



EMPLOYMENT TRIBUNALS

Claimant: Mr J Bevis

Respondent: Lincolnshire County Council

Heard at: Lincoln **On:** 4 April 2019

Before: Employment Judge Ayre (sitting alone)

Representation

Claimant: In person

Respondent: Mr L Middleton, Solicitor

RESERVED JUDGMENT

1. The complaints of sex discrimination and age discrimination are struck out pursuant to Rule 37 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 because they have no reasonable prospect of success.
2. The disability discrimination complaint is not struck out.
3. The claimant is ordered to pay a deposit of £750, pursuant to Rule 39 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 as a condition of continuing to advance his disability discrimination complaint.

REASONS

Background and Issues

1. By claim form presented to the Employment Tribunal on 17 August 2018 the claimant brought claims against the respondent.
2. It was not clear from the claim form exactly what claims the claimant was seeking to bring, or whether they were claims that the Tribunal has jurisdiction to consider.

3. By letter dated 6 September the claimant was warned that, as the claim appeared to raise no cause of action for which the Tribunal has jurisdiction, it was proposed that the claim be struck out pursuant to Rule 27 of the Employment Tribunals Rules of Procedure 2013, unless the claimant provided compelling reasons to the contrary.
4. The claimant subsequently provided a statement and documents, and the case was listed for a Preliminary Hearing.
5. The issues for determination at today's Preliminary Hearing were:-
 - a. Should any of the claims should be struck out pursuant to rule 37 of the Employment Tribunal Rules of Procedure, on the ground that they have no reasonable prospect of success; and
 - b. Does the Tribunal have jurisdiction to hear any of the claimant's claims, having regard to the time limits specified in the Employment Rights Act 1996 and the Equality Act 2010.
6. At the start of the Preliminary Hearing, I invited the claimant to explain what claims he was bringing. The claimant told me that he believed the respondent had discriminated against him in relation to job interviews he attended in 2018 for the following roles:-
 - a. Assistant Highway Officer;
 - b. Highway Officer;
 - c. Assistant Street Works Officer;
 - d. Street Works Officer; and
 - e. School Crossing Patrol Officer.
7. The protected characteristics relied upon by the claimant are disability, namely paranoid schizophrenia, age and sex.
8. I asked the claimant whether he was seeking to bring a claim in relation to his previous employment with the respondent which ended in 2012. The claimant told me that he didn't and that this claim had 'nothing to do' with his previous employment.
9. The claimant told me that his employment with an organisation called Annicare, at a children's home called The Beacon, had recently been terminated, and he believed that his dismissal was at the respondent's request or insistence. He indicated that he wished to bring a claim against the respondent arising out of his dismissal by Annicare. I explained that he would need to either bring a new claim or apply to amend the existing claim. The claimant indicated that he did not want to apply to amend this claim.
10. The claimant's claim is therefore now confined to events in May and June 2018 which are in time. The respondent raises no time bar arguments in relation to the remaining claim. Accordingly, it was not necessary for me to consider the time bar / jurisdiction issue set out at paragraph 5b above.

11. I did however consider, as an alternative to striking out the claim, whether to make a Deposit Order pursuant to Rule 39 of the Employment Tribunal Rules of Procedure.

Proceedings at the preliminary hearing

12. Having clarified the issues for determination, I invited the claimant to tell me why he believes his discrimination claims have reasonable prospects of success. I then invited submissions from the respondent.
13. The respondent produced a bundle of documents running to 148 pages, together with a written skeleton argument, for which I am grateful.
14. The claimant relied on a document headed "Matrix Plan – Interview Settings" which he said set out the basis of his complaints against the respondent.

Claimant's submissions

15. In relation to the disability discrimination claim, the claimant submitted that:-
- a. The respondent was made aware of his medical condition from a questionnaire completed before his interview, and from a conversation the claimant says he had with an HR advisor during which he was asked about reasonable adjustments.
 - b. He suggested to the HR advisor that she contact his doctor or CPN to take advice from them, but that the respondent failed to do so.
 - c. It was not for him to suggest reasonable adjustments (he accepted that he had replied 'no' to the question 'Do you have any special requirements in relation to your interview arrangements?')
 - d. His former manager should not have interviewed him.
 - e. Snide and malicious comments were made during the interviews.
 - f. There were threats and intimidation;
 - g. He had been incorrectly scored;
 - h. There was a debate about his qualifications;
 - i. The interviewers were patronising towards him; and
 - j. The respondent failed to make reasonable adjustments.
16. In relation to the age discrimination claim, the claimant submitted that:-
- a. He is young (36 years old).

- b. He believes the respondent has a culture of inviting internal candidates for interview, a lot of who are young.
- c. The questions asked were not selective enough for an experienced candidate.
- d. Younger candidates had been better prepared for the interviews.
- e. The respondent had failed to take account of his skills and experience.

17. In relation to sex discrimination, the claimant submitted that:-

- a. He believed he was treated differently to female candidates.
- b. One of the interviewers prefers women and has never recruited a woman, although another interviewer has an all-male team.
- c. He felt he was being steered towards an administrative role.
- d. He was the only male candidate for the School Crossing Patrol role.
- e. The questions asked were geared towards female candidates.

18. I explained to the claimant that I was considering whether to make a Deposit Order, and asked him three times what his financial situation was. The claimant told me that he did not want to talk about his financial circumstances with the respondent in the room because he found it humiliating. Despite encouragement to do so, he refused to disclose any details of his financial situation.

Respondent's submissions

19. The respondent submitted that the claims should be struck out as having no reasonable prospect of success. The claim for failure to make reasonable adjustments 'must fail' in the respondent's submission. Today was the first time that the claimant had alleged he spoke to anyone at the respondent about his disability.

20. The claim remains unclear, in the respondent's submission, and it is not for the respondent to 'guess' what reasonable adjustments should be made.

21. The respondent accepts that, in discrimination cases, the Tribunal should be reluctant to exercise its power of strike out (*Ezsia v North Glamorgan NHS Trust* [2007] EWCA Civ 330) but this is a case in which the Tribunal should exercise its discretion.

22. Mr Middleton also referred me to the cases of *Sanak v Community Lives Consortium* UKEAT/0585/12/LA and *Ahir v British Airways PLC* UKEAT/0014/16/RN.

23. Mr Middleton submitted that the respondent is a Disability Confident employer, which has a policy of inviting for interview any candidate that

meets the essential criteria for the role and declares themselves as having a disability.

24. The claimant had been interviewed 4 times by six different managers. To suggest that each of them had discriminated against the claimant amounted, in the respondent's submission, to a conspiracy theory.

25. Mr Middleton argued, in the alternative, that the Tribunal should make a Deposit Order.

The Law

Striking out a claim

26. Rule 37 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the Rules") provides as follows:-

"(1) 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 is scandalous or vexatious or has no reasonable prospect of success...."

Deposit Orders

27. Rule 39 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the Rules") provides that:-

"(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit."

Conclusions

28. The Tribunal's power of strike out must be exercised with "reason, relevance, principle and justice" (*Williams v Real Care Agency Ltd (2021) ICR D27*). It is well established that in cases which are fact sensitive, such as discrimination claims, strike out will be rare. The House of Lords highlighted in *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*, that it was important not to strike out discrimination claims except in the most obvious cases as they are generally fact-sensitive and require full examination to make a proper determination.

29. It appears to me that the claim of disability discrimination is fact sensitive. The claimant has raised allegations, including the allegation that he discussed his disability with an HR advisor at the respondent and

suggested she contact his doctor or CPN for advice on adjustments, and the allegations about the behavior of the interviewers, which can only be determined by the hearing of evidence.

30. It cannot, in my view, be said that the claimant's disability discrimination complaint has no reasonable prospect of success. Accordingly, it would not be appropriate in my view to strike out the disability discrimination claim pursuant to Rule 37 of the Rules.
31. I accept, however, Mr Middleton's submissions that the disability discrimination complaint does amount to an allegation of conspiracy by six different employees of the respondent. I note that the respondent claims to be a Disability Confident employer, and that the claimant was shortlisted for all of the positions he applied for.
32. It does seem to me that the disability discrimination claim has little reasonable prospect of success, and that it would be appropriate to make a Deposit Order pursuant to Rule 39 of the Rules.
33. Before making such an order, I have considered the claimant's means. I asked the claimant 3 times during the Preliminary Hearing to tell me about his financial situation. Each time the claimant declined to do so. The claimant did however tell me that he had recently been dismissed, which indicates that he has recently been in employment. That is the only information I have about the claimant's means.
34. In the circumstances it would, in my view, be appropriate to order the claimant to pay a deposit of £750 as a condition of continuing to advance his claim of disability discrimination.
35. I turn now to the claim of age discrimination. The claimant's position in relation to this allegation is unclear. At one point during the hearing he appeared to suggest that he had been discriminated against because he was young, but he then suggested that other, younger candidates had been prepared.
36. The claimant's arguments in relation to the age discrimination claim are contradictory, and the claimant has, in my view, not adduced any prima facie evidence of age discrimination. Age discrimination was raised for the first time during the Preliminary Hearing, and only in response to my pressing the claimant as to which protected characteristic he relied upon in support of his discrimination claim, and listing some of those protected characteristics.
37. The complaint of age discrimination has, in my view, no reasonable prospect of success. Accordingly, it is struck out under Rule 37 of the Rules.
38. Turning finally to the claim of sex discrimination, the claimant's position again seemed to be unclear and there was no prima facie evidence before me. No allegations of sex discrimination were made in the claim form, and the claimant only asserted sex discrimination when pressed to identify the protected characteristic(s) he relied upon and given examples of those protected characteristics.

39. The complaint of sex discrimination also has no reasonable prospect of success and should be struck out.

Employment Judge **Ayre**

Date: 05 April 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS