



# EMPLOYMENT TRIBUNALS

**Claimant:** S Dosanjh

**Respondent:** Sky Subscriber Services Ltd

## RECORD OF A PRELIMINARY HEARING

**Heard at:** London South (in private, by telephone)

**On:** 27 March 2020

**Before:** Employment Judge Housego

### Appearances

For the Claimant: In person

For the Respondent: R Dunn, of Counsel, instructed by the Respondent's in house solicitors

## JUDGMENT

The claims are struck out.

## REASONS

1. I have tried to write this decision as clearly as possible, to try to help Mr Dosanjh understand why I have come to the decision to strike out his claims. As I explained to Mr Dunn, it is really not necessary to set out the law in any detail to explain to Mr Dosanjh why his claims cannot succeed.
2. This hearing was a telephone hearing, to replace a planned 1 day preliminary hearing (by reason of the present suspension of all hearings in person) to deal with 4 issues. These are whether the Claimant is disabled with depression and stress, whether any part of the claim is out of time, to deal with the Claimant's wish to amend to add things he says occurred after the claim was filed, and to consider whether to order a deposit or to strike out some or all of the Claimant's claims.
3. The Claimant's claims are for disability discrimination, and for (perceived) sexual orientation discrimination.

4. The Claimant says that he has depression and anxiety to the extent that he qualifies as disabled. The Respondent ("Sky") does not admit that, on the basis that the Claimant has not provided an impact statement that is sufficient for it to do so. I do not need to take that issue any further. This is because the Claimant cannot succeed if he is so disabled.
5. The Claimant has set out what he says about this, in an email of 10 October 2019. He says that in 2015 someone took a picture of him on a mobile phone, and he found this distressing. Sky has a policy that mobile phones are not to be used in the workplace. He agrees that the reason for the policy is that people should be concentrating on their work, and not using their phones. He says that management are not really bothered about this, and the most that happens is that when a manager sees someone using a phone, the person will be told "Put it away" but no more. He says he has raised this often, but management do not do anything more. Meanwhile because people keep using their phones, he fears that someone will take a photo of him again. He does not say that anyone has, but he does not know that they have not, because they wouldn't tell him if they had.
6. He says that management know that this worries him, and so they have failed to protect him by enforcing the policy of no mobile phones, and that has caused him to become ill to the point that it is a disability, and so is harassment and a detriment arising by reason of that disability. He accepts that there is no requirement on Sky to have a policy that mobile phones are not to be used.
7. One difficulty for Mr Dosanjh is that Sky do enforce their rule. It is not a serious disciplinary matter for a person to get out a phone, even if it should not be done. I respectfully suggested to Mr Dosanjh that the issue might be a medical one, and not a legal claim. There is no evidence (or allegation) that anyone has used a mobile phone for any purpose contrary to his interests. He says that the only time that happened was about 5 years ago, and he knew about it then. That means it is very much out of time. Also, Mr Dosanjh says that this was the start of his problems, so he wasn't disabled then. That means the photograph can't be related to a disability, because he didn't then have a disability. If Mr Dosanjh has a fear of mobile phones being used against him, that seems to me to be incapable of being a disability. In any event there is no medical evidence to support such a possibility, and so that could not succeed as a basis for a claim.
8. Mr Dosanjh says that he suffers harassment as people insult him for being homosexual. He isn't, he says, but that doesn't stop it being painful. He is right to say that anyone can be harassed about being gay, and whether they are or not isn't the point. The trouble is that when asked to say what it is that he finds hurtful, Mr Dosanjh could find only one concrete work example, when he says someone called him a "fucker" at work. Sky point out that this was some years ago (2015), and there isn't anything else at work since, so the incident is too far back for Mr Dosanjh to bring a claim about it. They are right. There is also the point that the insult (for plainly it is an insult), while a sexual term is not particular about sexuality. (Nor can it be seen as harassment, when it was said, according to Sky, as a riposte to an Punjabi insult directed by Mr Dosanjh to the person saying it.)

9. Mr Dosanjh sets out 3 other examples, and these were the matters he wanted to add as amendments.
10. The first was on 19 July 2019, by a nurse called Naz, at a hospital where Mr Dosanjh was being treated (for cancer, automatically a disability, but not relevant to the Mr Dosanjh's claims). He says the nurse said "I've got your bracelet", meaning his ID band. He could only think that there was something on social media that meant that people thought he was gay, and that was why she said it.
11. The second was on 02 August 2019, in a hotel, where a receptionist spelled his middle name "Fuckvir" not "Sukhvir". He said that it was the fault of the hospital who had sent him there after treatment.
12. The third was 10 September 2019, again a nurse, who, all of a sudden said loudly to someone she was talking to "Come out!". This was like an indirect message to him.
13. None of these three things have any connection to work, and there is no evidence of any social media comment about Mr Dosanjh. The reference to a bracelet is plainly just a reference to an ID band, the misspelling is a phonetic mistake, and the last nothing to do with Mr Dosanjh.
14. These are just not matters that can possibly have any connection with Sky. They are not homophobic. Even if they were 3 separate examples of homophobic abuse they aren't the fault of Sky, nor their responsibility, because they have no connection with Sky, at all.
15. Mr Dosanjh says homophobic abuse goes on all the time, but this is a general unease, and he was not able (either in his email of 10 October 2019 or today) to give any example of harassment at work (of any description) in the last 5 years. That is no basis for a claim against an employer.
16. Mr Dosanjh feels a real sense of grievance, but it is apparent while the issues may be medical issues about which Mr Dosanjh may continue to seek help, they are not the basis for any claim against his employer.
17. More technically, I refuse the application to add the three matters above (on grounds of lack of relevance), both claims are out of time, it is not just and equitable to extend time, and even if they were in time there is no reasonable prospect of either claim succeeding.

Employment Judge Housego  
27 March 2020