EMPLOYMENT TRIBUNALS

Claimant: **Mr Brosrich Campbell**
Respondent: **Manning Gottlieb OMD**

In the London South Region by CVP

On: **21 November 2022**

Before: **Employment Judge Martin**

Representation
Claimant: **In person**
Respondent: **Ms Crawshay-Williams - Counsel**

JUDGMENT AT PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Claimant had less than two-year continuous employment required to bring a claim for unfair dismissal and this claim is dismissed.

2. The Claimant's claim breach of contract was withdrawn and is dismissed.

3. The Claimant's claim of race discrimination is dismissed as having no reasonable prospect of success.

REASONS

1. This hearing was listed to consider whether the Tribunal had the jurisdiction to hear the Claimant's claims of unfair dismissal on the basis that he had less than two years service with the Respondent and to consider whether the claim of discrimination should be dismissed as having no reasonable prospect of

success or that a deposit order should be made on the basis that it had little reasonable prospect of success.

The law

2. Section 108(1) of the Employment Rights Act 1996 provides, "Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years]1 ending with the effective date of termination."

3. Rule 37, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that the Tribunal can strike out all or part of a claim if it has no reasonable prospects of success.

4. Rule 2, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sets out the overriding objective. This states: 'a tribunal shall give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules' (our stress). In substance, the overriding objective is to enable tribunals to deal with cases 'fairly and justly'. This includes, among other things, ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance, and avoiding delay.'

5. **Chandhok v Tirkey 2015 ICR 527, EAT**, held that the ET1 is not an initial document free to be augmented by whatever the parties subsequently choose to add or subtract. It sets out the essential case to which a respondent is required to respond. In this regard, Langstaff P observed: '[A] system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an employment tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.'

6. **Adebowale v ISBAN UK Ltd and ors EAT 0068/15** held that even if the ET1 is not drafted by lawyers, the grounds of the claim must be set out with sufficient clarity so as not to befuddle the best efforts of an employment judge when considering it.

7. There are certain situations in which the dismissal by an employer for a specific reason will be treated as being automatically unfair. Examples include:

   (a) being summoned, or being absent from work, for jury service (ERA 1996 s 98B;

   (b) taking leave for family reasons (ERA 1996 s 99;

(c) performing certain health and safety activities (ERA 1996 s 100(f);

(d) refusal of Sunday working by shop and betting employees (ERA 1996 s 101;

(e) performing certain working time activities

This is not an exhaustive list.

The Claimant's pleadings

8. The Claimant presented his claim to the Tribunal on 26 January 2022. In box 5 of the form the Claimant ticked the box stating he was claiming unfair dismissal. There are various boxes to tick to indicate if a claimant is bringing a claim of discrimination and if so for what protected characteristic. None of these boxes were ticked The Claimant did tick the box to indicate that he was making another type of claim and stated this to be wrongful dismissal/breach of contract and discrimination.

9. At box 8.2, is where the background and details of the claim should be put. This gives the following instruction: "*The details of your claim should include the date(s) when the event(s) you are complaining about happened"* The Claimant wrote three short paragraphs in the first he says*: "and I'm now looking to bring a legal claim against them for wrongful dismissal and breach of a written agreement"*. The following two paragraphs deal with how he says it was wrong for the Respondent to terminate his employment but does not use the word discrimination or provide any facts from which it could be inferred that he was making a claim of discrimination let alone what protected characteristic he was relying on.

10. On 24 February 2022 the Tribunal wrote the Claimant a letter informing him that under section 108 of the Employment Rights Act 1996 claimants are not entitled to bring a claim of unfair dismissal unless they are employed for two years or more in certain specific certain stances which did not appear to apply in his case. The letter went on to say, "you have indicated on your claim form that you were claiming "discrimination"."

11. On 2 March 2022 the Claimant responded saying he was making a claim for automatic unfair dismissal *"for a reason that seems to mirror violations of employment law and without the Respondent following a full and fair procedure. I am also proposing that the Tribunal consider this dismissal as discriminatory arising from the difficulties under which I labored (sic) during my length of service where i believe human resources and my managers are liable for acts of discrimination."*

12. The full merits hearing was converted to this preliminary hearing to consider the Respondent's applications for strike out or a deposit order. Case management directions were revoked pending the outcome of this hearing.

13. During the hearing I explained to the Claimant what s108 Employment Rights Act 1996 said and what categories of case fall within the automatic unfair dismissal provisions. The Claimant explained that he was dismissed early in his probation period, and he had zero infractions or incomplete assignments, and what was said was contradicted by appraisals. He said that his claim was based on his employment record being good and that the Respondent acted without fairness to justify dismissing him without following a proper process. He repeated this several times.

14. The Claimant did not show, and has not pleaded, that the provisions for automatic unfair dismissal applied and therefore I dismissed his claim for unfair dismissal on the basis that he lacked the statutory period of service required to bring such a claim.

15. I then went through the claim form, pointing out that he had not ticked the relevant box to indicate what type of discrimination he was bringing. That while he used the word discrimination he did not say what protected characteristic applied and that the narrative in box 8.2 did not mention discrimination or any facts from which discrimination could be inferred.

16. The Claimant told me the protected characteristic that applied was race. When I asked why he thought he had been discriminated against, he repeated his arguments used when he was talking about his unfair dismissal claim namely that he had not done anything wrong, his work was satisfactory and there was no process leading to dismissal. I let him speak but did interrupt when he was repeating himself and not focussing on what I needed to know.

17. The Claimant has now had three opportunities to explain why a case for race discrimination is pleaded. He seemed to find it difficult to focus on the issues, saying repeatedly that he had evidence. I tried very hard to explain that I was looking at his pleaded case not his evidence, but due to constant interruptions and him talking over me, I do not think I managed to get this across to him, or if I did, he chose to ignore what I was saying.

18. The Respondent's position is that the race discrimination claim is simply not pleaded, and even today the Claimant was unable to articulate his claim. I have considered the skeleton argument provided by the Respondent. The Respondent referred to the case of **Ahir v British Airways plc [2017] EWCA Civ 1392, CA,** in which the Court of Appeal held that Tribunals should not be deterred from striking out discrimination claims that involve disputes of fact if they are satisfied there is no reasonable prospect of the facts necessary to find liability being established, provided they are aware of the danger of reaching the conclusion where the full evidence has not been heard (§16). In that case, it was said,

    "in a case of this kind, where there is an ostensibly innocent sequence of events leading to the act complained of, there must be some burden on a Claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was, or at least may have been, the real story, albeit (as I emphasise) that they are not yet in a position to prove it." (§19).

19. I adjourned to consider my decision on the discrimination issue. When I returned to give my decision, the Claimant immediately questioned the decision I had already made regarding his unfair dismissal claim. I told him that I had given my judgment, given reasons, and that he would be provided with written reasons in due course. He became agitated and aggressive constantly talking over me and interrupting me. It became so bad that I warned him several times that if he continued in that way I would mute him and give the judgment. He continued to talk aggressively, and I therefore muted him. Before I could give my judgment he disconnected and left the hearing. I proceeded to give my judgment which was that there was reasonable prospect of his claim for discrimination succeeding. The explanation that the Claimant gave me today did not show a case for race discrimination. Essentially what he told me was that he thought he had been badly treated when the Respondent dismissed him during his probationary period and that he was black. That is not sufficient to found a claim for discrimination on the protected characteristic of race. This part of his claim is therefore dismissed.

20. I have referred to the Claimant's behaviour during the hearing. Had this been an in person hearing I would have called security to sit in the room. His behaviour was inappropriate and disrespectful. I regret that I had to interrupt him (or tried to) however, it was necessary to do so, given his demeanour and his repetitiveness. I gave him the details of my Regional Judge if he wanted to contact her, and details of how to appeal to the Employment Appeal Tribunal.

Employment Judge Martin

Date: 21 November 2022