



EMPLOYMENT TRIBUNALS

Claimant: Mr A Seepujack

Respondent: The University of Manchester

Heard at: Manchester

On: 25 & 26 April 2019

Before: Employment Judge Ross

Representation:

Claimant: In person

Respondent: Mr C Breen, Counsel

JUDGMENT

1. I strike out the claimant's allegations 1,2 and 3 from the Schedule of Allegations table which consists of 86 allegations prepared by Employment Judge Ross following the Preliminary Hearing on 16 November 2018 namely: -

1.The claimant was underpaid from 14/4/12 to 7/7/12, an allegation of indirect age discrimination.

2. The claimant was being underpaid in 2013, an allegation of indirect age discrimination.

3. The claimant was being underpaid from 01/12/14-31/05/17, an allegation of indirect age discrimination

REASONS

1. These three claims are identified in a table produced following an extended case management hearing to identify the nature of the claimant's claims. The table

consists of 86 allegations of discrimination. This table arises out of allegations made by the claimant in his first three cases to employment tribunal against the same respondent University of Manchester. These are case numbers 242 3028/17, the first claim, 2404208/18, the second claim and 2411493/18, the third claim. There is also a separate table dealing with the claimant's claims of victimisation arising out of these claims. The claimant has presented two further claims against the University of Manchester which have not to date been combined with these claims or case managed.

2. The majority of the allegations in the table are allegations of indirect and direct discrimination where the protected characteristic relied upon is age and disability and direct age discrimination.

3. In these three claims the claimant brings a claim of indirect age discrimination. The provision criteria or practice identified by the claimant is "appointing older applicants to posts paying lower than their grade".

4. The basis of the claim is very difficult to understand. The claimant is a litigant in person who suffers from dyslexia. However he is an intelligent highly educated man with a degree who was working for the University as a researcher.

5. A claim for indirect discrimination has several components. See s19 Equality Act 2010. Firstly there must be a provision criteria or practice which the University applied. The claimant says this is "appointing to posts paying lower than their grade". It is entirely unclear what this means.

6. The next question in an indirect discrimination claim is does the application of the PCP put persons of the claimant's age group at a particular disadvantage when compared with persons aged 27 to 36 years old which is the comparator group the claimant relies upon. The next question is did the application of the PCP put the claimant at that disadvantage? If the answer to that question is yes, it is for the respondent to show that the treatment was a proportionate means of achieving a legitimate aim.

7. In addition to the PCP being unclear, there is no evidence adduced to suggest how it was applied or how it put older people at a group disadvantage or how the claimant was put at individual disadvantage by reason of his age. The claim is not clearly identified and it is historic.

8. These 3 allegations were included in claim three presented by the claimant on 5 June 2018 and are very considerably out of time. In particular allegation one is almost 6 years out of time. Allegation 2 is approximately five years out of time. Allegation three covers a 2.5 year period and is over a year out of time. No clear reason was given by the claimant as to why these allegations had been presented so very late.

9. The way the claim has been pleaded is extremely vague. Each allegation relies on an extensive period, particularly allegation 3 which covers a period of almost 2.5 years. It is not clear but given the reference to "Human Resources" as the perpetrator and the extensive time period it is likely the claimant is referring to a number of appointments

given he worked under fixed term contracts. Those contracts are not identified. In an age discrimination claim (indirect) the Tribunal must understand the PCP, the group disadvantage, the individual disadvantage and then consider whether there was a proportionate means of achieving a legitimate aim. There is no clarity at all about what the claimant means in terms of appointing older applicants to posts paying lower than their grade. The time period is so long ago that even if records still exist memories are likely to have faded very substantially. The same is likely to apply to allegations two and three.

10. I consider for these reasons these 3 claims have no reasonable prospect of success.

11. I reminded myself of Rule 37(1)(a) Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 which states a Tribunal may at any stage of the proceedings on the application of a party strike out all or part of the claim or response on the grounds that it has no reasonable prospect of success. I remind myself of the relevant cases and of paragraphs 8-13 Presidential Guidance – General Case Management 2018. I am aware the power to strike out a claim or allegation on the basis it has no reasonable prospect of success should be considered very cautiously particularly in a discrimination claim. I was referred to *Ezsias -v- North Glamorgan NHS Trust* 2007 EWCA Civ 330, *Van Rensberg -v- Royal Borough of Kensington Upon Thames and others* UKEAT/0096/07, *Ahir -v- British Airways Plc* 2017 EWCA Civ 1392 and *Chandhok -v- Ms P Tirkey* 2015 ICR 527.

12. I reminded myself that sometimes in Employment Tribunal where a party is a litigant in person a poorly pleaded claim can be clarified following a request for further information. I have borne in mind that this is not the situation here. In this case the claimant has had a number of opportunities to clarify his claim and a very considerable length of time was spent with him at the case management hearing in November 2018 trying to understand his claims resulting in the table of allegations. I also remind myself that the claimant has numerous other allegations which I have not struck out and although a number of his allegations have been subject to a deposit order, he still has an extensive number of allegations, approximately 40 allegations, in claims 1,2 and 3 from the Table document where he claims that the University discriminated against him in relation to various job applications. These will be considered by tribunal. In addition, he also has a very detailed victimisation claim – see separate Table. At present his claim for allegations in cases 1,2 and 3 is listed for a 15 day hearing.

13. I reminded myself of the guidance in case law and from the President. I am not satisfied that these are fact sensitive matters. This is an application of PCP which does not appear to make any clear sense and it is extremely historic. The claimant although a litigant in person suffering from dyslexia, is a highly educated person who has been given extensive opportunities to clarify his claim.

14. There are rare occasions where the high threshold for determining an allegation has little reasonable prospect of success and a striking out of the allegations is appropriate, even in a discrimination claim. I exercise my discretion for the reasons given above and the high threshold is met with regard to allegations 1-3. In these circumstances,

I strike out the these allegations as having no reasonable prospect of success.

15. Finally I turn to the other allegations which were also subject to this application. Once the application to amend had been decided (See separate Order) allegations 4, 12, 16, 19,22, 25, 34, 43, 53, 54, 55,57,58,60 62, 66, 67, 72, 78, 81, 82, 83 and 86 of the Schedule of Allegations table one prepared by me following a Preliminary Hearing on 16 November 2018 were also subject to this application to strike out.

16. Although I consider that almost all of those allegations have little reasonable prospect of success (See separate Deposit order) I am not satisfied they meet the very high threshold of “no reasonable prospect of success” for strike out, particularly bearing in mind that these are claims of discrimination. Accordingly I decline to strike them out.

Employment Judge Ross

Date 23 May 2019

ORDER SENT TO THE PARTIES ON
24 May 2019

.....
FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party’s participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.

[je]