



EMPLOYMENT TRIBUNALS

CLAIMANT

MS S M CLEWS

RESPONDENT

V THE GOVERNING BODY OF YSGOL RHOS HELYG

HELD AT: MOLD ON: 8TH NOVEMBER 2018

EMPLOYMENT JUDGE: R F POWELL

REPRESENTATION:

FOR THE CLAIMANT

- In Person

FOR THE RESPONDENT

- Mr Gow, HR Representative

JUDGMENT

The judgment of the Employment Tribunal is:

The claim of indirect discrimination contrary to section 19 of the Equality Act 2010, arising from alleged comments made to the claimant by the Respondent's Head Teacher on the 9th November 2106, is struck out because it has no reasonable prospect of success.

Reasons

Introduction

1. This preliminary hearing was listed to consider the respondent's applications to strike out all of the claimant's claims. Those claims are constructive unfair dismissal, direct discrimination, indirect discrimination and a failure to make reasonable adjustments.
2. In the alternative to the application to strike out these claims the respondent applied for deposit orders. Mr Gow, in a considerate action given the claimant's very modest means, withdrew that application content that view of the merits of the remaining claims put the claimant on notice that her claims had a most modest prospect of success and that she might, if her claims were not upheld, be at risk of a cost award being made against her.

3. The character of the allegation of indirect discrimination can be encapsulated to two examples of the particulars set out in the claimant's particulars dated the 16th June 2017: "I was made to feel uncomfortable with comments made such as; "what if you need to use the toilet?" and "Are you sure you can do the dinner lady role with your condition?"
4. In discussion with the claimant neither she, nor I, was able to identify a provision, criterion or practice within the pleaded facts or any basis on which it might be said that the pleaded facts could be understood said to apply to persons who do not share the claimant's protected characteristic.
5. Whilst the claimant can advance the factual allegation summarised above as part of her constructive dismissal claim and a claim of direct discrimination, I am satisfied that, as a matter of law, applied to the claimant's pleaded case, taken at its highest, has no prospect of success.
6. For the above reason, in accordance with Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013 (as amended in 2015), I strike out the claim of indirect disability discrimination.
7. Although it is not necessary to give reasons in relation to the other claims, I gave considerable attention and oral reasons which lead to brief curtailed consideration of a deposit order. And so I summarise the essence of my concerns.
8. Ms Clews is aware that I consider that her claim for constructive dismissal has considerable difficulties; for example she had difficulty articulating why, if she considered there had been a repudiatory breach of contract by the date on which she drafted her letter of the 16th December 2016 she continued in employment until she had been dismissed by Flintshire Council but did reference that working for only five hours a week, for the respondent, would have had an adverse effect on her tax credits.
9. She also cited a failure by the respondent to investigate a comment, which she did not witness (and does not believe she can establish with direct evidence) of a colleague doubting the diagnosis of Crohn's disease. She acknowledges that the school asked her for precise details of the alleged words said and asked for evidence as a foundation for an investigation but she was not able to provide that information. Aspects such as the two examples above cause me to consider that her claim for constructive dismissal is likely to be difficult to prove given the burden of proof rest upon her to establish the alleged acts or omissions and to prove that the respondent did not act with reasonable and proper cause.

EMPLOYMENT JUDGE R Powell

Dated: 15th November 2018

Order posted to the parties
On 24 November 2018

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For the staff of the Tribunal office