



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Laura Warner

**Respondent:** CenterParcs Limited

## RECORD OF AN OPEN PRELIMINARY HEARING

**Heard at:** Watford by CVP

**On:** 7 August 2020

**Before:** Employment Judge Alliot (sitting alone)

### Appearances

For the claimant: In person

For the respondent: Mr Matt Hall (Employee Relations)

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim for detriment for making a protected disclosure is struck out.

## REASONS

1. Following a preliminary hearing held on 4 May 2020, Employment Judge Kurrein ordered this open preliminary hearing to deal with a range of issues. The specific issues to be considered at this open preliminary hearing are whether to strike out a claim if it has no reasonable prospect of success, including if it is out of time and whether to order the claimant to pay a deposit as a condition of continuing.

2. When considering strike out an/or deposit orders the evidence is obviously untested and factual issues undetermined. Accordingly, my assessment must be based on taking the claimant's case at its highest. In this particular instance the claimant has been given an opportunity to put in a further statement dealing with the nature of her disability and the effect that she says it has had on her ability to carry out normal day to day activities.
3. In addition, I take account of the fact that the Employment Appeal Tribunal has, on numerous occasions, stressed that when dealing with discrimination claims it is only in the clearest possible cases that a strike out order would be appropriate given that such claims are invariably fact sensitive.

### **Unfair dismissal**

4. The claimant was dismissed with immediate effect on 22 August 2019. A payment was made in lieu of notice. The respondent's pleaded reason for the dismissal is as follows:

“36. Mark Wakeman made the decision to dismiss the claimant for misconduct as he found that the claimant breached health and safety rules in not wearing the correct PPE.”

5. In addition, Mr Hall told me today that the reason for dismissal included failing to follow her training.
6. The dismissal followed an incident on 4 August 2019 when the claimant had sustained acid burns on going into the Plant Room. Apparently, the claimant was wearing goggles but not full PPE.
7. The pleaded case of the respondent, in paragraph 26 of its response, was that full PPE should be worn when entering the store to deal with a leak.
8. I do not know what the Health and Safety instructions and training about entering the Plant Room required. The claimant told me that she did not go in to deal with a leak. There is clearly an issue as to the circumstances of the claimant going in to the Plant Room and what she should or should not have done.
9. Further, it seems to me that an issue will undoubtedly arise as to whether dismissal was within the range of reasonable responses of a reasonable employer.
10. Consequently, I do not conclude that the claimant has no, or little, reasonable prospects of success on the unfair dismissal claim.

### **The disability discrimination claim**

11. The claimant's further statement deals with her medical conditions. In discussion with the claimant today she indicated that her disabilities were as follows: Anxiety, Vasovagal attacks and Menorrhagia. As I was unfamiliar with both latter terms, the claimant explained to me that Vasovagal attacks

were blood pressure changes causing passing out due to a lack of oxygen to the brain and Menorrhagia was an extreme loss of blood.

12. Prima facie, I have no reason to doubt the claimant that she has these conditions. I cannot say at this stage as to whether or not the claimant comes within the definition of disabled under the Equality Act 2010 and a further open preliminary hearing will be ordered to determine that issue. However, anxiety may manifest itself in a range of different ways and I do not know what impact the other two conditions may have on the ability of the claimant to carry out normal day to day activities. At this stage I cannot conclude that the claimant has no, or little reasonable prospect of successfully establishing that she was disabled within the meaning of the Equality Act 2010.
13. There is clearly an issue as to whether the respondent knew, or ought reasonably to have known, of the claimant's disability but that will be for the full merits hearing.
14. Where there remains substantial uncertainly concerns how the claimant puts her claim for disability discrimination. I explained to the claimant the four ways that a disability discrimination claim can be advanced, namely direct discrimination, disability discrimination, indirect discrimination and a failure to make reasonable adjustments. I endeavoured in discussion with the claimant to ascertain what treatment she was complaining about and why. Unfortunately, the claimant was only able to articulate her complaints in the most general terms. Accordingly, she will be ordered to provide full particulars of what treatment she is complaining about and how she puts her disability discrimination claims.
15. I stressed to the claimant that this was her last opportunity to provide sufficient details about her claim so that the respondent could understand what she was complaining about and prepare its defence by taking instructions from relevant witnesses.
16. At this stage I consider it to be in the interests of justice to allow the claimant a further opportunity to clarify her claim and, consequently, at this stage, I do not conclude that she has no, or little, reasonable prospect of success.

### **Protected disclosure**

17. In her claim form the claimant has pleaded, at section 15:

“Pool observation checks: unsupervised pool when I left the area to perform any first aid – even though I informed the managers multiple times there was nobody to replace me supervising the pools.”

18. On my reading of the claim this is the only allegation of the disclosure of information of a health and safety nature to the respondent. In discussion with the claimant today I asked the claimant what detriment she was alleging and she told me that it was receiving a warning in September 2018 for leaving the pool unattended.

19. This was apparently a single free-standing event in excess of one year prior to the presentation of the claim form. In my judgment, this claim stands no reasonable prospect of success as it is well out of time and I do not consider that there is any prospect of successfully extending time on a just and equitable basis.
20. Consequently, I strike out this head of claim.

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**Employment Judge Alliott**

Date:.....24<sup>th</sup> Aug 2020.....

Sent to the parties on:

.....28<sup>th</sup> Sept 2020.....

For the Tribunal:

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