



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr H Abdullah

AND

Staffline Group Plc

PRIVATE PRELIMINARY HEARING

Heard at: North Shields

On: 4 January 2018

Before: Employment Judge Morris

Appearances

For the Claimant: In person

For the Respondent: Ms J Rushforth, Legal Executive

JUDGMENT

- 1 The claimant's evidence included that:
 - 1.1 he was an agency worker engaged by the respondent on a contract for service;
 - 1.2 the respondent assigned him to undertake work for and at the site of 2 Sister Food Group;
 - 1.3 the discrimination he says that he suffered was at the hands of managers employed by 2 Sister Food Group and not employed by the respondent;
 - 1.4 he was not discriminated against by the respondent or any person acting on behalf of the respondent.
- 2 Given the above, I find, with reference to rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013, that the claimant's claim has "no

reasonable prospect of success” and, as such, his claim is struck out in its entirety.

REASONS

Context

- 1 One of the purposes of this hearing was to consider the application on behalf of the respondent that the claimant’s claim be struck out on the basis that it has no reasonable prospects of success. I therefore determined to deal with that application first.
- 2 I record that throughout the hearing the claimant made use of an interpreter (Mr Hamid Muller) speaking Arabic (North African).

The respondent’s application

- 3 Ms Rushforth explained that the respondent’s position was as follows:
 - 3.1 The claimant was not an employee of the respondent but worked under a contract of service as an agency worker.
 - 3.2 He worked on site for a client, 2 Sister Food Group.
 - 3.3 If there is any allegation of race discrimination, it is not made against the respondent.
 - 3.4 If there are any other respondents they have not been named on the claimant’s claim form.
 - 3.5 Given the requirement for two years’ service the Tribunal does not have jurisdiction to consider a claim for unfair dismissal.
 - 3.6 The conciliation certificate has been issued in respect of Staffline with no other respondent being named.
 - 3.7 On 3 November 2017 the Tribunal made an order requiring the claimant to provide further information about his allegations of race discrimination to which the claimant replied on 26 November 2017 but essentially repeated what was stated in his claim form with no allegations being made of race discrimination.
- 4 Therefore the claimant’s claim has no reasonable prospects of success or is misconceived.

The claimant’s response

- 5 I repeated the above points to the claimant asking first whether he understood the concepts: for example of agency worker and working for a client. He responded that he did.

- 6 Turning to the detail:
 - 6.1 The claimant agreed that he was an agency worker engaged as such by the respondent.
 - 6.2 The claimant agreed that he worked for and at the site of a client of the respondent, namely 2 Sister Food Group.
 - 6.3 He stated that all those who had behaved towards him in a discriminatory fashion were employed by 2 Sister Food Group as managers and did not work for the respondent. The claimant added an allegation (not mentioned in either his claim form or his response of 26 November 2017 to the Tribunal's request for further information about his allegations of race discrimination) that managers of 2 Sister Food Group "treated us blacks" badly on various occasions including their being required to work in a hot area for a very long time whereas a white operative would be changed every two hours.
 - 6.4 The claimant further clarified that he had direct contact with the respondent through a lady called Savannah Keen by text and 'phone but did not suggest that she or anyone else on behalf of the respondent had discriminated against him: "Yes, that's correct – we had no issues with Savannah". He reinforced the point by saying, "The people who discriminated against us were the managers – particularly that manager called Billy."
- 7 Although there was no suggestion that the claimant had had any difficulty in addressing me through an interpreter I nevertheless wished to be absolutely clear as to his position. I therefore put to the claimant a summary of my understanding of his position, which he confirmed to be correct, as follows:
 - 7.1 He was engaged by the respondent as an agency worker.
 - 7.2 The respondent placed him with 2 Sister Food Group to work for that company at its premises.
 - 7.3 On occasions, he was discriminated against him because of his race by managers employed by 2 Sister Food Group. In this respect, the claimant referred to an incident when the machine on which he was working broke and he was asked to do cleaning, and when the manager (Marios) shouted at him for not doing the cleaning properly, he replied that it was his first day cleaning and he had no right to shout at him but he continued to do so. (I note that this incident is that referred to in the claimant's claim form and in his response to the Tribunal's request for further information.)
- 8 The claimant then added that he considered that his dismissal was unfair and that as a result of lifting heavy weights he had strong back pain.

Consideration and findings

- 9 I considered carefully all that the parties had said and particularly the clarification provided by the claimant of his experiences when working at 2 Sister Food Group and the claims that he wishes to bring before this Tribunal. I make the following findings having taken into consideration all the relevant evidence before me (documentary and oral) and the relevant statutory and case law notwithstanding the fact that, in the pursuit of conciseness, I may not have specifically mentioned every aspect.
- 10 As set out above, claimant accepts, first, that he was an agency worker engaged by the respondent on a contract for service and, secondly, that the respondent assigned him to work for and at the site of 2 Sister Food Group. The claimant was very clear that all those whom he asserted had behaved towards him in a discriminatory fashion were employed by 2 Sister Food Group as managers and did not work for the respondent. This is apparent from his claim form and the response he submitted by e-mail of 26 November 2017 to the orders of this Tribunal, and was reinforced by his explanations before me at this hearing. He was equally clear that he was not discriminated against by the respondent or any person acting on behalf of the respondent: he named, for example, his contact there, Savannah Keen, with whom he said he had “no issues”.
- 11 The claimant complied with the early conciliation requirements but did so in respect of, “Staffline”. Additionally, and perhaps more importantly, in his claim form the claimant cites “Staffline Group plc” as the respondent. On the claimant’s own case, therefore, he has sought to make his claims of race discrimination against the respondent while alleging such discrimination by and on behalf of 2 Sister Food Group.
- 12 For completeness, I note that in section 2.2 of the claimant’s claim form he has given the name and address of 2 Sister Food Group as the address of the respondent. I have considered whether he thus intended to cite 2 Sister Food Group as an additional respondent. I note, however, that he has not given such details of any second respondent at either section 2.4 or 13 of his claim form.
- 13 I have nevertheless considered whether I should initiate a process that could lead to that company being joined as a second respondent to the claimant’s claim with all that would involve in terms of re-serving the claim on that company (which I suspect is actually “2 Sisters Food Group Ltd”) and considering and determining an application on behalf of the claimant for leave to amend his claim and the inevitable counter-argument, including the delay since the incidents in question the latest date of which I note was 5 September 2017. In that context I have considered also the apparent merits of the claimant’s claim against 2 Sister Food Group. On the basis of the claimant’s account in his claim form, his response to the Tribunal’s orders for further particulars and his evidence before me today, he has failed to satisfy me that there are facts from which a Tribunal in the future could decide, in the absence of any other explanation, that 2 Sister Food Group (or, indeed, the present

respondent) contravened any provision in the Equality Act 2010 such as to reverse the burden of proof in a case such as this.

- 14 On that basis too, therefore, I consider the claimant's claims against either company to have no reasonable prospects of success.
- 15 For the above reasons, particularly the first relating to the correct identity of the respondent, the claimant's claim is struck out in its entirety.

Employment Judge Morris

Date 11 January 2018