



EMPLOYMENT TRIBUNALS

Claimant: Mr Khalid Mughal

Respondent: (1) Omnia Life Style Ltd (2) Mr Francis Mirandha

RECORD OF A PRELIMINARY HEARING (CASE MANAGEMENT)

Heard at: Watford (by CVP) On: 15 March 2024

Before: Employment Judge Reindorf KC

Representation

Claimant: Mr S Jackson (solicitor)

Respondent: Mr I Hurst (solicitor)

CASE MANAGEMENT ORDERS

List of Issues

1. If either party is not content with the amendments made by the Employment Judge to the List of Issues (below), they **must** write to the Tribunal setting out their objections **within 28 days** of the date this Order is sent to the parties.

Schedule of Loss

2. The Claimant **must** provide to the Respondents on or before **5 April 2024** a Schedule of Loss setting out what remedy is being sought and how much in compensation and/or damages the Tribunal will be asked to award the

- Claimant at the final hearing in relation to the Claimant's complaint and how the amount(s) have been calculated.
3. The Schedule of Loss must include the following information: whether the Claimant has obtained alternative employment and if so when and what; how much money the Claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
 4. The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidancepension-loss-20170810.pdf;
 5. If the Claimant is claiming for loss of pension, the Schedule of Loss must include the following information: precisely how much is being claimed and on what factual and arithmetical basis.

SUMMARY OF PRELIMINARY HEARING

6. A Case Summary is contained in the Case Management Orders of EJ Cowen sent to the parties on 29 August 2023.
7. Following that hearing, the Claimant sent Further Particulars of his age discrimination complaint to the Respondents on 11 September 2023 (the date for compliance with paragraph 8 of EJ Cowen's Case Management Order having been varied by agreement). In his Further Particulars he said that he was bringing claims of direct discrimination and harassment. The Respondents responded to the Further Particulars on 29 September 2023. On 31 October 2023 the Respondent made the present application for a strike out of the age discrimination claim, alternatively a deposit order, on the basis that it was inadequately particularised.
8. The matter came before me to determine the Respondents' application to strike out the age discrimination claim, as to which judgment is sent under separate cover.
9. At the conclusion of the hearing I made the case management orders set out above, by consent.

The issues

10. The Respondents' strike out application having been unsuccessful; it is necessary to complete the relevant section of the List of Issues which was provisionally drawn up by EJ Cowen. There was insufficient time to undertake this task during the hearing. I therefore undertook to do it after the hearing. For ease of reference I replicate below the entire List of Issues. Amendments are shown in underlined type.

1. Time limits

- 1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 1 March 2023 may not have been brought in time.
- 1.2. [If applicable] Was the discrimination complaint made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2. If not, was there conduct extending over a period?
 - 1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?
- 1.3. Was the unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:
 - 1.3.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
 - 1.3.2. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 1.3.3. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Unfair dismissal

- 2.1. The Claimant was dismissed on 22 November 2022. What was the reason or principal reason for dismissal? The Respondent says the reason was capability and/or misconduct.

Capability

- 2.2. If the reason was capability, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will decide, in particular, whether:

2.2.1. The Respondent adequately warned the Claimant and gave the Claimant a chance to improve;

2.2.2. Dismissal was within the range of reasonable responses.

Misconduct

2.3. Did the Respondent genuinely believe the Claimant had committed misconduct;

2.4. Did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will decide, in particular, whether:

2.4.1. there were reasonable grounds for that belief;

2.4.2. at the time the belief was formed the Respondent had carried out a reasonable investigation;

2.4.3. the Respondent otherwise acted in a procedurally fair manner;

2.4.4. dismissal was within the range of reasonable responses.

3. Remedy for unfair dismissal

3.1. If there is a compensatory award, how much should it be?

3.2. What basic award is payable to the Claimant, if any?

3.3. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

4. Age discrimination

4.1. The Claimant's age group is 60—65 and he compares himself with people in the age group under 45.

4.2. Did the Respondent do the following things:

4.2.1. by Mr Miranda and / or Sumana (HR Representative), tell the Claimant in meetings from February / March 2022 onwards that he was seen as aloof and slow and not able to blend into teams quickly because of the age factor;

4.2.2. by Sumana, in a meeting tell the Claimant that some of the staff found him absent-minded; and

4.2.3. dismiss the Claimant?

4.3. Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who he says was treated better than he was.

- 4.4. If so, was it because of age?
- 4.5. Did the Respondent's treatment amount to a detriment?
- 4.6. The Respondent does not argue that the treatment, if proved, was justified.

5. Harassment related to age

- 5.1. Did the Respondent do the things listed at paragraphs 4.2.1 and 4.2.2 above?
- 5.2. If so, were they unwanted conduct?
- 5.3. If so, was the unwanted conduct related to the Claimant's age?
- 5.4. If so, did the unwanted conduct have the purpose or effect of:
 - 5.4.1. violating the Claimant's dignity; or
 - 5.4.2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

6. Remedy for discrimination

- 6.1. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
- 6.2. What financial losses has the discrimination caused the Claimant?
- 6.3. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 6.4. If not, for what period of loss should the Claimant be compensated?
- 6.5. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 6.6. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

7. Failure to comply with ACAS Code

- 7.1. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- 7.2. Did the Respondent or the Claimant unreasonably fail to comply with it?
- 7.3. Is it just and equitable to increase or decrease any award payable to the Claimant?
- 7.4. By what proportion, up to 25%?

Employment Judge Reindorf KC

Date 15 March 2024

Sent to the parties on:

15/4/2024

For the Tribunal:

N Gotecha