



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Lunn

**Respondent:** The Wilf Ward Family Trust

**Heard at:** Hull

**On:** 24 January 2018

**Before:** Employment Judge Keevash

## **Representation**

Claimant: In person

Respondent: Mr J English, Solicitor

# PRELIMINARY HEARING JUDGMENT

The complaint of breach of contract is struck out on the ground that it has no reasonable prospect of success.

# REASONS

## **Background**

1 By her Claim Form the Claimant complained that the Respondent acted in breach of contract when withdrawing an offer of employment. The matter was listed for a Preliminary Hearing to determine prospects of success.

## **Issues**

2 The Employment Judge identified the following issues for determination:-

2.1 Does the complaint have no or little reasonable prospect of success?

2.2 If so, should the complaint be struck out or should a Deposit Order be made?

## **Law**

3 Rule 37(1) of Schedule 1 to the Employment Tribunals (Constitution and Rules

of Procedure) Regulations 2013 provides:-

“At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –

(a) that it ... has no reasonable prospect of success”.

### **Submissions**

4 The Claimant and Mr English made oral submissions.

### **Agreed matters**

5 The following matters appeared to be agreed-

5.1 The Claimant is a US national.

5.2 The Respondent is a charity which offers supported living and residential care to its customers who are vulnerable adults with learning disabilities.

5.3 On 11 October 2017 the Claimant applied for the post of Cluster Manager. She was presented to the Respondent via a recruitment agency. Her application form stated that she did not require a work permit to work in the UK.

5.4 On 12 October 2017 the Claimant attended an interview.

5.5 By an email dated 12 October 2017 Ms Ellison, the Respondent's Regional Administrator, informed the Claimant:-

“... ”

Please find attached your offer letter and documentation which you have to complete and return ...”

Attached to the email was a letter which stated:-

“... We are pleased to inform you that you have been successful at interview and we can conditionally offer you the post of *Cluster Manager (Ripon -39 hours)*. Date of commencement to be agreed.

Please note that this conditional offer is subject to the following:

- Satisfactory medical clearance.
- Satisfactory written references received and verified.
- Disclosure and Barring Services Certificate and DBS Adult first checks.
- Completed Evidence seen of your right to live and work in the UK.

Please be aware that we are regulated by external bodies and are therefore obliged to ensure that the above checks are in place pre-employment ...”.

5.6 On 13 October 2017 the Claimant sent to the Respondent an expired passport as a national of the USA with an indefinite leave stamp and a current USA passport with no such stamp.

5.7 On 16 October 2017 the Respondent was advised by the Home Office that, if the indefinite leave stamp were in the Claimant's current passport, she would have the right to work in the UK but, since it was not, she did not. The Respondent informed the Claimant about the Home Office's advice.

5.8 The Claimant was advised by the Home Office that she needed to apply for a biometric card. She took steps to expedite her application.

5.8 On or about 18 October 2017 the Respondent received references from Cygnet Health, Ladies in Waiting and Harrogate Skills 4 Living Centre in respect of the Claimant.

5.9 By 31 October 2017 the Respondent had not received a reference from T2 Group, the Claimant's previous employer.

5.10 By an email dated 31 October 2017 Ms Ellison informed the agency that it had withdrawn the offer of the position "due to the lack of the Right to Work in the UK."

5.11 By a letter dated 2 November 2017 Ms Cooper, the Respondents Assistant Director of Operations, informed the Claimant:-

"...I am now writing to confirm that we are withdrawing that offer as we have not yet received satisfactory pre-employment checks and have decided not to proceed with your offer of employment on this basis."

### **Discussion**

6 The Claimant contended that the Respondent acted in breach of contract when it withdrew the offer.

7 The Respondent contended that the parties had not entered into any legally binding contract. It made a conditional offer and at the time it communicated withdrawal of that offer the Claimant had not satisfied those conditions.

8 The Employment Judge found and decided that by its letter dated 12 October 2017 the Respondent made a conditional offer to the Claimant. During the Discussion the Claimant accepted that she needed to provide satisfactory references which included one from T2 Group. As at 31 October 2017 the Respondent had not received that reference. The Employment Judge found and decided that the Claimant had not satisfied the condition that satisfactory written references be received and verified. It followed that irrespective of her right to work (and the provision of evidence of such right), at the time when the Respondent withdrew the offer of employment, there was no legally binding contract.

9 Accordingly the Employment Judge decided that this complaint had no reasonable prospect of success. He ordered that it be struck out.

Employment Judge Keevash

Dated: 29 January 2018