



EMPLOYMENT TRIBUNAL
England and Wales
London Central Region

Claimant: Miss C Abdullah
Respondent: Bakkavor Foods Ltd
Before: Mr J S Burns
Representation
Claimant: In person
Respondent: Mr S Nichols (Counsel)

Heard by CVP and then BT MeetMe on 11 August 2021

JUDGMENT

The claims are struck out

REASONS

1. The above judgment followed an Open Preliminary Hearing to determine preliminary issues. We started on CVP but with the parties' consent switched to telephone because of persistent problems with the Claimant's internet connection.
2. I heard evidence from the Claimant and then from Christina Deverell. The documents were in a bundle provided by the Respondent's solicitors of 190 pages. I permitted the Claimant during the hearing to email me further documents which she wished to refer me to, and I considered those. I was referred to a Respondent's skeleton argument and received oral submissions.
3. I have refrained from conducting a mini-trial of the issues but have taken the claims at their highest, but have assessed their prospects of success against the documentation and the Claimant's own evidence about them.

Background

4. The Claimant describes herself as "an Arab".
5. The Respondent provides prepared food to British supermarkets. It has 23 factories in the UK.
6. The Claimant began employment with the Respondent on 6 September 2016 under a fixed term contract of employment as a Cookhouse Operative at Bakkavor Meals Abbeydale. At the time, the Claimant was employed under the name Clara Sylvester.
7. Following the expiry of her fixed term contract on 23 December 2016, the Claimant was accepted through the Respondent's agency partner, First Call Contract Services Ltd (First Call) onto a 12-week training programme at another of the Respondent's sites, Bakkavor Meals London, Cumberland (BML).
8. The Claimant was engaged by First Call and commenced a role with the Respondent on 3 February 2017 as a Trainee Process Controller. There was an opportunity to be offered a

- permanent role with the Respondent at BML upon successfully passing the training, although this was not guaranteed.
9. On 31 March 2017, the Claimant lodged a grievance making serious accusations against Indian co-employees whom she accused of ganging up on her and using voodoo against her. She used inflammatory and racist language in her grievance.
 10. On 5 May 2017, the Claimant took photos inside the CML factory on her personal mobile phone and made notes in a notebook. In a subsequent meeting, the Claimant admitted this. (She also admitted it during her oral evidence at the beginning of the hearing on 11/8/21). The forbidden photo/s she took were apparently intended to be of matters such as a "*Portugese young lady*" and to do with food hygiene and not to do with her issues with the Indians.
 11. As a result of taking the photos, the Claimant was sent home and subsequently banned from the Respondent's CML site.
 12. Unauthorised phones were are not permitted inside Bakkavor's factories. Such conduct was considered gross misconduct subject to summary dismissal by the Respondent.
 13. First Call was advised by the Respondent of the ban from the Respondent's CML site. Given the serious nature of the Claimant's conduct, First Call terminated the Claimant's assignment for gross misconduct.
 14. During her evidence in chief the Claimant stated clearly that she did not contend that her dismissal in May 2017 was because she was an Arab. The contemporaneous documentation suggests that the dismissal on account of the fact that she had taken photos contrary to the Respondent's rules.
 15. Following this, from May 2017 until March 2019, the Claimant repeatedly contacted a number of individuals at the Respondent about the termination of her engagement. The general theme to the Claimant's correspondence was her request to be re-employed by the Respondent, and that she was being treated unfairly.
 16. The Respondent told the Claimant throughout this period that she would not be re-employed by the Respondent given the serious nature of her conduct which led to the termination of her engagement with First Call, and that she should seek alternative employment.
 17. With effect from 7 June 2019, the Claimant was re-employed by the Respondent through the Regional Resourcing Centre (RRC) into Bakkavor Meals Elveden. The Claimant had applied for a role using a different name (Clara Abdullah) from that which she had used previously (Clara Sylvester). The Respondent was therefore unaware that she had previously been assigned to the Respondent via First Call and that her engagement had been terminated in 2017 for conduct reasons.
 18. The fact (that the Claimant had been previously dismissed) was discovered soon, and in the new information, a meeting was held on 7/6/2019 by Sean Madden with the Claimant and a decision was made to terminate her employment immediately on the grounds of her previous conduct in 2017.
 19. This was subsequently confirmed to her in a letter dated 11 June 2019 which was probably written by Lorna Goldsmith (the Respondent's HR partner at the time – who has subsequently left) but signed by Sean Madden. That letter gives as the reason for the 7/6/2019 dismissal the fact that she had been dismissed in 2017 and gives as the reason for the 2017 dismissal a number of reasons including the fact that the Claimant had raised grievances "*about poor management behaviours*" and had alleged that the "*HR team in Cumberland was racist*" as well as the fact that the Claimant had taken prohibited photos. The fact that the Claimant was Arab was however not mentioned. Sean Madden and Laura Goldsmith had not been involved in 2017 and the contents of the letter appears to be the result of retrospective consideration of the matter after the event.
 20. The Claimant appealed her termination on 17 June 2019. The Claimant stated during the appeal hearing "*you are dismissing me because of my race*". Her appeal was not upheld on 3 July 2019..
 21. I asked the Claimant at the beginning of the hearing on 11/8/21 why it was that she thought the appeal was directly discriminatory of the grounds of race, and she answered "*I don't know – they just didn't want me there*". However later in the hearing, when under cross-examination she stated (which she had not done previously for example in her ET1,

witness statement or in any other document) that she had been told by an unnamed receptionist who took her to the appeal hearing on 3/7/2019 that “*you have been dismissed because you are an Arab*”. When questioned about this further, she was extremely unclear and then said it was because she was wearing black lipstick, from which her Arab ethnicity must have been inferred.

22. Following her unsuccessful appeal, the Claimant resumed correspondence with the Respondent sending further complaints and allegations,
23. The Claimant commenced ACAS conciliation on 26/03/20 and the ACAS certificate was issued on 26/03/20 and she then presented her claim on 25/04/20.
24. The involvement of ACAS after the expiry of the limitation period has no effect upon the limitation period and therefore a claimant cannot benefit from the provisions relating to the extension of time.
25. The Claimant confirmed in her oral evidence that she received help from the GMB union of which she was a member from no later than July 2018. It is clear from her own correspondence that she was threatening and contemplating taking legal action against the Respondent in January 2019. She agreed that she was told in July 2019 by her union rep, who had attended the appeal with her, that she should present an ET claim and that she was at the same time told by ACAS about the Tribunal time-limits. The Claimant agreed that drafting her ET1 would have taken her no longer than a day and was unable to explain why she waited (from July 2019 onwards) a further nine months to present her claim, nor why she waited a further month after receiving her ACAS EC certificate.
26. Several relevant people involved in the matters complained of, for example Lorna Goldsmith, Monika Holliday and others have left the Respondent’s employment some time ago.

Is the claim for breach of contract out of time? If so was it reasonably practicable to bring the claim in time and if not was it then presented within a reasonable period thereafter?

27. The breach of contract claim is that R should have given C a contract of employment when her fixed term contract came to an end in December 2016.
28. Claims for breach of contract in the ET must be brought within (a) three months beginning with the effective date of termination of contract giving rise to the claim, or (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which had terminated. C’s prior fixed term contract terminated on 23/12/16 and therefore it should have been presented no later than 22/03/17. The claim was therefore presented some 37 months out of time.
29. C has failed to set out in her witness statement or oral evidence any reason why this claim could not have been brought within the limitation period. It was reasonably practicable for the claim to have been brought within the three-month limitation period.
30. The Claimant stated in her witness statement “*I only just learnt from the appeal meeting on the 02 July 2019 from Monika Holliday when Mike Hardy and I were discussing in the appeal meeting and it stated on Form DP-18- Meeting Notes “WE DON’T EMPLOYED AGENCY AS PROCESS CONTROLLER (PC).”* That information was not required by the Claimant to bring any breach of contract claim but even if it had been, the Claimant allowed a further 9 months to elapse after the appeal meeting before presenting her ET1 claim.
31. C has delayed too long in pursuing the claim and has not therefore brought the claim within a reasonable period after the limitation period had expired.
32. There would be obvious prejudice to R in having to defend such a stale claim.
33. The claim has no merit in any event. C has not identified a contract which has been breached, instead she suggests that the breach was not giving her a contract when she was working through an agency. If there is no contract there cannot have been a breach of contract.

Whether the claims of direct race discrimination are out of time? If so whether it is just and equitable to extend time?

34. The direct race discrimination has three elements:
35. The first relates to the dismissal in May 2017 by FC on R's instructions.
36. C was sent home from work on 05/05/17 and her assignment was formally terminated on 06/05/17. C's claim should therefore have been presented by 05/08/17 at the latest. C's claim was therefore presented 32 months out of time. C has not provided any reasons justifying the later presentation of the claim.
37. There will be clear prejudice to R in defending such a stale claim.
38. The claim appears to have little or no merit in any event. The contemporary documentation suggests strongly that her employment in 2017 was terminated because it was found that she was taking photographs on her personal mobile phone (on or about 05/05/17) and taking notes in her personal note pad. C admits that she took photos. In her oral evidence on 11/8/21 she confirmed that she did not suggest that her dismissal was because she was an Arab.
39. While the letter dated 11/6/2019 contains material suggesting that the 2017 dismissal was an act of victimisation, the letter was written by others 2 years afterwards, and in fact over a month had passed between the Claimant's grievance of 31 March 2017 and the dismissal on 5/5/2017, which dismissal was immediately preceded by the discovery of the prohibited photography. In any event the Claimant has never suggested that she was dismissed because she had previously complained of racism, and there is no victimisation claim before the Tribunal.
40. The second element of the direct race discrimination claim refers to the Claimant's dismissal by R on 07/06/2019.
41. This claim should have been presented by 06/09/19 and it was therefore presented over 7 months out of time. No good reason for extending time has been shown.
42. The claim appears to have little or no merit in any event. If the Respondent objected to employing an Arab the Claimant would not have been employed in June 2019 in the first place. It seems clear from the contemporary documentation that the cause of the dismissal 5 days later was simply the fact that the Respondent had discovered in the meantime that the Claimant under her previous name had been dismissed before in 2017. The Claimant's claim in her witness statement that "*Mr Sean Madden and Lorna Goldsmith decided to terminate my contract of employmentbecause I'am a Egyptian Arab wearing black tattoo lipstick tradition*" seems implausible.
43. The third element of the direct race discrimination claim relates to the appeal process in July 19.
44. The appeal hearing took place on 02/07/19 and the decision was notified to C on the same date. A letter confirming the outcome of the appeal was sent to C on 03/07/19. This claim should therefore have been presented no later than 02/10/19. The claim is therefore more than 6 months out of time. No good reason for extending time has been shown.
45. The claim appears to have little or no merit in any event. Apart from her oral evidence which I have commented on in paragraph 21 above, there are no facts or matters put forward by the Claimant which would create a prima facie case that the appeal process was directly discriminatory. R appears to have done more for the C in the circumstances than most other employers would have done having terminated an employment relationship that lasted just 5 days.

46. For these reasons it is not just and equitable to extend time for any of these claims and they are all struck out as outside the jurisdiction of the Tribunal.

Date 11/8/21
J S Burns Employment Judge
London Central
For Secretary of the Tribunals

Sent : 11/08/2021