



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

MEMBERS: Ms E Whitlam
Mr S Goodden

BETWEEN:

Miss C Poku

Claimant

And

NHS Croydon Clinical Commissioning Group

1st Respondent

Ms A O'Grady

2nd Respondent

Ms R Colley

3rd Respondent

ON: 2 – 4 April 2019

Appearances:

For the Claimant: Mr S Marchant, Lay Representative

For the Respondent: Mr C Kennedy, Counsel

JUDGMENT

All claims against all Respondents fail and are dismissed.

REASONS

1. By a claim form presented on 18 April 2018, the Claimant complained of direct race discrimination and victimisation against her former employer, R1 and two of R1's employees, R2 and R3. Claims of sex discrimination, age discrimination, disability discrimination and a number of allegations of harassment and victimisation were struck out at an earlier hearing.

Application for Anonymity Order

2. On the first day of the hearing, the tribunal heard an application from the Claimant for an anonymity order. The order was opposed by the Respondent.
3. The basis of the application was that the Claimant wished to remain anonymous and had a reasonable right to do so under Article 8 of the Human Rights Act 1998. It was not in the public interest for the matters in her case to be in the public domain. It was said that the Claimant suffers from Dyspraxia and because of her experiences at work, this had brought on anxiety and depression. If these matters were in the public domain, they would cause damage to her reputation, stigmatisation and would adversely affect her employment prospects.
4. It was submitted on behalf of the Respondents that the starting point is that justice must be carried out in the public domain and that the Claimant had to show that it was strictly necessary to depart from that principle. That was a high hurdle and there is nothing in the Claimant's submission to weigh in the balance with her Article 8 rights. The real reason the Claimant wanted anonymity was to avoid the embarrassment of the fraud allegations against her being aired in public.
5. The case: BBC v Roden UKEAT/385/14 was cited by the Respondents and we have taken this into account.

Decision on Anonymity Order

6. The tribunal has power to make an anonymity order under Rule 50 of the Employment Tribunal Procedural Rules 2013. In making such an order, the tribunal must have regard to the principle of open justice and to the convention right to freedom of expression. As an anonymity order interferes with those principles, it should only be made in exceptional circumstances and even then, should only go so far as is necessary in the interests of justice or in order to protect the Convention rights of any person. It is for the person seeking the order to satisfy the tribunal that such exceptional circumstances exist.
7. The reasons for the application fall far short of exceptional circumstances justifying a departure from the principle of open justice. That the Claimant suffers from particular medical conditions is not remarkable. In a jurisdiction such as this, which deals with disability discrimination cases, Claimants present with disabilities as a matter of routine. That is not, in itself, a good enough reason to hear a case in private. A discrimination claim against a public body such as R1 is something the public would be interested in knowing about and we are satisfied that the Claimant's Article 8 right to privacy, such as it is, is outweighed by the public interest in having her case dealt with in the public domain.

8. Having considered the parties' representations and the guidance set out in BBC v Roden, the unanimous decision of the tribunal is that the application is refused.

The Issues

9. The Claimant makes 27 separate allegations against the Respondents, which can be described in broad terms as complaints of bullying and harassment. They are set out in a Scott Schedule at pages 165-174 of the bundle. The most serious of the allegations are allegations of assault against the R2, R3 and a Ms Brookman. The Claimant alleges that Ms Brookman pushed and hit her causing her shoulder pain for a month. She claims that R2, her interim manager, physically assaulted her by hitting her back and shoulders causing her pain and stress. And that R3 assaulted her by hitting her hand and pushing it off the computer mouse, causing pain to her wrist and arm for a couple of months and causing her recurring nightmares. All of these assaults were said to have occurred in an open plan office and with no witnesses present.
10. Having made multiple applications to adjourn today's hearing without success, including going to the EAT, the Claimant has not attended. She has however been represented by Mr Marchant, even though she had used his unavailability to attend today as one of the reasons for requesting an adjournment.
11. Given that this is a discrimination claim, the Claimant has the initial burden of proving facts from which the Tribunal could conclude discrimination.
12. The Claimant has produced a witness statement for these proceedings. As she has not attended, the question arises as to how much weight we can attach to her statement. In attendance to give evidence on behalf of the Respondents were R2 and R3, Stephen Warren (SW) Director of Commissioning; Bunmi Brookman (BB) Interim HR Business Partner; and Mike Sexton (MS) Chief Finance Officer.
13. Given the serious nature of the allegations; the fact that they were disputed; and the absence of independent witnesses to the alleged events, the relative credibility of the parties was a key factor in the tribunal's decision making. The Claimant was not present to be cross examined. On the other hand, the Respondents and their witnesses gave evidence on oath and their evidence was not challenged.
14. In those circumstances, to the extent that the Claimant's witness statement conflicted with the Respondents' evidence, we preferred the evidence of the Respondents. However, we go further than that. Because of serious doubts we have about the Claimant's credibility, we not only prefer the Respondents' evidence in its entirety, we find that the allegations are untrue.
15. In reaching that conclusion, we have taken account of the following:
 - a. We have seen evidence in the bundle that the Claimant lied about her qualifications when she applied for her role with the Respondent. She said in her application that she had an MSC from Imperial College, London (she refers to it as Imperial University) in Molecular Biology and Pathology of Viruses. As part of its fraud investigation, the Respondent wrote to Imperial College for verification of the Claimant's degree and the response received was that the Claimant had not attended that college [670]

- b. The Claimant told the Respondent when she was recruited that she had worked for Action Aid as a Director for over 4 years. However, we have seen in the bundle a letter from Action Aid confirming that they had no record of the Claimant. [663-666].
- c. On the 27 March 2018, the Claimant attended a formal disciplinary investigation and was asked about these discrepancies in her application. MS gave evidence that she was unhelpful, unwilling to engage, evasive and vague. In essence, she failed to provide any credible explanation for the discrepancies. We accept that evidence.
- d. The Claimant did not raise the alleged assaults with the Respondent until 21 March 2018, after she had resigned. [663-664] Yet in January 2018, she had spoken to SW about her difficult working relationship with R2 and R3 but did not refer to any assault on that occasion. On 19 February 2018, the Claimant made a formal written complaint against R2 of bullying and harassment but there was still no reference to an assault, even though the alleged assault by R2 is said to have happened on 10 January 2018 and the alleged assault by R3 on 15 January 2018. [526-527]
- e. On 1 March 2018, the Claimant met with SW to discuss her grievances. His evidence to the tribunal was that at the meeting, the Claimant said to him that she would drop the bullying allegations if the capability process against her was stopped. That the Claimant was prepared to barter pursuing serious allegations of bullying and assault in exchange for not being performance managed appears to us to be rather manipulative and completely undermines the credibility of the allegations.
- f. Turning to the events of the last couple of days, the tribunal agreed to an adjournment of the proceedings on Tuesday afternoon because the Claimant told us that she was suffering from panic attacks and heart palpitations arising from the condition: Sinus Tachycardia, which she said she had suffered from for many years. She assured the tribunal that she would be fit to attend on Thursday (We were not due to sit on the Wednesday). The tribunal took the Claimant at her word and granted the adjournment but told her to produce medical evidence by Thursday, when the hearing was due to resume.
- g. On the Wednesday, the Claimant wrote to the tribunal asking for a further adjournment on grounds that she was still unfit because of her condition. She failed to produce any credible medical evidence of an existing condition or her inability to attend the resumed hearing and on that basis, her request was refused. She then made a number of subsequent requests citing different reasons, none of which were credible. For example, she claimed in one of her letters that she needed an adjournment to obtain legal representation as she was too ill to represent herself. When the tribunal again refused the request, pointing out that she already had a representative, the Claimant's reply was that her current representative, Mr Marchant, had informed her that he was unable to attend on Thursday. Mr Marchant had been present on Tuesday and had made no mention of this to the tribunal. In the event, Mr Marchant did attend the resumed hearing and confirmed to the tribunal that he was always going to do

so. When asked to explain why the Claimant had reported otherwise, Mr Marchant put this down to crossed wires between them. We think he was being very generous to the Claimant, which is understandable, given the difficult position she had put him in. We do not believe that there were crossed wires at all. In our view, this was a deliberate lie by the Claimant to secure an adjournment by any means.

16. For these reasons, we find the Claimant to be totally lacking in credibility. This is therefore one of those rare occasions where we are prepared to find, not only that the allegations are not proved, but also that they are untrue.

Judgment

17. The unanimous decision of the tribunal is that all claims against all Respondents fail and are dismissed.

Employment Judge Balogun
Date: 16 April 2019