



# EMPLOYMENT TRIBUNALS

**Claimant: Mr T Szczuka**

**Respondent 1: Polypipe Ltd**

**Respondent 2: Polypipe Building Products Ltd**

**Heard at: Sheffield** in private; **On: 30 November 2018**

**Before:** Employment Judge Rostant (sitting alone)

## **Appearances**

For the claimant: Mr Lassey of counsel

For the respondent: Mr Warren-Jones, consultant

## **JUDGEMENT ON A PRELIMINARY MATTER**

**No Order is made in this case.**

## **REASONS**

- (1) This matter first came before Employment Judge Smith at a preliminary hearing for case management on 29 August. He identified the presence of four claims, unfair dismissal, indirect discrimination because of race, direct discrimination because of race and breach of contract.
- (2) At paragraph 6 of his list of issues, when describing the claim of direct discrimination, he characterised the treatment complained of as 'subjecting the claimant to a detriment by failing to reduce his workload'. In fact, the claim form also alleges detrimental treatment in the form of being shouted at.
- (3) Employment Judge Smith characterised the claim of direct discrimination as vague in the extreme. To the extent that no detail is given as to the circumstances, dates and people involved, EJ Smith was manifestly entitled to that view.
- (4) Following the preliminary hearing, by an email dated 3 September 2018, the respondent applied for a hearing to consider striking out the claim of direct discrimination or ordering a deposit. In that email, the respondent asserted that the grounds of claim were extremely vague and in any event were several years out of time'. It follows that the grounds for strikeout included the question of time.

The Law

- (5) Rule 39 (1) of the Tribunal Rules of Procedure 2013 gives the Tribunal power to order a party to pay a deposit as a condition of continuing with a particular contention. The tribunal may only make such an order if it considers that the contention has little reasonable prospect of success and then only if a deposit order is appropriate bearing in mind all other circumstances including the claimant's means.
  - (6) As to the issue of time, the section 123 of the Equality Act 2010, provides that claims of discrimination must be brought within three months of the act complained of or the last in a series of acts (subject to any extension for the early conciliation)
- My conclusion
- (7) Mr Warren-Janes for the respondent effectively confined his application to one for a deposit order or strike out on the grounds that the claim was brought out of time. On that latter point, during his submissions I pointed out that the claim form contains an allegation that the treatment complained of (shouting and giving of excess work,) continued from the start of the claimant's employment to its end. On that basis, the claim for direct discrimination was not manifestly out of time. Depending on the tribunal's findings, having heard evidence, there might be a time point in relation to earlier examples of the behaviour but at present it could not be said that what was being alleged was not a continuing act where the last example was more than three months before presentation.
  - (8) That left me with considering the question of the deposit order. I made it plain that I would first consider the matter of principle, that is to say whether or not I was satisfied that the claimant had little reasonable prospect of success. If I decided that in favour of the respondent, I would then conduct an enquiry into the claimant's means before finally deciding whether to make a deposit order and if so in what amount.
  - (9) Mr Warren-Jones submitted that the contemporaneous evidence showed that the claim had little reasonable prospect of success. The claimant presented a grievance about this matter in 2015. It was rejected and he did not appeal that grievance. The grievance contained a complaint of overloading of work and being shouted at but did not contain any allegation of racial motivation or any allegation that other, Polish, colleagues were being similarly treated. Mr Warren-Jones referred again to the vagueness of the pleading.
  - (10) For the claimant, Mr Lassey, observed that there might be many explanations for the fact that the claimant had not repeated his grievance and that the fact that the matter was not mentioned again until the claim to the employment tribunal was insufficient for to allow me to conclude that the claim now made stands little reasonable prospect of success
  - (11) I must have a proper basis for doubting the likelihood of success in this claim. Although the allegations are vague there is some detail and certainly sufficient to establish the nature of the matter being complained of. That detail can and will be expanded upon in compliance with an order for further and better particulars.
  - (12) I have no doubt that there is a significant factual dispute which will have to be resolved. However, where it to be resolved in the claimant's favour, such that it were found that indeed the claimant and other Polish workers were routinely

given more work than their non-Polish colleagues and were shouted at that might well amount to sufficient to require an explanation from the respondent.

- (13) Where a significant factual dispute lies at the heart of the issue it is only where there is compelling evidence, normally in the form of documentary evidence, that shows that the claimant is unlikely to establish his version, that a tribunal should be prepared order a deposit see *Javed v Blackpool Teaching Hospitals*, EAT 0135/17
- (14) To my mind, the fact that the grievance raised in 2015 does not alleged discrimination is insufficient to allow me to conclude that the claimant's allegations of differential treatment are unlikely to be made out. That is also true of the fact that the allegations were not repeated. The fact that the claimant may have difficulty in establishing his case is not the same as saying that it has little reasonable prospect of success.
- (15) For those reasons I do not consider it appropriate to order a deposit in this case.

**Employment Judge Rostant**

Dated: 30 November 2018

Sent to the parties on:

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For the Tribunal:

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