which stated that his name had been added to a list of employees who could benefit from being ‘raped’ or infected with a sexually transmitted disease. It also stated that ‘the company took pride in the amount of shit employees received’ and that ‘your immediate superior [is] specially trained to make sure you receive all the SHIT you can handle’.
- 3.2 Was the conduct related to the Claimant’s protected characteristic of sex?
- 3.3 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 3.4 If not, did the conduct have the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 3.5 In considering whether the conduct had that effect, the Tribunal will take into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Section 13 Equality Act 2010: Direct Discrimination on grounds of race

- 4.1 The Claimant defines his race as Black British. Has the Respondent subjected the Claimant to the following treatment falling within Section 39 of the Equality Act 2010 namely:
- 4.1.1 Ms Mein, the Claimant's line manager, made unfounded allegations to Margaret Bourne, Chief Executive and Mr Roper, Chair of the Board which were discussed at a meeting with the Claimant on 22 April 2016;
 - 4.1.2 Mr Roper conducted the meeting on 22 April 2016 in a hostile and intimidating manner particularly by asking inappropriate questions about what the Claimant had done with a client at the Respondent's premises on 19 April 2106 and by making references to the Police.
 - 4.1.3 Instructing the Claimant at the meeting on 22 April 2016 that he should have no contact with the Respondent's clients.
 - 4.1.4 Approximately every fortnight during February, March and April 2016, Ms Mein would reprimand the Claimant in front of advisors he was managing in respect of the advice he was giving the advisors as to specific case files. Ms Mein regularly used the expression 'That's a fail' to describe the quality of the feedback the Claimant was giving to advisors he managed.
 - 4.1.5 In or around late February 2016 or early March 2016, when the Claimant was having discussions with advisors he was managing and another supervisor, Ms Chris Allen, Ms Mein stood behind the Claimant's back gesturing that the Claimant's head was too big to fit through the door. The Claimant was alerted to this by Ms Allen. On a subsequent occasion shortly afterwards, Ms Mein repeated the gesture in front of the Claimant.
 - 4.1.6 From March 2016 until the end of the Claimant's employment, Ms Mein refused the Claimant a lunch break. The Claimant was instructed he could eat lunch at his desk but he was not permitted to leave his desk or to leave the premises at this time.
 - 4.1.7 Towards the end of March 2016, in the Claimant's review meeting, Ms Mein noted down that the Claimant was taking short 'fresh air' breaks and that that was unacceptable.
 - 4.1.8 On 29 March 2016 Ms Mein emptied the contents of the Claimant's desk drawers across two tables before the Claimant arrived at work. Ms Mein told the Claimant that she was checking as to whether he had any confidential information in his desk drawers.

- 4.1.9 Around mid March 2016 Ms Mein accused the Claimant of meeting with a client when it was not his role to do so and of working on two cases. The Claimant had not met with the particular client as he was not in work on the relevant day and considered that he had been instructed to work on the cases by Ms Mein and Ms Bourgeois.
- 4.1.10 Ms Mein wrote a negative and false review document, dated 12 April 2016, for the meeting on 22 April 2016.
- 4.1.11 On 23 March 2016 at a work event organised by the Claimant's line manager, the Claimant was handed a memorandum (by the chief executive) which stated that his name had been added to a list of employees who could benefit from being 'raped' or infected with a sexually transmitted disease. It also stated that 'the company took pride in the amount of shit employees received' and that 'your immediate superior [is] specially trained to make sure you receive all the SHIT you can handle'.
- 4.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated the comparators? The Claimant relies on the following comparators: Ms Christine Allen and Ms Anne Dean, Supervisors.
- 4.3 If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
- 4.4 If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

5. Section 13 Equality Act 2010: Direct Discrimination on grounds of sex

- 5.1 Has the Respondent subjected the Claimant to the following treatment falling within section 39 of the Equality Act 2010 namely:
- 5.1.1 Making allegations of inappropriate conduct by the Claimant with a female client at the Respondent's premises on 19 April 2016;
- 5.1.2 Subjecting the Claimant to a meeting on 22 April 2016 during which the Claimant was asked inappropriate questions about what the Claimant had done with a client at the Respondent's premises on 19 April 2016 and by making references to the Police;
- 5.1.3 Mr Roper instructed the Claimant at the meeting on 22 April 2106 that he should not have contact with the Respondent's clients.
- 5.1.4 On 23 March 2016 at a work event organised by the Claimant's line manager, the Claimant was handed a memorandum (by the chief executive) which stated that his name had been added to a list of

employees who could benefit from being 'raped' or infected with a sexually transmitted disease. It also stated that 'the company took pride in the amount of shit employees received' and that 'your immediate superior [is] specially trained to make sure you receive all the SHIT you can handle'.

- 5.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated the comparators? The Claimant relies on the following comparators: Ms Christine Allen and Ms Anne Dean, Supervisors.
- 5.3 If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
- 5.4 If so, what was the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

CASE MANAGEMENT ORDERS

Schedule of Loss

1. No later than **14 February 2017** the Claimant shall serve on the Respondent and the Tribunal a Statement of Loss that:-
 - 1.1 sets out the money the Claimant seeks as compensation;
 - 1.2 shows the calculations that have been used, where appropriate.

Amended Response

2. The Respondent has leave to present an amended response, if so advised, to the Claimant and the Tribunal no later than **14 February 2017**.

Disclosure of documents

3. The parties are ordered to give mutual disclosure of documents relevant to the issues identified below by list and copy documents so as to arrive no later than **28 March 2017**.
4. This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
5. The parties shall comply with the date for disclosure given above but if despite their best attempts, further documents come to light (or are created) after that

date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

Document Guidance

6. "Documents" includes letters, notes, emails, memos, diary entries, audio or visual recordings, text messages and any other legible records.
7. If hand written documents are being relied on a typescript must be provided by the party relying on them and inserted in the bundle of documents immediately after the hand written document.
8. If a recording is being relied on a transcript must be prepared by the party relying on it. That typescript must be included in the bundle of documents and sent to any other party, together with a copy of the recording.
9. **No documents or copy correspondence should be sent to the Tribunal unless a party is required to do so.**

Trial Bundles of Documents

10. The Respondent shall prepare a consolidated bundle of copy documents.
 - 10.1 The bundle shall not, without the consent of an Employment Judge, exceed 200 pages (400 sides). Two-sided copying is encouraged.
 - 10.2 The bundle shall only contain copies of relevant pages of documents a party intends to use at the Tribunal hearing.
 - 10.3 All the documents, except any pleadings and Orders, must be in date order, with the oldest at the front.
 - 10.4 Each page must be numbered.
 - 10.5 The bundle must have an index showing the date, description and page number of each document.
 - 10.6 The bundle must be held together so it opens flat.
 - 10.7 Witness statements must not be included in the bundle.
- 11 No later than **9 May 2017** the Respondent shall supply one copy of the bundle to the Claimant.
- 12 The Respondent shall bring four identical bundles of the copy documents to the Tribunal hearing.

Witness Statements

- 13 The parties shall prepare a written statement for each witness (including the Claimant who will give evidence personally) that it is intended will be called to give evidence at the Tribunal hearing. Each witness statement must:
 - 13.1 have page numbers, be typed single-sided with double line spacing with at least 2.5cm page margins;
 - 13.2 use a “standard” (e.g. Arial, Times New Roman or similar) size 12 font;
 - 13.3 contain all the evidence of the witness;
 - 13.4 be laid out in short consecutively numbered paragraphs;
 - 13.5 set out in chronological order, with dates, the facts which the witness can state;
 - 13.6 not contain matters irrelevant to the issues;
 - 13.7 refer by page number in the bundle of documents to any document mentioned in the statement;
 - 13.8 be signed and dated;
 - 13.9 not be contained in a bundle.
- 14 Each party shall ensure that there are four copies of each statement of their own witnesses available at the Tribunal hearing for the use of witnesses and the tribunal.

Evidence without a Witness Statement

- 15 No evidence-in-chief may be given by a witness, in addition to that contained in the written statement of that witness, without the permission of the Tribunal.
- 16 No witness may be called by a party to give evidence at the Tribunal hearing, without the permission of the Tribunal, unless their written witness statement has been prepared and exchanged.

Simultaneous Exchange of Witness Statements

- 17 On **25 September 2017** there shall be a simultaneous exchange of witness statements by each party providing to the others one copy of each witness statement for each of the witnesses that party intends to call to give evidence at the Tribunal hearing.

Hearing Date

- 18 The case is listed with the agreement of the parties before a full Tribunal for five consecutive days commencing on **23 October 2017 at 10.00am on the first day** at the Employment Tribunals **Montague Court, 101 London Road, West Croydon, Surrey, CR0 2RF**. The parties are to attend by 9.30 am.
- 19 It is noted that this time allocation is based on the Claimant's intention to give evidence and to call one further witness and the Respondent's to call four witnesses.

NOTE:

1. *Failure to comply with an Order may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.*
2. *If a person does not comply with Orders made under the Employment Tribunals Rules of Procedure, rule 8 of the Employment Tribunals (Levy Appeals) Rules of Procedure or rule 7 of the Employment Tribunals (Health and Safety - Appeals against Improvement and Prohibition Notices) Rules of Procedure an Employment Judge or Tribunal may:*
 - (a) *make an order in respect of costs or preparation time (if applicable); or*
 - (b) *make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.*
3. *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 under rule 19 or hold a pre-hearing review or a Hearing.*
4. *An Order may be varied or revoked upon application by a person affected by the Order or by an Employment Judge on his own initiative.*
5. *This Order confirms orders made/directions given at a hearing on 24 January 2017.*

Employment Judge Harrington
29 January 2017