



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121686/2018

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Held in Glasgow on 19 March 2019

Employment Judge Shona MacLean

10 **Mr D Baker**

**Claimant
In Person**

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The Natural Power Consultant Limited

**Respondent
Represented by:
**Mr F Vandal -
Solicitor****

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is to dismiss the direct age discrimination claim under rule 52 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 because the claimant informed the Tribunal during the preliminary hearing that the direct age discrimination claim under section 13 of the Equality Act 2010 is withdrawn.

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REASONS

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1. The preliminary hearing was listed to consider whether a deposit order should be ordered as a condition of proceeding with the direct age discrimination claim if it appeared to me that the direct age discrimination claim had little reasonable prospect of success. The preliminary hearing did not apply to the constructive dismissal case which proceeds regardless.

2. I explained to the claimant that the purpose of a deposit order was to identify at an early stage claims with little prospect of success and to discourage pursuit of those claims by requiring a sum to be paid and by creating a risk of expenses if the claim failed. Even if I concluded that the direct age

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discrimination claim had little prospect of success it did not mean that a deposit order must be made. I had to make reasonable enquiries into the claimant's ability to pay the deposit and have regard to that information when deciding the amount. If a deposit order was made and the claimant failed to
5 to pay by the date specified, the direct age discrimination claim would be automatically struck out.

3. Mr Vandal explained the respondent's position in relation to the final written warning issued to the claimant. the respondent maintained that the decision had nothing to do with age. There were no additional factors identified
10 suggesting that the reason for the treatment complained of was the claimant's age.

4. The claimant was invited to respond. He maintained that the charges against him were not substantiated and there was no justification for the respondent not following the process. Accordingly, the reason must be because of his
15 age and high salary.

5. There was discussion about the claimant's belief that his treatment was related to his age/salary and why he formed this view. We also discussed whether if it was established that the respondent was concerned reducing salary costs how would the claimant identify this factor as suggesting his age
20 was the reason for the less favourable treatment.

6. The claimant advised that having had an opportunity to discuss the direct age discrimination claim at this and the earlier case management preliminary hearing he had a better understanding of what was required. He accepted that the direct age discrimination claim had little reasonable prospect of
25 success. He was therefore withdrawing that claim. I noted this and advised that direct age discrimination claim would be dismissed.

7. In the circumstances there was no need for me to consider whether to make a deposit order.

8. I noted that the final hearing before a full Tribunal panel will now only consider
30 the constructive dismissal claim. There was discussion about whether the

final hearing should be before an Employment Judge sitting alone. It was agreed that it should remain before a full Tribunal panel.

5 **Employment Judge**

Shona MacLean

Date of Judgment

19 March 2019

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**Entered in register
and copied to parties**

20 March 2019