

IN THE EMPLOYMENT APPEAL TRIBUNAL

APPEAL No:EA-2022-001163-NLD

On appeal from the Employment Tribunal (London Central)

B E T W E E N:-

ALLISON BAILEY

Appellant

-and-

STONEWALL EQUALITY LIMITED

Respondent

**SKELETON ARGUMENT FILED ON BEHALF OF THE
FIRST RESPONDENT**

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1. For the reasons set out in the Respondent's answer [p.128-131] and in this skeleton argument the Respondent respectfully submits that the employment tribunal did not err in law in dismissing the Claimant's claims against it. Accordingly, this appeal should be dismissed.

Ground One

2. The Respondent submits that:-
 - (1) the employment tribunal directed itself correctly on the law in respect of the constituent elements of a basic contravention as defined in section 111(1) of the Equality Act 2010 ("the EA") see §§ 250-254, 261-262 reasons [p.67-68, 69-70];
 - (2) the employment tribunal directed itself correctly on the law in respect of the test for causation and of remoteness within section 111(2) EA. It appropriately asked the critical reason why question: see §§358-359, 377 reasons [pp.98,102];
 - (3) the employment tribunal directed itself correctly on the law in respect of the mental element required to support a finding of a breach of section 111(2) EA see §360 reasons [p.98];

- (4) a fair reading of the employment tribunal's reasons does not support the Claimant's contentions that in its analysis or application of section 111(2) EA the employment tribunal:
 - (i) wrongly focused on the subjective intentions of KM; or
 - (ii) wrongly imported a requirement that KM must have intended the specific basic contravention which in fact occurred.

Ground Two

- 3. The Respondent submits that:
 - (1) the employment tribunal directed itself correctly on the proper approach to inducement in section 111(3) EA see §§358-359 [p.98];
 - (2) the employment tribunal directed itself correctly in law on the nature and salience of the relationship required for the purposes of section 111(7) EA see §359 [p.98].

Generally

- 4. The employment tribunal was required to determine the legal meaning of the provisions of section 111(2) and (3) not in the abstract but when applied to the facts of the case before it.
- 5. Though the meaning to be attributed to legislation is a question of law, if as a matter of law, a word or phrase is being used in its ordinary sense, then it is for the tribunal of fact to determine and apply that meaning to the facts found.
- 6. It is a question of law whether the words "cause" or "induce" in the relevant provisions are to be given their ordinary meanings.
- 7. It is a question of fact whether the First Respondent's conduct complained of by the Claimant was "causing" or "inducing" within that meaning. The employment tribunal had the conduct complained of by the Claimant clearly in mind. It summarised that conduct at §364 reasons [p.99].
- 8. The parties agreed that the words "cause" and "induce" should be given their ordinary meaning. It was therefore for the employment tribunal to assess the conduct

complained of by the Claimant and to form a view, as a matter of fact, as to whether that conducted amounted to actions which were unlawful under sub-sections 111(2) and/or (3).

9. The employment tribunal performed its task dutifully. Having carefully considered the evidence it concluded that KM's email of 31 October was not an inducement or an attempt to induce the Garden Court Respondents to cause a detriment to the Claimant. Its reasons do not suggest that either the specific detriment alleged or any particular detriment was necessary in order for liability to be established against the First Respondent.
10. The employment tribunal make a specific finding about the purpose of the email in the context of the Claimant's case on inducement. The email was not an inducement within ss111(3) rather the email was, the employment tribunal find as a fact, "just a protest" see §372 [p.101], "no more than protest" §377 [p.102].
11. The employment tribunal also concluded that KM's email did not cause, nor was it an attempt to cause, detriment to the Claimant: see §390 [p.105]. Again, the employment tribunal's reasons do not suggest that either the specific detriment alleged or any particular detriment was necessary in order for liability to be established against the First Respondent.
12. On any analysis, the employment tribunal's findings of fact are not sufficient to support a finding of liability against the First Respondent. The employment tribunal did not find that in writing his email KM was materially influenced by the protected belief relied on by the Claimant nor was it bound to do so.
13. The matters raised in the Claimant's notice of appeal are an impermissible attempt to challenge the employment tribunal's findings of fact and the conclusions which it drew and was entitled to draw from them.
14. The employment tribunal's starting point was to ascertain the relevant facts. It did so in a manner which discloses no error of law and therefore warrants no intervention from this Appeal Tribunal.

15. The employment tribunal's conclusions based on those findings of fact were open to them based on its assessment of the evidence before it. That assessment was pre-eminently a matter for the tribunal.
16. The employment tribunal's conclusions based on those findings of fact are not perverse. Its reasons are adequately set out, having regard to the strictures to parties about how such reasons are to be read.
17. There is no proper basis upon which the employment tribunal's judgment can be interfered with.

IJEOMA OMAMBALA KC

30 April 2024

Old Square Chambers