



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 109518/2006

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Held in Glasgow on 12 June 2019

Employment Judge L Doherty

10 **Mr C L Garrett**

**Claimant
In Person**

15 **Ayrshire & Arran Health Board**

**Respondent
Represented by:
Mrs H Craik -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the Employment Tribunal is that the claim is struck out under Rule 37 (1) (a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the Rules) on the grounds that the claim has no reasonable prospects of success.

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REASONS

1. This was a Preliminary Hearing (PH) to consider the respondents application for strikeout of the claim under Rule 37 of the Rules on the basis that it had no reasonable prospects of success. The claimant appeared in person, and the respondents were represented by Ms Craik, solicitor.
2. This claim was presented on behalf of the claimant as part of multiple claim, by Thompsons solicitors in 2006.

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3. The basis of the claim, as set out in the paper apart to the ET1, was that the claimant maintained her job had been evaluated under Agenda for Change (AGF), a job evaluation study within the meaning of section (1) (2) (b) of the Equal pay Act (the EqA) and that study was a valid job evaluation study within the meaning of section 1 (5) of the EqA . The claimant's position was that her job had been rated the same as that of her comparator under that job evaluation study.
4. Thompsons Solicitors withdrew from acting for the claimant, and she continued to pursue her claim in person. The claimant provided additional information in support of a claim. As a result of the case management process it emerged that as a matter of fact it was agreed that in the period from April to October 2004 the claimant and her comparator were paid at the same rate of pay.
5. The significance of the period of April to October 2004 is that this is the period prior to implementation of AFC with which this tribunal is concerned with in considering this claim, following the judgement in *Foley v Greater Glasgow and Clyde Health Board*.
6. The respondent's application was to strike claim out under Rule 37 (1) (a) on the grounds that it had no reasonable prospects of success. Ms Craik's position was that the claim of equal pay could not succeed in circumstances where the comparator was not earning more than the claimant. It was accepted in the ET 1 that AFC was a valid job evaluation study, and therefore any claim which is now based on the fact that the claimant's comparator is a higher band under AFC would require a significant amendment, which would be over 10 years out of time, and was unlikely to be allowed. It was open to the claimant to pursue a claim of equal pay out with this claim.
7. This application was resisted by the claimant on the basis that her comparator, and Mr McTaggart was graded a band 3 under AFC, the claimant remained a band 2, but that they were both doing the same work, and that this was an unfairness.

8. The Tribunal was satisfied that in circumstances where it is agreed as a matter of fact that the claimant and her comparators enjoyed the same terms and conditions as to pay prior to implementation of AFC, that the claim for equal pay during the relevant period (April, to October 2004) had no reasonable prospect of success. The claimant would be unable in these circumstances to demonstrate a term in relation to pay in her comparators contract which was more favourable than she enjoyed.
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9. The claimant's claim is based on AFC being a valid job evaluation study. Any attack on the validity of AFC would now require a significant amendment to that claim. Such an amendment would come some 13 years after the claim was lodged and would be extremely unlikely to be allowed. Furthermore, there is nothing to prevent the claimant pursuing a claim of equal pay as she remains in the respondent's employment, as does her named comparator.
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10. In the circumstances, the Tribunal was satisfied that the claim as pled had no reasonable prospects of success and should be struck out under Rule 37 (1) (a) of the Rules.
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Employment Judge Laura Doherty

Date of Judgment 13 June 2019

20 Date sent to parties 13 June 2019