



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Richard Page

and

Respondent
NHS Trust Development
Authority

CASE MANAGEMENT ORDER

Before: Employment Judge Downs

Preliminary hearing on 12th January 2017

Representation

Claimant:

Mr P Stroilov

Respondent:

Ms H Baxter (Solicitor)

JUDGMENT

Upon this matter having been listed as a Preliminary Hearing to determine whether the Tribunal has jurisdiction to entertain the claims taking into account the statutory time limit and a Case Management Hearing

AND Upon the Claimant having applied to withdraw his claim against the Secretary of State on 7th January 2017 and this being agreed by the Respondents.

AND Upon the NHS Trust Development Authority accepting they were the correct Respondent for all aspects of this claim

IT IS THE JUDGMENT OF THE TRIBUNAL THAT the Claim against the Secretary of state for Health is dismissed upon withdrawal

CASE MANAGEMENT DIRECTIONS

IT IS DIRECTED THAT

The identify of the Respondent

1. The correct Respondent is the NHS Trust Development Authority

Further Particulars

1. No later than 21st February 2017, the Respondent is to supply to both the Respondent and the Tribunal the particulars of its contentions that any potential indirect discrimination of the Claimant was justified pursuant to section 19 (2) (d) Equality Act 2010

Schedule of Loss

2. No later than 21st February 2017, the Claimant shall supply to both the Respondent and the Tribunal a Schedule of Loss.

Disclosure of Documents

3. The parties shall exchange lists of documents electronic or otherwise that are relevant to the claim or the defence thereof by 20th March 2017
4. Parties are to request copies of the documents that they want from the other party and to provide copies of the documents requested by 3rd April 2017
5. The Parties are to agree the contents of the bundle by 17th April 2017
6. The Respondent is to provide a copy of the agreed paginated bundle for the Claimant by 20th May 2017
7. The Respondent is to provide the Tribunal three copies of the agreed hearing bundle and one for the witness table at the time of the final hearing.

Witness Statements

8. The parties shall prepare written statements for each witness including the Claimant or Respondent who will give evidence personally, who it is intended will be called to give evidence on their behalf at the Tribunal Hearing, such witness statements shall:-
 1. Be typed in double spacing.
 2. Contain the evidence in chief of such witnesses.
 3. Be laid out in short consecutively numbered paragraphs.
 4. Set out in chronological order with dates, the facts which the witnesses can state.
 5. Admit any matter not relevant to the issues of the case.
 6. Identify the source of any information which the witness does not know first hand.

7. Refer by page number of the bundle of documents, to any document mentioned in the statement.
8. Be signed.
9. The witness statements are to be exchanged by 4th July 2017
10. Each party shall bring to the hearing sufficient copies of the witness statements for the Tribunal and Witness table.
11. The parties are to file with the tribunal and exchange with each other outline arguments addressing the issues in the case by 25th July 2017

Hearing

12. The parties agree that this matter can be concluded in a 3 day hearing. The Tribunal concluded that it would be prudent to list this matter for four days to allow proper time for submissions and the preparation of a Judgment as well as consideration of remedy.
13. The Tribunal considers that a four day listing is proportionate to the issues in the case and the parties are to prepare and conduct the hearing so that it is completed in that time.
14. This matter shall be set down for hearing for four days commencing at 10.00 am on Tuesday 1st August 2017 i.e. this matter shall be heard on **1st, 2nd, 3rd and 4th August 2017** at the London South Employment Tribunal at London Road, Croydon.

Schedule of Issues

15. This is a claim for unlawful discrimination because of the Claimant's religion and belief and victimisation pursuant to the Equality Act 2010 interpreted so as to be consistent/compliant with Articles 9 and/or 10 of the European Convention of Human Rights.
16. The Claimant says that he was subjected to three detriments as the holder of a public office or being an aspirant public office holder (within the meaning of Equality Act 2010 ss 50 – 52) namely:
 - (i) His suspension as a non-executive Director of the Kent and Medway NHS and Social Care Partnership NHS Trust because of expressing his religious and/or philosophical beliefs on 21st March 2016 until the expiration of his fixed term appointment on 12th June 2016 pursuant to Equality Act 2010 ss 50 (6) (b) or (d) or (8) or (9) (b) or (d);
 - (ii) The investigation into the Claimant because he had been expressing his religious and/or philosophical beliefs initiated by the Respondent on 21st March and lasting until 2nd August 2016 pursuant to Equality Act 2010 ss 50 (6) (b) or (d) or (8) or 9 (b) or (d) or 51 (a); and
 - (iii) The outcome of the Termination of Appointments Panel which was communicated to him by way of a letter of 19th August 2016 pursuant

to Equality Act 2010 ss 50 (6) (b) or (d) or 8 or 9 (b) or (d) 51 (1) (b) or (c) (2) (3) (b)

17. The consequences of the letter of 19th August is likely to be the subject of argument but might be interpreted as a recommendation that it was not in the interests of the health service for the Claimant to serve as a non-executive director.

Direct discrimination because of the Claimant's religion and belief

18. The Claimant says that all three detriments were because of his religion and belief. The Claimant states that he is a Christian and his relevant philosophical belief was that it is in the best interest of a child to have a mother and a father.
19. The Claimant has set out a hypothetical comparator at paragraph 51 of his ET1

Indirect discrimination

20. The Claimant says that each of the three detriments above are instances of indirect discrimination pursuant to Equality Act 2010 section 19.
21. The Claimant says that he was subject to three PCPs pursuant to section 19 (2)
 - (i) In assessing suitability of a non-executive director for the office, the Respondent considers that expressing a critical view of same-sex adoptions has a negative impact on the confidence of staff, patients and the public in a non-executive director of an NHS Trust (that this PCP was applied is agreed);
 - (ii) In assessing suitability of a non-executive director for the office, the Respondent gives a high priority to securing the confidence and/or approval of the so-called LGBT community (that this PCP was applied, is agreed);
 - (iii) In assessing suitability of a non-executive director for the office, the Respondent gives greater weight to the actual or perceived views of the so-called LGBT community than to the views of Christians and others who adhere to the traditional sexual morality (this PCP is not agreed);
22. The Claimant would say that these PCPs were discriminatory pursuant to Equality Act 2010 section 19 (2) (a), (b) & (c).
23. The Claimant would say that the Respondent cannot show the PCPs to be a proportionate means of achieving a legitimate aim.

Harassment

24. The Claimant also alleges that the three instances of detriment cited at paragraph 16 above are unwanted conduct related to his religion and belief and had the purpose or effect of violating his dignity or creating an intimidating, hostile degrading, humiliating or offensive environment for him.

Victimisation

25. The Claimant says that he has been victimised by the Respondent by being subject to the three detriments cited at paragraph 16 above and this was because of a series of protected acts set out at paragraphs 17 – 28 of the ET1. The Claimant says that these are protected acts because:

- (i) He had been a victim of discrimination and/or harassment on the grounds of his Christian religious beliefs and/or his philosophical belief that it is in the best interests of a child to be raised by a mother and father; and/or
 - (ii) That he had been victimised for his earlier allegations to the same effect; and/or
 - (iii) That he was bringing a claim in the Employment Tribunal under the Equality Act.
26. That these matters amount to a protected act is denied by the Respondent.

Limitation

27. The Tribunal considered the question of limitation. The Tribunal had the benefit of the claim form and reply as well as the letter from the Respondent of 10th August 2016 which noted the referral to the Termination of Appointments Panel (TAP) of 10th July 2016 as well as the decision letter of 19th August 2016. On the basis that the latter could be interpreted as a recommendation not to appoint the Claimant to a Non-Executive Director post in the future, it would appear that some, at least, of the claim was in time. The Claimant alleges that he was subjected to continuing discrimination – the last of the series of acts being in time for the purposes of this claim. In addition, the Claimant alleges that he was the subject of the pleaded PCPs at all relevant times.
28. The Respondent sought to argue that the decisions to suspend and subject the Claimant were out of time. The Tribunal indicated that to decide that issue would require access to many of the original documents and that it would be better if this matter could be determined at the final hearing of the matter. The Claimant accepted that the Tribunal at that hearing could examine the Claimant's timeliness in the presentation of this claim.
29. If the parties do not agree with the way that the claims are summarised and set out above they shall write to the Tribunal with a copy to the other party by 23rd January 2017 days of the date of the Order setting out any disagreement and proposing any amendments.

Employment Judge Downs

11th April 2017