



EMPLOYMENT TRIBUNALS

Claimant

B Yanquoi

v

Respondents

First Respondent: Abbeyfield
Reading Society Limited
Second Respondent: Kathleen Davis
Third Respondent: Timothy Howe
Fourth Respondent: David Magowan

Heard at: Reading by CVP

On: 8 September 2023

Before: Employment Judge Anderson

Appearances

For the Claimant: S Swanson (employment consultant)

For the Respondents: A Griffiths (counsel)

JUDGMENT

1. The claimant's claims of direct discrimination and harassment on the grounds of sex, age and race are struck out as they have no reasonable prospects of success.
2. The claim against the third and fourth respondents is dismissed.

REASONS

Background

1. The claimant was employed in 1996 by the first respondent, a small charity running a care home in Reading. She was appointed Home Manager at Abbeyfield House in 2002, until the time of her summary dismissal on 15 September 2021. In terms of the other respondents:
 - 1.1 The second respondent was, at all relevant times, Chair of the Trustees, and was the disciplinary investigating officer;
 - 1.2 The third respondent was, at all relevant times, the Chair of Abbeyfield Southern Oaks and was the disciplinary officer;
 - 1.3 The fourth respondent was, at all relevant times, a trustee and chaired the claimant's grievance hearing.

2. The claimant brings claims of unfair dismissal, protected disclosure detriment, victimisation, and discrimination on the grounds of sex, age and race.
3. An unless order was made by EJ Shastri-Hurst at a hearing on 14 December 2022 ordering the claimant to provide particulars of her claims of direct discrimination and her claim against the fourth respondent. Particulars were filed on 25 January 2023. The respondents made an application on 7 June 2023 for the discrimination claim to be struck out as, they said, the document filed on 25 January did not provide the requested particulars and the claims have no reasonable prospect of success. A deposit order of £1000 was sought in respect of each head of the discrimination claim.
4. The purpose of the hearing today was to consider that application. The claims under scrutiny are of direct discrimination and harassment related to the following allegations:
 - 4.1 Taking of disciplinary action from 5 January 2021:
 - 4.2 Dismissing the claimant on 15 September 2021
 - 4.3 Raising complaints to the Disclosure and Barring Service (Autumn/Winter 2021)

The Hearing

5. The parties filed a joint bundle of 147 pages. Both representatives made oral submissions and answered questions of clarification from me. I gave a brief oral judgment at the hearing in order that case management could be completed. The reasons for my decision are set out in full below.

Submissions

6. For the respondent, Mr Griffiths said that the claimant had now had three opportunities to particularise her discrimination claim but had at no stage provided details to found a discrimination claim. No facts relating to discriminatory conduct have been presented. He said that this is not a case with a core of disputed crucial facts as no facts are pleaded from which discrimination could be concluded. He said that the respondents were in a difficult position as to calling witnesses as there were no dates or specific events referred to in relation to alleged discriminatory actions. He said that the claimant had alleged a multitude of discriminatory factors without a single fact in support of the allegations that would give rise to an inference of discrimination.
7. Mr Swanson, for the claimant, said that he disputed Mr Griffiths contention that there were no facts in dispute, and these were set out at paragraphs 1-31 of the further and better particulars. He said that the case of *Anyanwu and Another v South Bank Student Union and Another* [2001] UKHL 14 was authority to support the claimant's position that discrimination cases are fact sensitive and should be decided on an assessment of the facts after hearing evidence. He accepted that some specific dates were not set out in the grounds of claims and the position was set out generally by the claimant that she was treated differently because of her age and race. He said that there are specific dates for certain events and facts the tribunal could

consider in order to reach the conclusion that discrimination could be inferred. Mr Swanson said that it was accepted in *Igen v Wong [2005] ICR 9311, CA* that it was not always clear to an employee at the relevant time that discrimination was taking place. He said that since the claimant had been dismissed she had been told by other staff who still worked for the first respondent that a new white male manager was not managing the home in a better way but had not been subjected to disciplinary action. He accepted that sex discrimination had not been specifically raised by the claimant until she filed her claim but said that it was implicit when she had referred to herself as a member of a BME group.

Decision and Reasons

8. The following decision relates to the claimant's claims of direct discrimination and harassment only. The claim of victimisation continues, as do the claims of unfair dismissal and detriment resulting from making a protected disclosure.
9. In an order dated 10 February 2023 EJ Shastri-Hurst commented, on the claimant's discrimination claim, that she had concerns that there was no detail about a causative link between the protected characteristics and the alleged treatment and that the claimant seemed to have been casting around for a reason as to why she suffered certain conduct. She ordered the claimant to clarify her claim or rectify this lack of detail by filing further and better particulars. The claimant's response was filed on 25 January 2023 in a document entitled 'Claimant's Further and Better Particulars'.
10. Those particulars are essentially a restating of the grounds of claim, paragraph by paragraph, which do not take the matter of a causative link any further. The matters complained about are that the disciplinary procedure instigated by the respondent in January 2021, following a complaint from a resident's relative, was unfairly conducted, and should not have been brought, as any incident that did arise was due to the failure of the respondent to provide sufficient resources to the claimant in previous years. In each allegation of a poorly conducted disciplinary process the claimant states that the events on the balance of probabilities provide facts from which the tribunal could conclude the respondent had acted in a discriminatory manner. There is not a suggestion or even a bare indication as to why this should be so, beyond the simple facts that the claimant is a black woman aged 62.
11. In *Madrassy v Nomura International plc [2007] ICR 867* the Court said that to establish a *prima facie* case of discrimination, there needs to be something more than a set of circumstances where the tribunal "could" conclude discrimination – mere differences in status or treatment are not sufficient. By Mr Swanson's argument, any events or circumstances with which the claimant was unhappy would evidence a *prima facie* claim of discrimination and there would be no circumstances in which a claim could not move beyond that initial step of establishing a *prima facie* case. That cannot be right and I did not see that the claimant here has been able to give any indication at all that there is 'anything more'.

12. Furthermore, the claimant, in her pleadings, suggests reasons as to why the alleged discriminatory acts (taking disciplinary action, dismissing the claimant and raising complaints to the DBS) were taken, being that she had raised complaints about the first respondent's work practices in the past. Indeed, protected disclosure detriment is one of her heads of claim.
13. I am of course fully aware that this is a strike out hearing and I am considering pleadings and submissions rather than bundle documents and oral evidence. I note that there is case law which states clearly that the decision to strike out a discrimination claim should be rare. There is also case law that states that this does not mean that the tribunal cannot use its powers in this way, and even in the often quoted case of *Anyanwu*, Lord Steyn commented that: *'The time and resources of the employment tribunals ought not to be taken up by having to hear evidence in cases that are bound to fail.'*
14. Where there are disputed facts in a discrimination claim, it is clear that the proper course is for the claim to proceed to a hearing where the tribunal can hear full evidence on those disputed facts. My understanding of that is that a decision on those disputed facts would be relevant to any decision a tribunal then went on to make about discrimination having taken place. Mr Swanson said, for the claimant, there are many disputed facts. I asked him to provide me with his best examples. He referred to a lack of support with resources for the claimant going back to 2016 which he said continued until the time of dismissal. He also referred to the allegations in the disciplinary process, which he said were unfounded. Otherwise, he said, he did not intend to go through every point made in the particulars.
15. There is a difference between a disputed fact or act and a dispute over what occasioned it. I can identify few if any disputed facts as opposed to disputes about motivation in the pleadings, and as set out above, the claimant has provided no indication at all as to why that motivation might be discriminatory other than setting out the claimant's sex, age and race. Mr Swanson did not indicate that the resolution of what he says are disputed facts would give an indication of a discriminatory motive. The only factual dispute brought to my attention by Mr Swanson was about the provision of resources and I do not see how the resolution of that dispute would provide evidence of discrimination or provide a basis for inferring discrimination.
16. Mr Griffiths submitted that if there was any basis for the claimant's allegations of discrimination she would have presented them by now when it has been clear from the time of the last case management hearing that the tribunal was concerned about the merits of the discrimination case, and she has not done so. I agree.
17. Having taken all these matters into consideration it is my decision that the claimant's claims of direct discrimination on the grounds of sex, age and race and her claim of harassment on the grounds of sex, age and race have no reasonable prospect of success and they are struck out.

18. Having made this decision, I have not gone on to consider the matter of a strike out on the grounds of whether the claim is vexatious.
19. Mr Griffiths also argued that the Unless Order made by EJ Shastri-Hurst had not been complied with. While I have found that the document submitted for the purposes of complying with that order does not in my view provide a basis from which I can conclude that the discrimination claims have any reasonable prospect of success, I accept that the document was drafted by the claimant for the purpose of complying with the order to provide particularisation and attempts to do that. I do not accept the respondents' argument on this point.

Decision and reasons on application to dismiss claims against second, third and fourth respondents.

20. Consequent on my decision above Mr Griffiths, for the respondents, sought the removal of the second, third and fourth respondents from the claim. Mr Griffiths said that the claims of unfair dismissal and protected disclosure detriment could only be brought against the first respondent as employer. He said the victimisation claim was not put in such a way that it identified individual respondents as committing the alleged detriments.
21. Mr Swanson, for the claimant, said that he accepted that in light of my decision on the strike out application the third and fourth respondents should now be removed as respondents. He said that the second respondent was identified specifically as being instrumental in the widening of the allegations made within the disciplinary process and in the decision to dismiss the claimant. These are allegations of detriment made within the victimisation claim.
22. On reviewing the grounds of claim I accepted that the claimant has claimed that the second respondent was involved in these two acts. I dismissed the claims against the third and fourth respondents. The second respondent remains a respondent to the proceedings. The only allegations now directed at the second respondent are that she victimised the claimant in that she escalated the disciplinary allegations from 2 to 8 allegations (around 5 March 2021) and dismissed the claimant (15 September 2021).

Employment Judge Anderson

Date: 14 September 2023

Sent to the parties on: 18 October 2023

For the Tribunal Office