

EMPLOYMENT APPEAL TRIBUNAL

Appeal No UKEATPA/0941/19/LA (V)

BEFORE

**HIS HONOUR JUDGE AUERBACH
SITTING ALONE**

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at Manchester and sent to the parties on the 1st day of August 2019

BETWEEN:

Miss Paczkowska

Appellant

- and -

R-Com Consulting Limited

Respondent



UPON HEARING Miss Paczkowska the Appellant in person

AND UPON the Appellant's application pursuant to Rule 3(10) of the Employment Appeal Tribunal Rules 1993 (as amended)

AND UPON the form of hearing being fully remote (conducted by Skype but with the Appellant participating by sound only) as a face to face hearing was not practicable in the current circumstances and all issues could be determined in a remote hearing

AND UPON consideration of the documents as lodged

AND UPON the application of the Appellant for leave to appeal to the Court of Appeal

IT IS ORDERED THAT:

1. The Appellant's application pursuant to Rule 3(10) is allowed in respect of the following grounds only:

(1) That the Tribunal erred by dismissing allegation 16 (regarding the alleged remark about a Russian woman) without determining, as best it could, what was said and/or on the basis that the alleged remark was about "an unknown Russian third party."

(2) That the Tribunal erred in determining (in respect of allegation 20) that the Respondent was not vicariously liable for the email sent by Ms Dando (and hence dismissing the complaints relating to that email) having regard to the Claimant having been permitted to add those complaints, and the Respondent having conceded vicarious liability, at the PHCM on 16 March 2018.

(3) That the Tribunal erred in determining that, having found that the claim of victimisation in respect of allegation 21 (concerning the reference request) succeeded, it was therefore not necessary to make findings in relation to the direct disability discrimination complaint relating to the same matter.

(4) That the Tribunal took an unfair approach to the fact that the Respondent called six live witness and tendered two further witness statements, when, at the PHCM in March 2018, it had indicated that it would be calling four witnesses.

(5) That the Tribunal unfairly did not permit the Claimant to give evidence last, rather than first.

(6) That the Tribunal erred in deciding that it was not just and equitable to extend time in relation to the allegation 1 complaint, on the basis that no explanation had been given for the delay in complaining, when the Claimant had put forward arguments in correspondence, and/or because she did not have a fair opportunity to do so before that was decided.

All other grounds be dismissed.

2. This appeal be set down for a full hearing for the Reasons attached hereto. The time estimate for this hearing (including time for judgment to be delivered) is 1.5 days, *the parties are to notify the Tribunal in writing if and so soon as they disagree with such estimate*. Category B.
3. The full hearing of this appeal be heard before a judge sitting alone.
4. Within 28 days of the seal date of this Order, the Respondent must lodge with the Employment Appeal Tribunal and serve on the Appellant an Answer, and if such Answer include a cross-appeal shall forthwith apply to the Employment Appeal Tribunal on paper on notice to the Appellant for directions as to the hearing or disposal of such cross-appeal.
5. This hearing will be conducted in person. If any party has a concern about attending a hearing in person they should raise it in writing to the EAT (with a copy to the other party or parties) within 14 days of the seal date of this Order. The other party or parties may then write to the EAT (copy to the party that has raised the concern) with any comments, within 7 days of receipt. A Judge or the Registrar will thereafter decide whether the hearing should proceed in person or remotely or some other Order should be made, and the parties will be notified of their decision. The EAT may, itself, notify the parties that the hearing will be converted to a remote hearing, should it be decided that it is appropriate or necessary to do so.
6. If it is considered by any party that a point of law raised in the appeal or cross-appeal cannot be argued without reference to evidence given (or not given) at the Employment Tribunal, the nature of which does not, or does not sufficiently, appear from the written reasons of the Employment Tribunal, then the parties so contending shall within 28 days of the seal date of this Order give notice to the other party, and they shall seek to co-operate in the agreement of a statement or note in that regard; in the absence of such agreement within 14 days of such request, either party shall be at liberty to apply on paper within 7 days thereafter to the Employment Appeal Tribunal, giving notice to the other party, in relation to such evidence (whether for the purpose of resolving such disagreement or of seeking answers to a questionnaire or requesting the Employment Judge's notes (in whole or in part), from the relevant Employment Tribunal).
7. The parties shall co-operate in compiling and agreeing and shall, by no later than 28 days prior to the date fixed for the hearing of the full appeal, lodge with the Employment Appeal Tribunal 2 copies of an agreed, indexed and paginated bundle of material documents for the hearing of the appeal prepared in accordance with the Employment Appeal Tribunal Practice Direction. It shall consist of the Judgment against which the appeal is made, the sealed Notice of Appeal, the Claim (ET1), Response (ET3), any questionnaires and replies, relevant orders, judgments and written reasons of the Employment Tribunal, relevant orders and judgments of the Employment Appeal Tribunal, any affidavits and comments (where ordered). In addition, other relevant documents which (a) were before the Employment Tribunal; and (b) to which it will be *necessary* for any party to refer during the appeal may be added as a separate bundle. Permission must be sought if it is proposed to lodge a separate bundle which is in excess of 50 pages: any excess will have to be justified.

8. The Appellant shall lodge with the Employment Appeal Tribunal and serve on the Respondent a chronology and the parties shall exchange and lodge with the Employment Appeal Tribunal skeleton arguments for the purposes of this appeal, not less than 14 days before the date fixed for the hearing of the full appeal.
9. The parties shall co-operate in agreeing a list of authorities and shall jointly or severally lodge a list or lists and copies of such authorities for the purposes of the appeal not less than 7 days prior to the date fixed for the hearing of the full appeal. The authorities are to consist only of those which identify a relevant principle, and not those which are merely illustrative of it. If more than 10 are to be relied on, the parties must be prepared to justify their selection to the court. They are to be arranged in chronological order in a ring-file binder, separated by tabs, with relevant passages clearly marked by side-lining, highlighting, or in some other effective way. Electronic copies of reports may be used, but where the authority is reported in the ICR or IRLR series, in the official series of Law Reports, or if not, the All England Reports, then so far as the parties' facilities permit it a copy (whether electronic or not) of one of those reports must be utilised. You do not need to include copies of any authority shown in the list of 'familiar authorities' on the EAT's website, as copies are available in court.
10. The parties are permitted to apply for this Order, or part of it (save for paragraph 1), to be varied, supplemented or revoked. Any such application should be copied to the other party or parties. The Employment Appeal Tribunal may, on its own initiative, vary, supplement or revoke this Order, or part of it. If this order, or any part of it is varied, supplemented or revoked, the parties will be notified.

IT IS FURTHER ORDERED that the Appellant's application for leave to appeal to the Court of Appeal be refused.

IT IS DIRECTED that any further application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order

D A T E D the 19th day of August 2020

TO: Miss K Paczkowska the Appellant
Peninsula for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No 2405428/2016)