



EMPLOYMENT TRIBUNALS

Claimant:
Mr G Campion

v

Respondent:
Chief Constable Thames Valley
Police

PRELIMINARY HEARING

Heard at: Reading **On:** 6 February 2017

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mr G Baker (Counsel)

For the Respondent: Mr E Gold (Counsel)

PRELIMINARY HEARING (STRIKE OUT/DEPOSIT APPLICATION)

JUDGMENT

1. The claimant's complaint that he was treated unfavourably because of something arising from disability by being asked to return home during 5 to 7 February 2016 has no reasonable prospect of success and is dismissed pursuant to rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013.
2. The Claimant's contentions that:
 - 2.1 The claimant was treated unfavourably by the respondent because of something arising from his disability;
 - 2.2 The respondent failed in its duty to make reasonable adjustments; and
 - 2.3 That the respondent harassed the claimant

Have little reasonable prospect of success and the claimant is ordered to pay a deposit in the sum of £100 in respect of each contention (a total of £300) as a condition of being permitted to continue to take part in the proceedings related to that matter.

REASONS

1. There appears to have been some confusion as to whether this preliminary hearing today was to encompass the question whether the tribunal has

jurisdiction to consider the claimant's complaints having regard to the time limit for the presentation of claims. I have decided that it is not appropriate for me to deal with that question as the claimant has not prepared for the hearing to decide whether the claim is in time and if not whether an extension of time should be granted.

2. I have however taken into account time points in considering whether to strike out the claim on the grounds that it has no reasonable prospect of success.
3. My conclusion is that this is not a case where it is appropriate for me to strike out the all complaints. I am of the view that it is an appropriate case for a deposit. In one specific complaint, relating to the claimant being asked to return home on 5 to 7 February 2016, I am satisfied that that complaint has no reasonable prospect of success and is struck out. I also have considered the question whether I ought to strike out the claim in relation to the provision of a TAC vest or impose a deposit. For reasons I will briefly explain later, I have decided that it is not appropriate to either strike out or impose a deposit in relation to that part of the claim. Otherwise my decision is that the claimant should be required to pay a deposit as a condition of being permitted to continue to take part in the proceedings in respect of the other complaints that he makes.¹
4. I come to that conclusion for the following reasons:

Absence Management Procedures:
5. The main thrust of the claimant's complaint appears to be about the way that the respondent operated its absence management procedure in his case, the claimant says that the respondent failed to take heed of his complaints and observations that it should disregard his disability related absences when considering him under that absence management procedure.
6. The other side of the case from the respondent is essentially that the respondent did take heed of his disability and has clearly demonstrated that it took into account his disability by the way that it adapted its procedures in his case. The respondent refers to the length of the claimant's absences, the various triggers that operate under the procedure and he sets against that what happened in relation to the claimant's own specific case.
7. The ultimate question for the tribunal to determine in relation to the complaint of whether there was unfavourable treatment arising from the claimant's disability is going to be whether it was reasonable for the respondent to treat the claimant as they did, or whether they should, among other possible actions, have acceded to the claimant's request that his disability-related absences be separated from the other absences.

¹ I have made no separate observations relating to the indirect discrimination complaints, it appears to me that for the purposes of the deposit application my reasoning in respect of the complaints made under section 20 and 21 applies equally to section 19.

8. In respect of the section 20 claim, whilst the matters to be proved under the section is clearly different to section 15, it seems to me that at its heart the considerations are going to be similar and the question will ultimately be for the full tribunal to determine, having made findings of fact based on hearing all the evidence in the case and considered all the circumstances, is whether the respondent has made reasonable adjustments.
9. This will involve considering whether the respondent's actions have been a proportionate means of achieving a legitimate aim in the claimant's case. Answering both the questions posed by section 15 and section 20, The question to be determined being one about reasonableness, requires an examination not just of what did or did not happen but requires also requires a tribunal to make a qualitative assessment of that in the context of the real circumstances of the claimant and the respondent's organisation in respect of organisation of resources and the service that it has to provide to the public. I do not consider that it is possible for me on a preliminary hearing of this nature to make a conclusion that would allow me to say that there is no reasonable prospect of the claimant succeeding in relation to his complaints.
10. However, I do consider that it is appropriate for me to look at this case objectively and bearing in mind that at this stage I am doing it simply on looking at the pleadings and submissions made, to consider what the realistic chances are of the claimant succeeding. Looking at this in a fairly broad brush way and trying to assess it objectively what you have in this case is a person who has had a great deal of absence from work. It is clear the respondent's procedures anticipate much shorter periods of absence from work than the claimant had for the employee to be managed under the absence management procedure. The measures which are set out in the undisputed facts as described by Mr Gold in his submissions show that the claimant exceeded these considerably during the relevant time. Set against that, one looks at what appears to have been the response of the respondent and it appears that the respondent has adjusted the operation of its attendance management policy to permit the claimant a greater level of absence than would otherwise be anticipated by the procedure.
11. At this stage a very simple observation it seems to me is that it would be difficult for the claimant to say that there was a failure to make adjustments in his case. It seems to me taking that into account also that it is going to be difficult for the claimant to say that there was a failure on the part of the respondent to have regard to a proportionate means of achieving a legitimate aim. There must be, in my view, a legitimate aim in the respondent wanting to ensure that police officers are fit and able to work as police officers.

TAC Vest

12. Turning now to the question of the TAC vest. In relation to that, I have decided that it is not appropriate to impose any deposit or to strike it out.

While it appears to me that the complaint is out of time, I note that the time when any breach of the duty ceased would have been within time, i.e. around May 2016. In the circumstances I think it may be reasonably arguable that this is a case where it would be appropriate to extend time and so it does not seem to me that it would be a clear case where I ought to strike out the claim on a simple consideration of the time point. I emphasise that I am not deciding any time issue.

13. It also seems to me that there is a significant argument that the claimant can put forward that there was certainly for a period of time a breach of duty to make a reasonable adjustment due to the fact that after he asked for the TAC vest it was not provided for a significant period of time. It appears to me arguable that the delay indicates that there is breach of duty. Obviously it does not follow that there was a breach of duty because the factual matrix of this case shows that there were things happening in the intervening period, a position was being taken as information was emerging and being considered in the to-ing and fro-ing as to whether or not a belt or a TAC vest was appropriate for the claimant. My conclusion however is that that complaint is not one that on its merits I would have considered appropriate to impose a deposit or strike out. The only question mark around it concerns a time point and in relation to the time point as I have said I do not think it is appropriate for me to take a strong view on that because there may well be an argument to say that is just and equitable to extend time.

The complaint concerning the claimant's absence from work between 5 and 7 February

14. I find it very difficult to see how the claimant is able to maintain this as a complaint of unfavourable treatment on the part of the respondent. What I understand happened is that the claimant was not fit for work due to his diabetes at the point that he was told to stay away from work. Unless and until the claimant was fit for work it would have been wholly improper for the claimant to remain at work. I do not consider that this complaint has any reasonable prospect of success.
15. In any event, it seems to me that the complaint is out of time. I have tried to construe it in the context of the case as a whole and asked myself the question whether or not it could be said that this forms part of an act extending over a period and I do not consider that it does. It appears to me that it is a matter that stands on its own.
16. The conclusions that the claim is out of time, that stands on its own and it has no reasonable prospect of success leads me to conclude that the appropriate order is to strike out that complaint.

The claimant's complaint of harassment

17. This is the one complaint that has caused me the most anxiety when considering this application because I am not completely sure that I understand how the complaint is being made. That at one point was

pushing me towards striking out the claim on the basis that if I do not understand it, then I should not allow it to proceed because if I was having a hearing today, it could not possibly succeed.

18. To the extent that I understand the complaint, I do not think it is well conceived. I think it is misconceived because it appears to rely in part at least on an email of 30 September from Chris Sharp to Norma Rivett which discusses the claimant's situation. From that I am supposed to form a conclusion that this is evidence of harassment. I do not think an objective assessment of that complaint is one that can lead to the conclusion that there was harassment.
19. However, I am reluctant to strike out that complaint as Mr Baker has stated that it is too narrow a reading of the complaint to say that it turns on the email of 30 September and I, with some trepidation, have decided that it is not appropriate to strike out the harassment complaint but to require the claimant to pay a deposit as a condition of continuing with the claim.
20. In circumstances where I am not clear how the claim is actually being put and to the extent that I understand it, I do not think it is likely to succeed, I think that the appropriate way to proceed is by imposing a deposit. In coming to that conclusion, what weighs heavily upon me is the fact that the matters on which the claimant relies in relation to the harassment complaint arise out of the facts of the rest of the claims which are going to be before the tribunal in any event. In those circumstances, I think it would be unfair and wrong for me to effectively prevent the claimant from arguing a legal point which may or may not be a good point.

Employment Judge Gumbiti-Zimuto

Date:07/02/17.....

Sent to the parties on:

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For the Tribunals Office