



EMPLOYMENT TRIBUNALS

Claimant: Ms R Zakar

Respondents: 1. Search Consultancy Ltd
2. OCS Group UK Ltd

Heard at: Manchester **On:** 3 April 2019

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: Miss S Malik, Solicitor

Respondents: Mrs Ferrario, Counsel

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is:

1. The Tribunal refuses to make an order pursuant to either rule 37 or rule 39 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, either striking out the claims of the claimant against the second respondent or ordering the claimant to pay a deposit as a condition of being allowed to continue to advance her claims of discrimination against the second respondent.
2. The claims of the claimant against the second respondent will therefore continue and be heard at the final hearing of the claims against both the first and second respondents on **8, 9 and 10 October 2019**.

REASONS

1. The Tribunal did not believe that it was possible to make any conclusions as to whether the claims of the claimant against the second respondent had no reasonable prospects or little reasonable prospects of success without hearing, considering and assessing the evidence of the line manager of the second respondent who had carried out a health and safety assessment on the claimant's ability to carry out her role as a Customer Care Assistant following her announcement to the second respondent that she was pregnant. The Tribunal was told that the health and safety assessment comprised some nine pages, but a copy was not available to the Tribunal. That is not

meant as a criticism. Even if that form had been available to the Tribunal, the basis of the comments and conclusions and observations in that report would not have been available and will only be available to the Tribunal from witness evidence which is subsequently given by that line manager.

2. It is accepted by all parties that the claimant was only an employee of the first respondent and was never an employee of the second respondent. Nevertheless, it is equally accepted by both parties that it was the conclusions of the second respondent about the alleged health and safety concerns of the second respondent which led to her removal as a Customer Care Assistant and the refusal by the second respondent to make available to her suitable alternative employment as a concierge. Again it was agreed by all parties that discrimination legislation does not only apply between an employer and an employee. It applies where a claimant is a worker and not only when they are an employee. It was obvious to the Tribunal, and again agreed by all parties, that the line manager would have to give evidence about the health and safety assessment even if claims against the second respondent were struck out. That evidence would still have to be heard and considered by the Tribunal and the conclusions reached by the Tribunal on that evidence would, in the opinion of this Tribunal, be relevant to the claims of the claimant against the second respondent and not just the first respondent.

3. The Tribunal reminded itself that where there were substantial findings of fact yet to be made by the Tribunal it would be improper for the Tribunal to strike out the claims of the claimant and even to order the payment of a deposit as a condition of the claimant being allowed to continue with her claims against the second respondent.

4. The conclusions of the Tribunal are that in the absence of the evidence of the line manager and the details of the health and safety assessment it was not possible for the Tribunal to make any reasonable assessment of the likely prospects of the claim against the second respondent, and in those circumstances the Tribunal concluded that it was not possible at the hearing on 3 April 2019 to determine whether the claims of the claimant against the second respondent had no or little reasonable prospects of success.

5. The Tribunal therefore refused to either strike out the claims of the claimant against the second respondent or alternatively to order the claimant to pay a deposit as a condition of continuing with those claims.

Employment Judge Whittaker

Date ___10th April 2019___

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 April 2019

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