



EMPLOYMENT TRIBUNALS

Claimant: Ms L Kerrar

Respondents: Chanel Ltd and others

Heard at: London Central

On: 28 November 2018

Before Judge: Employment Judge A Isaacson

Representation

Claimant: Mr J Sykes, advocate

Respondents: Ms G Rezaie, counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

1. The respondents' application for striking out the claimant's 2nd – 4th claims fail.
2. Chanel Ltd are added as second respondent to the claimant's second claim. Therefore, there is no jurisdiction issue remaining regarding the Tribunal hearing a claim against Ms Legedina alone.

REASONS

Issues

1. The following issues were listed by Judge Grewal at a previous preliminary hearing:
 - 1.1 Any application made by the respondents to strike out any of the 2nd – 4th claims for abuse of the process and/or the Henderson v Henderson rule.
 - 1.2 Any application made by the respondents to strike out or obtain a deposit order on any of the claims – the respondents' counsel confirmed at the

beginning of the hearing that the respondents hadn't made any such applications but was making an application, as part of her skeleton argument, that the Tribunal did not have jurisdiction to hear the claimant's second claim as it had only been brought against an individual.

1.3 The claimant's application to amend the 4th claim to add a racial harassment claim in the alternative to the direct race discrimination claim – this application has been withdrawn by the claimant.

1.4 Whether it is necessary to order a joint medical report or alternatively confine the hearing to liability alone – it was agreed that the timetable for disclosure of the medical notes was extended until the 10 December 2018 and the parties would notify the Tribunal of their views after the disclosure whether a joint medical report was necessary or whether the hearing should be on liability alone.

Evidence before the Tribunal

2. The Tribunal was assisted by written skeleton arguments and oral submissions from both representatives, together with the cases referred to and the claimant produced a witness statement and was questioned before the Tribunal.

Law

3. Rule 37 of the Employment Tribunals Rules of Procedures 2013 provides the Tribunal with the authority to strike out a claim on five grounds. The respondents argue that the 2nd – 4th claims should be struck out as an abuse of the process on the grounds that issuing four separate claims is vexatious and /or unreasonable.
4. The respondents' counsel confirmed that she was not relying on the principles of res judicata as there had been no determination in any of the claims but did rely on the rule in Henderson v Henderson ("the rule").
5. The rule precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. There is also a general procedural rule against abusive proceedings. However, just because a matter could have been raised in earlier proceedings, it is not necessarily abusive to raise the matters in later proceedings.
6. The rule doesn't only apply in cases where there has been a determination and the purpose is to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions. It is not necessary to show harassment or oppression. The very fact that a defendant is faced with two claims where one could and should have sufficed will often of itself constitute oppression. It might also be an abuse of the process to pursue complaints in second proceedings regarding matters occurring prior to the lodgement of the first claim.
7. A Tribunal should look at all the facts of the case and question whether a party is misusing or abusing the process of the Tribunal by seeking to raise before it the issue which could have been raised before.

Facts

8. Judge Grewal clearly summarised the claimant's four claims in paragraphs 8 – 18 of her case management order sent to the parties on 18 October 2018.
9. The Tribunal accepts the evidence of the claimant set out in her witness statement that she was in a state of trauma and shock when she first saw her

representative and could only deal with what was on her mind at the time. She wasn't sleeping or eating well and barely left her house. How Chanel Ltd treated her over the incident regarding Diana Legedina was foremost in her mind and was all she discussed with her representative. Consequently, a claim against Chanel Ltd for direct race discrimination, racial harassment and victimisation was presented on 6 March 2018.

10. That night she thought about Diana Legedina treatment of her and then went back to her representative the very next day on 7 March 2018 and her representative presented a second claim solely against Ms Legendina for direct race discrimination and racial harassment. The events concerned were the same as those pleaded in the first claim except for those concerning Chanel Ltd's own actions. The claimant had to go back to ACAS for early conciliation.
11. A week later she was able to remember more incidents from earlier in her employment including regarding wearing a hijab. Her representative presented a third claim on 21 March 2018 against ChanelLtd, Ms Legedina and Ms Richard for direct religious discrimination and religious harassment.
12. About two weeks later the claimant remembered more incidents regarding the treatment of Chinese customers, that she had mentioned briefly in her previous claims and felt strongly that Chanel Ltd should answer for these incidents. She contacted her representative again and a fourth claim was presented on 10 April 2018 against Chanel Ltd for direct race discrimination because of the race of customers.

Applying the law to the facts

13. Looking at all the facts the Tribunal does not find that the claimant has been abusing or misusing the process of the Tribunal. The claimant was in a state of shock and trauma when she first saw her representative and continued to be unwell for a number of weeks. She was only able to instruct her representative about incidents and claims as they came to her over a few weeks period. She wasn't deliberately giving instructions on a piecemeal basis.
14. Although the respondents have had to deal with four separate claim forms to respond to, other than the extra time and resources spent on dealing with four different claims they haven't been prejudiced in any way by the different claims particularly as the first two claims are based on the same set of facts. The respondents have had time to respond to all the claims before any findings have been made. There hasn't been any substantial delay causing any injustice to the respondents as all the claims were presented within just a few weeks. Both parties are not prevented from having a fair trial.
15. Therefore, the Tribunal refuses the respondents application to strike out 2nd – 4th claims on the grounds of an abuse of the process or under the Henderson v Henderson rule.

Jurisdiction

16. The Tribunal was not convinced by the respondents' counsel's argument that the Tribunal did not have jurisdiction to hear the claimant's second claim on the basis that only an individual was named as a respondent and not the employer. However, the Tribunal is not making any ruling on this because instead the Tribunal has decided that, on its own initiative under rule 34 of the ETS Rules of Procedure 2013, in the interests of justice Chanel Ltd should be added as a second respondent to the 2nd claim 2201593/2018. The respondent is potentially liable for the actions of its employee. The second claim arises from the same set

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of facts set out in the first claim in which Chanel Ltd are named as the respondent. Therefore, there is no undue prejudice to Chanel Ltd by adding them as a party to the proceedings. In addition, all the claims are going to be heard together in any event.

Employment Judge Isaacson

Date 5 December 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

6 December 2018

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FOR THE TRIBUNAL OFFICE