

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104871/17

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Held in Glasgow on 16 November 2017

Employment Judge: Robert Gall

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Mr Andrew Colquhoun

**Claimant
In Person**

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Glasgow City Council

**Respondent
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The decision of the Tribunal to reject the claim form upon submission, that decision
25 being dated 10 October 2017 and communicated to the claimant on 11 October
2017, is, upon reconsideration, confirmed. The claimant therefore remains rejected.

REASONS

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1. A claim form was presented to the Employment Tribunal by the claimant on
6 October 2017. It was referred to an Employment Judge on the basis that it
appeared to the Clerk that rejection of the claim form was potentially
appropriate.

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2. The claim form was considered by Employment Judge Gall. It was rejected
by him on the basis that it could not as set out be sensibly responded to.

3. The claim as presented was one of victimisation. The claimant said that he had been victimised following upon an allegation made to the respondents that they had discriminated against him. He did not, however, set out any protected characteristic.

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4. In response to the letter from the Tribunal confirming rejection of his claim, the claimant represented his claim form by hand on 12 October 2017. He continued to refer to the basis of his claim as being victimisation. He said in an email submitted on 12 October 2017 that his understanding was that under the Equality Act 2010 if a complaint was made that discrimination had occurred then it was unlawful for an employer to victimise an employee because the employee had carried out a protected act. He said that his claim was the prospective respondents, his employers, had treated him badly during 2015, 2016 and 2017 “*as punishment for carrying out a protected act in 2014*”. The claimant sought reconsideration of the decision to reject his claim.

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5. A Hearing was set down in order that reconsideration could be considered to determine whether the claim was permitted to proceed or not. If that occurred, the initial judgment to reject the claim required to be revoked on reconsideration.

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6. The claimant appeared. He addressed the Tribunal in relation to reconsideration.

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7. He explained that he had obtained an MBA qualification from Strathclyde University. He had applied for jobs with his current employer but had been rejected for various possible positions. His view was that having obtained the MBA was the reason for that rejection. In his view these acts of rejection constituted discrimination.

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8. The terms of the Equality Act 2010 were then discussed with the claimant. It was explained to him in that for discriminatory behaviour to potentially have occurred and to found a claim to an Employment Tribunal, as a matter of law

it required to be the view of the claimant that the actings alleged to have been discriminatory were associated with a protected characteristic of the claimant. These characteristics are defined under the Equality Act 2010, Section 14, and comprise:-

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- Age
- Disability
- Gender Reassignment
- Race
- Religion or belief
- Sex
- Sexual Orientation

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9. For the type of claim which the claimant brought it then required to be his position that he had been subjected to a detriment because he had done a protected act or because his employer believed that he had done or might do a protected act. A protected, in terms of Section 27 of the Equality Act 2010 comprised:-

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- Bringing proceedings under the Equality Act 2010
- Giving evidence or information in connection with proceedings under the Equality Act 2010
- Doing any other thing for the purposes of or in connection with the Equality Act 2010
- Making an allegation, (whether or not express) that his employer had contravened the Equality Act 2010.

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10. The claimant confirmed that he did not allege that the behaviour of his employer which he saw as the foundation of his claim was discriminatory in

5 that it was associated with a protected characteristic. He further confirmed that he did not allege that victimisation had occurred because he had done a protected act in the sense that he had met any of the categories mentioned above with his act being broadly put, "related to" allegations of discrimination under the Equality Act 2010. He had not brought proceedings under the Equality Act 2010. He had not acted as a witness in any element of proceedings related to the Equality Act 2010. He did not allege that the actings of his employer were related to something which he had done in connection with the Equality Act 2010. He did not say that their actings were because of any allegation which he had made as to contravention of the Equality Act 2010 by his employer. What he had done, he said, was to allege that there had been discriminatory behaviour by his employer. He had understood that that was sufficient to found a claim of victimisation in that making an allegation of discrimination constituted a protected act. He accepted, however, that when he made the allegation of discriminatory behaviour he was not making any allegation as to behaviour linked in any way to a protected characteristic.

11. 20 Whilst I understood the basis for the position set out by the claimant, I did not regard there as being grounds to revoke the original rejection of the claim. It might be sufficient to found a claim of victimisation to allege that there has been discriminatory behaviour by an employer. That would only be so, however, if an allegation of discriminatory behaviour was an allegation that the employer had committed some act which was linked to a protected characteristic as those are set out in the Equality Act 2010. It is not necessary of course for a claim to prove that that was so.

12. 30 The claimant in this case confirmed that he had no basis for allegation that the behaviour of his employer about which he complained was in any way associated with a protected characteristic either in reality or that this was his thinking.

13. Put in its starkest form, the claimant alleged that he had not been considered for other posts by his employer and that this was because he had obtained an MBA.

5 14. That might or might not be correct. It does not seem to me, however, that there is any basis for a claim of discrimination under the Equality Act 2010 or a claim of victimisation under the Equality Act 2010 set out by the claimant in his claim form or indeed explained by him at the reconsideration Hearing.

10 15. I regard it as having been appropriate to set down the Reconsideration Hearing in order to try to clarify the position with the claimant. Having so clarified it, I am of the view that the original decision to reject the claim was correct. The reconsideration application therefore results in the original judgment being confirmed.

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Employment Judge: Robert Gall
Date of Judgment: 21 November 2017
Entered in register: 04 December 2017
25 and copied to parties

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