



EMPLOYMENT TRIBUNALS

Claimant

Miss J Wilson

v

Respondent

Ministry of Justice

Heard at: Bury St Edmunds

On: 19 October 2018

Before: Employment Judge Warren

Appearances

For the Claimant: In person

For the Respondent: Ms L Robinson, Counsel

JUDGMENT

1. The claimant's case that she was discriminated against by reason of disability is struck out on the grounds that it has no reasonable prospects of success.
2. The respondent's application for a deposit order in respect of the claimant's claim of unfair dismissal is refused.
3. The claimant's claims in respect of maternity leave or under the Part-Time Worker Regulations are dismissed upon withdrawal.

REASONS

1. The claim here was issued on 20 May 2015, in short it was rejected for the non-payment of fees. Following the decision in the case of Unison, Miss Wilson was invited to ask for her claim to be reinstated by letter dated 24 November 2017. She applied for the case to be reinstated by a letter from her dated 22 February 2018. The claim was reinstated and it was served upon the respondents on 10 April 2018. A response was filed after an extension of time on 5 June 2018, needless to say the claims are resisted.

2. The matter came before Employment Judge Manley sitting in the Watford Employment Tribunal on 13 July 2018. She listed the matter for hearing today in Bury St Edmunds, I presume because of the shorter time frame that would be involved, so that an employment judge may consider whether or not the disability claim should be struck out on the grounds that it has no reasonable prospects of success and whether, in the alternative, there should be a deposit order in that respect, and a deposit order in respect for the claim for unfair dismissal.
3. Case management orders were made by Employment Judge Manley, including disclosure of documents by 10 August, documents from the claimant by 7 September and the claimant has leave to prepare the witness statement for today although she has chosen not to do so. There has been correspondence regarding what the claimant says is a lack of disclosure on the part of the respondents, the respondent says that it has disclosed all of documents relating to the claimant that it is able to locate, I stress documents relating to the claimant, not relating to the issues because at this stage the respondent does not know what the issues in the case are.

Evidence

4. I was provided with two documents by Ms Wilson today, they are documents which were prepared for her, by the CAB, as the basis of a referral to the Free Representation Unit and are submitted as an outline of what she believes her case to be. It is nothing more formal than that, but it tended to assist me in understanding her case. Miss Wilson also prepared a paginated bundle which runs to page number 35.
5. Although Ms Robinson had not seen any of these documents before the hearing, she very sensibly had no objection to them being referred to. Ms Robinson herself had prepared a skeleton argument which had been produced to me and to Miss Wilson before the hearing started.
6. I also note on the tribunal file an email from Miss Wilson dated 13 July 2018, setting out further and better particulars of her claim. That email was also sent to the respondent.
7. Lastly, in terms of formalities, I should recall that I explained to the parties, I, myself am a claimant against the respondents in two sets of proceedings relating to judicial pensions and to rates of pay to part-time fee-paying judges in relation to my role as a fee-paid Employment Judge before I became salaried. Neither party had any objection to me dealing with the matter.
8. I consider first of all though, the respondent's application that I should strike out the disability claim or disability discrimination claim on the grounds that it has no reasonable prospects of success. I, first of all, reveal the contents of the claim form. At part 8.1 Miss Wilson has ticked the boxes to say that she was unfairly dismissed and that she was

discriminated against on the grounds of disability. She has also ticked the box, 'I am making another type of claim' which the employment tribunal can deal with and there she has added, "*part-time working / maternity leave*".

9. Pausing there for a moment, Employment Judge Manley recorded on 13 July, that Miss Wilson had withdrawn her part-time working maternity claim. I do not see on the file any record of the claim being dismissed on withdrawal, so I will provide the judgement that those claims are dismissed on withdrawal.
10. At section 8.2 in the narrative, Miss Wilson has written that her union representative was on leave and she has been advised to submit the form because of time limits and to say that further and better particulars will follow. In fact, at the section for 'Additional Information', on page 12 of the ET1, Miss Wilson did provide some form of narrative about her claim.
11. Lastly, just to note that, she had also ticked a box at part 12 of the ET1 to say that she did not have a disability.
12. I understand that at the preliminary hearing before Employment Judge Manley, she did explain the need to apply to amend her claim with one wished to rely upon matters not set out in the original claim form. There has been no application to amend. If there had been, relevant would have been to such an application, that the claim for disability discrimination now, in October 2018, is hugely out of time. Some of the allegations that Miss Wilson would have wanted to rely upon date back to 2012.
13. Miss Wilson was represented by her union at the relevant time. She was aware of the three month time limit. There was a delay in her responding to the invitation to reinstate her claim. She could, when she reinstated her claim have given more detail of what her proposed disability discrimination claim was. Employment Judge Manley had explained the need for amendment and no application has been made.
14. Further and better particulars have in fact been provided in the email of 18 July, but there are no particulars of any potential disability discrimination claim contained therein, other than mentioned an Occupational Health report of 5 June 2015, which makes reference to depression and anxiety and the view of the Occupational Health Adviser that the circumstances probably qualify Miss Wilson as a disabled person under the Equality Act 2010. There was no application to amend today.
15. Case law provides that on an application for strike out, one must take the claimant's pleaded case at its highest and unfortunately, there is no pleaded case other than a bare assertion of disability discrimination. I therefore strike out the disability discrimination claim as it has no reasonable prospects of success as pleaded.

16. That then brings me to the question, whether or not I should order a deposit in respect of the unfair dismissal claim. It is necessary to understand something of the background of the case.
17. Miss Wilson was employed as an administrator at the Royal Courts of Justice. She has 29 years' service. The background is that on, or about, 30 January 2015, there was a murder, a stabbing in her street. That involved a group of youths of which her son was one. The police could not find her son, they went to her house, it was suggested that there had been a party at her house and Miss Wilson was arrested on suspicion of murder.
18. To be clear, she was never charged. She was police bailed to 24 March, and informed on 23 March that there would be no charge. Miss Wilson says that the police assured her that there was no need for her to tell her employer. In fact, the respondent says, its conduct policy at section 13.11E provides that, "*employees of the Ministry of Justice must inform their manager if they are arrested.*"
19. Miss Wilson was away from work ill with stress and anxiety, perhaps not surprisingly, from 23 January through to 15 September 2015. Her absence was being managed, she was assisted by her union. The union knew of her arrest. She says the union advised her that she would need to disclose the arrest. It was agreed between them that disclosure would be made to somebody senior, not her manager.
20. On 28 August 2015, Miss Wilson wrote to a director at the Ministry of Justice, disclosing her arrest.
21. On 16 September 2015, she was due to return to work after her absence through illness and she was immediately suspended. The failure to disclose her arrest was then investigated. At some point, (it is not entirely clear when), she does in fact return to work.
22. There was a disciplinary hearing on 17 December 2015. During the disciplinary hearing, she further disclosed that she had been fined by magistrates for failing to attend an appointment with the Youth Offending Team under the terms of a Magistrate's Parenting Order which had been made arising out of her 17 year old daughter's truancy. In fact, says Miss Wilson, this was all over a misunderstanding and that was later set aside. Miss Wilson said that she had disclosed this to her manager whom had been supportive, giving her time off, in fact, to lodge an appeal. The respondent says the disciplinary officer spoke to that manager during adjournment and the manager had said that she did not know about these things. Miss Wilson says that cannot be true.
23. On 22 December, the disciplinary officer wrote to Miss Wilson to say that she was dismissed for gross misconduct. Miss Wilson appealed. The appeal hearing was on 26 February 2016, Miss Wilson's union representative attended, Miss Wilson did not. The appeal officer decided,

says the respondent, the appeal, on the basis of the evidence before her, the decision to dismiss was upheld.

24. On the merits, the respondent says quite simply, Miss Wilson admitted non-disclosure of her arrest on suspicion of murder. The policy requires, plainly, that it should be disclosed. She was being advised by her union and so ignorance would be no excuse. Given where she works, the importance of these matters is plain to see and it is therefore clear that she should have disclosed her arrest and that this is a very serious matter and that the decision to dismiss would be well within the realms of reasonable responses.
25. Miss Wilson says that dismissal was unfair for the following reasons, and I am setting out a precis, or summary of the many matters that she told me in a one and a half hour discussion with her as to the basis of her case.
26. This is what she says:
27. She did disclose her arrest, it is just that she did so late. Previously she had disclosed late an earlier conviction under the Education Act 1992, that was in 2013 relating to her daughter's truancy. No action was taken. Murder is of course, I observe, a far more serious matter.
28. The disciplinary officer had said, during the hearing that she was inclined to issue a final written warning. The parenting order matter seems to have tipped the balance and Miss Wilson says the disciplinary officer simply did not understand what that was all about. She says that the disciplinary officer failed to take into account mitigating circumstances which would have included the distressing state that she was in at the time of, and immediately after, her arrest. Which included at the time her having no home to go back to. The fact that she was off ill during a long period with stress and anxiety, and the fact that she had been bullied by her manager at that time whom was a gossip and she did not want to tell her about the arrest which is why she and her union decided to make the disclosure to somebody senior. To avoid confusion, I should make the point that the manager that we are talking about here is a different person from that latterly whom the claimant says was supportive with regards the bad parenting order matter.
29. Miss Wilson says the typed notes of the various meetings in the disciplinary process were not accurate. She says that the respondent brought her back to work from her suspension which suggests they had not regarded the non-disclosure as gross misconduct. She says it is unclear, from the dismissal letter, in what way the respondent had thought that she had not been honest about her circumstances. She said she had been more than honest and she says she had not been evasive as was suggested. Miss Wilson says that the respondents did not properly investigate the Magistrate Court's fine and it did not put to her, or give her an opportunity to respond to, the manager's alleged evidence in that regard. She says the disciplinary officer would not discuss the

investigation report with her during the disciplinary hearing. She says that the respondents and the disciplinary officer was biased against her and wanted her dismissed, for two reasons I will put forward. The first is because of her absence record; and the second is because she had refused to participate in a conspiracy to undermine her manager when she returned to work.

30. She says that the appeal was listed at a time that she had to drop off her youngest child at school, obviously given this history something that is important, and the respondent had refused to move the start time to a later time of the day. She says it is not that she did not attend the appeal hearing, she did attend, but she was late.
31. She says that in the early stages of the disciplinary hearing, in answering her question from her union representative, the disciplinary officer had said that she regarded the arrest reporting matter as serious misconduct and that the HR advisor had intervened and said that it was gross misconduct. Suggesting perhaps that the decision maker was the HR advisor, and giving some indication of the view, the disciplinary officer took of the matter.
32. Lastly, she says that the respondent's disciplinary officer had not taken into account her reassurance that there would be no more issues such as this as her daughter was now over 17 and she was no longer responsible for her.

Conclusions

33. I cannot say that this is a case of little reasonable prospects of success. It is a case which needs to be heard.
34. I therefore decline to make a deposit order.

Employment Judge Warren

Date: 29 November 2018

Sent to the parties on: 30 November 2018

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For the Tribunal Office