



EMPLOYMENT TRIBUNALS

Claimant

Mr Adrian Badita

Respondent

v Merrow Language Recruitment Limited

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford (By CVP and Telephone)

On: 5 January 2021

Before: Employment Judge Alliott (sitting alone)

Appearances:

For the Claimant: In person

For the Respondents: Mr Alex Watson (A Director of the respondent)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim has no reasonable prospect of success and is struck out pursuant to Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. This hearing was scheduled to be held by CVP. However, at 13:47 on 4 January 2021, the claimant sent an email to the tribunal stating that he would not be able to attend by video as his internet connection was very poor. Accordingly, the claimant was contacted in advance and it was agreed that he would participate by telephone. The respondent attended by CVP. At the outset of the hearing I established that the claimant consented to his participation by telephone alone.
2. This open preliminary hearing was ordered by Employment Judge Smail on 20 August 2019 to determine the following issues:

- 1.1 “Whether to strike out the claim because it has no reasonable prospect of success,
 - 1.2 Whether to order the claimant to pay a deposit (not exceeding £1,000) as a condition of continuing to advance any specific allegation or argument in the claim if the tribunal considers that allegation or argument has little reasonable prospect of success.”
3. As part of that order Employment Judge Smail also directed that:-
- “The claimant is to provide the respondent with a witness statement, with documents in support, setting out the basis of his claim by 17 September 2019.”
4. By a claim form presented on 11 March 2019, following a period of early conciliation from 5 to 7 March 2019, the claimant made a complaint of race discrimination/victimisation by being refused employment because of his Romanian nationality. The details of his claim are as follows:-
- “The last time I had applied for a job on 13 December 2018 but the respondent did not reply to my application. On 22 February, the respondent had forgotten having discriminated me, and contacted me on email for discussing about a job. After replying to this email on 5 March 2019, the respondent had understood the mistake done, and obviously failed again to reply. Obviously, at those point, the respondent had no intention offering a job. I did not lodged a claim for discrimination in January 2019 against the respondent, but now after the last mistake done, as I had promised in my last email, I will lodge this claim in Employment Tribunal.”
5. By virtue of the order of Employment Judge Smail, the claimant was given the opportunity of setting out the basis of his claim with supporting documents.
6. On 17 September 2019 the claimant sent an email with attachments to the employment tribunal and the respondent. The covering letter states as follows:-
- “The basis for bringing this claim are direct race discrimination and victimisation under section 27 of the Equality Act 2010. Everyone use a no-Romanians policy and the claimant was a blacklisted Romanian. DHL had admitted in writing to blacklisting the claimant, therefore, all these claims cannot be defended, being the most obviously and plainest cases. For this reason, this tribunal refuses to process claims submitted on 29/30 January 2019. This claim is similar to all other claims lodged in other tribunals over the United Kingdom. Now, I hope that everything is very clear regarding my claim. All the particulars of this claim can be found on the attached files.”
7. All the documents attached to the claimant’s letter of 17 September 2019 relate to different cases. No details of this case are set out therein.
8. Rule 37 of the Employment Tribunals (Constitution and Rules of procedure) Regulations 2013 provides as follows:-

“37 – Striking out

- (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –
 - a. That it is scandalous or vexatious or has no reasonable prospect of success;”

9. I take into account that appellate courts have repeatedly stressed that in discrimination cases, due to the fact sensitive nature of such claims, it is only in the clearest and plainest cases that it will be appropriate to strike out such a claim.
10. Accordingly, I have assessed the claimant's claim taking his case at its highest. The respondent is a recruitment agency which merely introduces potential applicants to clients. It is common ground that the claimant applied for consideration for a job on 13 December 2018. The claimant asserts that he did not receive a reply. The respondent's case is that he was contacted by telephone but there was no answer. Mr Watson informed me that that contact was not only logged but there was a voice recording of it.
11. It is common ground that on 22 February the claimant was contacted with a job opportunity. I have been shown the email which reads as follows:

"22 February 2019 12:42

Hi Adrian,

I had come across your CV online and I am presently recruiting for 4 A Accounts Payable Customer Accounts Assist, location: Rubery. Permanent. Up to £20,000 and wanted to discuss this with you in more detail to see if this is of interest.,

I have attached copy of the job description; please feel free to contact me on the number below otherwise let me know when it's a good time for me to call you.

Many thanks.

Marcus."

12. The claimant refers to replying to that email on 5 March 2019 and complains that the respondent failed again to reply. In actual fact I have seen the claimant's email reply of 5 March 2019 which reads as follows:-

"Because you are fuckin' idiots, now you will go straight into employment tribunal!"

13. The respondent accepts that it did not reply in response to that email. Mr Watson indicated his evidence would be to the effect that he regarded the comment as unjustified and unwarranted and that the respondent would not want to represent him.
14. Against that factual background, the claimant has clarified his claim by asserting, boldly, that everyone uses a "No Romanians" policy and that the claimant was a blacklisted Romanian.
15. In my judgment, the evidence is likely to show the following:
 - That after an application for a job opportunity the claimant was contacted by the respondent but no contact was made.
 - That he was offered a job opportunity later by email and given a contact number.

- That he replied in abusive terms which caused the respondent to have nothing further to do with him.
16. In order to succeed on his discrimination claim the claimant will have to demonstrate that he was treated less favourably on the grounds of his race and to succeed on his victimisation claim he will have to establish that he had been subjected to a detriment because he had done, or may have done, a protected act. In my judgment, the claimant stands no reasonable prospects of successfully establishing any of these matters and that this is a plain and obvious case.
17. Accordingly, the claimant's claim is struck out.

Employment Judge Allott

Dated 29 January 2021

Sent to the parties on: 15 February 2021

For the Tribunal