



EMPLOYMENT TRIBUNALS

Claimant

Mrs N Ibrahim

v

Respondent

Alam & Alam Ltd

PRELIMINARY HEARING

Heard at: Watford

On: 16 October 2017

Before: Employment Judge Palmer

Appearances:

For the Claimant: Mr Rahman, Counsel
For the Respondents: Mr Kerrigan, Solicitor

JUDGMENT

1. After hearing from the parties and reading the documents to which the parties referred, the respondent's applications to strike out the claims and to make a deposit order are dismissed.

REASONS

1. There was an agreed bundle of documents and outline submissions from the claimant. It was agreed that it would not be practical to hear evidence from the claimant or respondent though the claimant provided a witness statement. The hearing proceeded with the parties making submissions and referring to relevant documents in the agreed bundle of documents. The ET1 and ET3 were both full.
2. The application to strike out the claims is on the ground that there was "no reasonable prospect of success" under Rule 37(1)(a).
3. A claim should not usually be struck out where there are crucial facts in dispute and there has been no opportunity for all the evidence in relation to those facts to be considered. The claimant's case is that the respondent wanted her out of the

business because she was on maternity leave and that there had been a previous attempt to make her redundant and to reduce her pay and that the reason given for her dismissal was not genuine. The respondent argued that the claimant was dismissed for gross misconduct as she had been working for her uncle during her maternity leave and on her return which was, the respondent alleged, a breach of her contract.

4. It was clear from the ET1 and ET3 as well as the parties' submissions, that the facts were not agreed nor indeed could it be said that they were clear from the documents provided to the tribunal. There was more evidence needed to resolve the differences between the parties. For example, there was a dispute about whether the respondent was aware that the claimant had sometimes carried out work for her uncle, which was the reason for her eventual dismissal.
5. Further, tribunals should be cautious about striking out discrimination claims which often rely on inferences that are fact sensitive. This is true of these claims.
6. The application to make a deposit order is on the basis that the claim "has little prospect of success"; see Rule 39(1). This is a lower threshold. This application is rejected for similar reasons to the strike out. There are clearly significant factual issues to decide as set out above and it is not possible to say, on the documents presented and submissions, that this test is satisfied. Further, in the alternative, it is unlikely that the claimant would have the resources to pay a deposit as she is currently on maternity leave, claiming maternity allowance and tax credit and has no capital.
7. I would add that although the tribunal's letter giving notice of the preliminary hearing referred only to the issue about whether there was "little prospect of success", suggesting that it was listed only for a deposit order, the parties agreed to proceed on the basis that the tribunal would decide both the application to strike out and the application for a deposit order.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within **four days**. It has been listed at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford WD17 1HP to start at 10am or so soon thereafter as possible on **21-24 May 2018**. The parties are to attend by 9.30am. The hearing may go short, but this allocation is based on the claimant's intention to give evidence and call two further witnesses and the respondent's to call three witnesses. The time will be used as follows:-
 - 1.1 Maximum 2.5 days for oral and other evidence on liability;
 - 1.2 A maximum total of one hour (half each) for submissions on liability, the parties having provided written submissions;

- 1.3 Half a day for the tribunal to determine the issues which it has to decide and reach its conclusions;
- 1.4 Two hours for the tribunal to give judgment, with reasons;
- 1.5 The remaining time for the tribunal to identify issues relevant to remedy, hear further evidence if appropriate and reach its conclusions in respect thereof, if the claimant succeeds in whole or part.

The complaints

2. By a claim form presented on 23 February 2017, the claimant brought claims of pregnancy and maternity discrimination, automatically unfair dismissal under s.99(3)(a), victimisation, and notice pay. During the hearing the claimant withdrew her claim for sex discrimination relying only on pregnancy/maternity discrimination. The respondent defended the claims. In essence the claims arise out of the claimant's dismissal which the respondent alleged to be for gross misconduct and the claimant alleged to be because of her maternity leave.

The issues

3. I now record that the issues between the parties which will fall to be determined by the tribunal are as follows:

4. Maternity/pregnancy discrimination

- 4.1 The claimant's case is that she was treated unfavourably because of her maternity leave in relation to the following:

4.1.1 Her dismissal;

4.1.2 Unfavourable treatment prior to her dismissal, this being that she was put at risk of redundancy, there was an attempted reduction of her salary and the procedure leading up to her dismissal

- 4.2 She also argues that under s.99 Employment Rights Act 1996 the reason or principal reason for the dismissal was her pregnancy, childbirth or maternity. The issue under the Equality Act (s.18) is whether the respondent treated the claimant unfavourably because of her pregnancy or because she had exercised her right to maternity leave.

- 4.3 The respondent argued that the claimant was dismissed for gross misconduct because she was carrying out work for her uncle, Ali Ibrahim Associates, throughout her employment.

5. Section 27: Victimisation

- 5.1 Has the claimant carried out a protected act? The claimant relies upon the following:

- 5.1.1 The protected act is the complaint made by the claimant in May 2016 when she alleged that she had suffered discrimination. The detriment is that the claimant was suspended, the manner in which the investigation was carried out including not informing the claimant that there had been an investigation ongoing during her maternity leave and the disciplinary process and dismissal.

6. Notice pay and wrongful dismissal

- 6.1 (The claimant claims her notice pay denying that she should have been dismissed without notice).

7. Time/limitation issues

- 7.1 Apart from the dismissal, where there is no dispute that the claim was brought in time, the respondent argues that the alleged unfavourable treatment which occurred during maternity leave, including the attempt to make the claimant redundant, the attempt to reduce her pay, are out of time. The tribunal will need to decide whether there was a continuing course of discrimination and/or if not whether it is just and equitable to extend time.

8. Remedies

- 8.1 If the claimant succeeds, in whole or part, the tribunal will be concerned with the issues of remedies. This will include loss of earnings and injury to feelings, breach of contract and/or the award of interest.

Judicial mediation

9. The parties raised the possibility of this case being considered for an offer of judicial mediation. The parties were given two notes giving an explanation of the judicial mediation scheme.
10. The judicial mediation will be on **18 December 2017**. There will be a case management discussion by telephone at 10am on **8 November 2017**.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Disclosure of documents

- 1.1 The respondent will provide any further relevant documents to the claimant on or before **31 January 2018**.

1.2 On or before **14 February 2018** the claimant will provide to the respondent any further copy documents which are to be included in the bundle. This will include any documents relating to mitigation of loss including all attempts to find alternative work.

2. **Schedule of loss**

2.1 The claimant will provide to the respondent with a copy to the tribunal, a schedule of loss on or before **11 December 2017**. This will need to take into account the claimant's period on maternity leave.

3. **Bundle of documents**

3.1 On or before **28 February 2018** the respondent will prepare a bundle of documents and provide one copy to the claimant.

3.2 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing. The respondent is ordered to bring sufficient copies (at least five) to the tribunal for use at the hearing by 9.30am on the morning of the hearing.

4. **Witness statements**

4.1 Witness statements are to be exchanged 21 days before the hearing fixed for 21-24 May 2018, ie by **1 May 2018**.

4.2 Exchange of statements should be contemporaneous.

4.3 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues as identified above.

4.4 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

4.5 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

5. **Other matters**

5.1 The respondent will provide a chronology to the claimant **seven days** before the hearing which should be agreed by the parties if possible. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the tribunal is likely to hear.

5.2 The claimant is ordered to prepare a short, neutral chronology for use at the hearing.

5.3 These documents should be agreed if possible.

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 Palmer

24/10/17

Sent to the parties on:

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For the Tribunal:

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