



EMPLOYMENT TRIBUNALS

Claimant

Mr V Birt

v

Respondent

Wincanton Group Ltd

PRELIMINARY HEARING

Heard at: Norwich

On: 13 September 2017

Before: Employment Judge Postle

Appearances:

For the Claimant: In person

For the Respondent: Mr Meichin, Counsel.

JUDGMENT

1. The claimant's claim that he was unfairly dismissed or constructively dismissed is struck out as the claimant is still employed by the respondent as of today's date and therefore the tribunal has no jurisdiction to hear such a claim.
2. The claimant's claim that he has been discriminated against by reason of his disability which is accepted by the respondents as stress and depression particularly Direct Discrimination and Failure to make Reasonable Adjustments is struck as having no reasonable prospect of success.

REASONS

1. This is an application by the respondents to have the claimant's claims struck out as outlined at the preliminary hearing on the 18 May 2017 and as further amended by the claimant in his additional particulars as described in an email of the 14 June 2017 (page 45 of the bundle).
2. Dealing with the claimant's original advanced claim the provision, criterion and practices he indicated at the preliminary hearing in July are those shown at page 38 paragraphs 6.1 to 6.3.

3. The first point to make is that apart from a short return to work at the end of November 2003 which was on a phased return basis. The claimant has not performed any role since May 2013 in his capacity as a heavy goods vehicle driver.
4. Unfortunately the claimant's return to work briefly at the end of November 2013 on a phased basis, (and we see that at page 129) was ended when his driving licence was revoked by the DVLA in December 2013 and apparently his licence was not recovered by the claimant until July 2016. Therefore during the above period the claimant could not have worked as a driver. In those circumstances the first PCP the claimant advances namely "that employees will perform their contractual role on a full time basis" clearly never applied to the claimant as he did not perform his role and therefore the PCP could never applied.
5. Dealing with 6.2 "that a multi depot driver be flexible", again as the claimant had not worked as a driver since July 2003 it is clear that the PCP did not apply to the claimant.
6. Turning to 6.3 that "employees return to work after sickness absence to their normal duties", again the claimant returned briefly to work in November 2013 on a phased return basis then his licence was revoked and did not return to any duties and could not return to any duties until July 2016.
7. Collectively those PCPs cannot amount to a PCP and those claims have no reasonable prospect of success and should therefore be struck out.
8. Dealing with the reasonable adjustments the claimant advances, again at page 39 paragraph 7.1 to 7.5.
9. The first one is that the claimant should have been offered alternative employment. It is clear that any adjustments do not come in to play because at the start of 2014 there was no warehouse role available to the claimant. The respondents in the circumstances are not under a duty to create a role for the claimant. In any event that claim is out of time and there is no reason why the claim could not have been issued earlier had the claimant wished to do so.
10. In relation to 7.2 "to ensure the claimant undertook CPC training which he needed to undergo once his licence was regained in July 2016", any individual who loses his licence would have to undergo such training. It is therefore not a reasonable adjustment.
11. Dealing with 7.3, there were regular meetings it is quite clear and there was even mediation arranged between the claimant and the respondents via ACAS.
12. 7.4 the suggestion that the claimant's role from the multi depot one to a core driver, that's a single driver at a depot, again the respondents can only make the adjustment when the claimant returns to work as a driver in July 2016 as the claimant had not returned that adjustment cannot be made. The only reason the claimant has not returned to work is because he wants some form of compensation package to be agreed before his return.

13. The 7.5 claim, namely that when the claimant first returned to work after is first bought of depression in 2013 the claimant should have been given training/induction. This is not only hopelessly out of time it does not relate to any PCP and further it was agreed at the preliminary hearing in May that the claimant's claims would commence from January 2014 and any matters before that date were merely background information.
14. In relation to the additional information the claimant provided in his email to the tribunal of the 14 June 2017 (page 45), the claimant indicated he wanted the following added:-
 - 14.1 Failure to provide occupational therapy;
 - 14.2 Non-adjustment of disciplinary or grievance procedures; and
 - 14.3 Failure to make start times more agreeable.”
15. Clearly those three matters are entirely new PCPs and further clarification would indeed be required from the claimant. However, occupational therapy was never suggested by Occupational Health, and that seems to be advanced as an adjustment rather than a PCP.
16. In relation to the claimant not having the benefit of adjustments for a disciplinary or grievance procedures, it is difficult to see how this is advanced as the claimant has not been through any disciplinary or grievance procedure process. In any event this is not a PCP but an adjustment.
17. In relation to making the start times more agreeable, again it is difficult to see how this applied to the claimant as he has not returned to work since May 2013.
18. These claims therefore have no reasonable prospect of success and are struck out.
19. In relation to 1.3 at page 46 a list of additional matters that the claimant refers to as other forms of disability discrimination, these are clearly new matters not envisaged by his claim form, not mentioned at the preliminary hearing and clearly for the claimant to advance these entering new matters he would have to make an application to amend his claim. In any event it is not clear what or how these are being advanced and some of them go back to 2013 which again was agreed at the preliminary hearing would not be considered, the cut off point being anything prior to January 2014.
20. There is no clarification as to what form of discrimination is claimed.
21. The suggestion that this should have been some form of weight management is again a new matter and goes beyond what was originally understood as the claimant's claims from the preliminary hearing.

22. All those claims therefore are dismissed as having no reasonable prospect of success, being new claims out of time and not particularised in any event and generalised complaints of unfair treatment rather than actual discrimination because of a protected characteristic as envisaged under the Equality Act 2010.

Employment Judge Postle

Date: 13 October 2017

Sent to the parties on:

.....13.10.17.....

For the Tribunal:

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