



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Patterson

Respondent: Chief Constable of Essex Police

Heard at: East London Hearing Centre

On: Monday 30 November 2020

Before: Employment Judge Russell

Representation

Claimant: In Person

Respondent: Mr L Harris (Counsel)

JUDGMENT

1. The claim of disability discrimination is dismissed upon withdrawal by the Claimant.
2. The claim of indirect discrimination because of religion or belief is struck out as it has no reasonable prospect of success.
3. The claim brought under s.63 of the Employment Rights Act 1996 is struck out as it has no reasonable prospects of success.

REASONS

1. By a claim form presented on 27 April 2020 the Claimant brought complaints of discrimination on the basis of religion and belief; disability discrimination and for other claims. The Respondent resists all claims. In summary, the Claimant made an unsuccessful application for the role of Special Constable with the Respondent. The Claimant has Asperger's Syndrome and describes his philosophical belief as being a Kantian Rationalist.
2. The case came before Employment Judge Burgher on 1 September 2020 and the issues were identified. The claims identified by Judge Burgher were: (i) failure to make reasonable adjustments in respect of disability; (ii) indirect discrimination because of religion or belief and (iii) failure to offer training under

section 63 of the Employment Rights Act 1996. Judge Burgher considered that all other complaints referred to in the claim form did not come within the jurisdiction of the Employment Tribunal. Judge Burgher identified the following preliminary issues:

- 2.1 Whether Kantian Rationalism is a belief capable of protection under the Equality Act 2010 and whether the Claimant meets the test set out in **Grainger Plc v Nicholson** UKEAT0219/09;
- 2.2 Whether any of the Claimant's claim should be struck out as having no reasonable prospects of success;
- 2.3 In the alternative whether any of the Claimant's claims should be subject to a deposit order as they have little reasonable prospects of success.

3. The **Grainger** criteria are that: (i) the belief must be genuinely held; (ii) it must be a belief and not an opinion or viewpoint based on the present state of information available; (iii) it must be a belief as to a weighty and substantial aspect of human life and behavior; (iv) it must attain a certain level of cogency, seriousness, cohesion and importance; and (v) it must be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.

4. I clarified the issues in dispute at the outset of the hearing. The Claimant has withdrawn his disability discrimination claim. The Respondent does not dispute that the Claimant's Kantian Rationalism is genuinely held and worthy of respect in a democratic society. Rather, the Respondent's case is that it is an opinion or viewpoint not a belief and/or that it lacks the level of cogency, seriousness or cohesion required to meet the **Grainger** criteria. In the indirect discrimination claim, the Claimant relies upon the criterion of "importance of Special Constable" as a PCP. He maintains that this PCP placed him, as a Kantian Rationalist, at a particular disadvantage compared to people who do not share his belief. Finally, the Claimant's case under section 63 ERA is that he ought to have been given training and that the poor score achieved on the selection exercise due to discrimination prevented him from doing so.

5. In deciding the preliminary issues, I was greatly assisted by the Claimant's oral submissions and his earlier written submissions explaining Kantian Rationalism and its effect upon his day to day life. I was also assisted by Mr Harris' submissions on the application of the relevant law to the facts and circumstances of this case.

6. Rule 37 of the Employment Tribunal Rules of Procedure 2013 provides that 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 grounds that it is scandalous, vexatious or has no reasonable prospect of success.

7. Rule 39 provides that where a Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of

success, it may make an order requiring a party to pay a deposit not exceeding £1000 as a condition of continuing to advise that allegation or argument.

8. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances, **Balls v Downham Market High School & College** [2011] IRLR 217 EAT where Lady Smith held:

“The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word ‘no’ because it shows that the test is not whether the Claimant’s claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral submissions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospect”.

9. A case shall not be struck out where there are relevant issues of fact to be determined. It may be seen that the test to strike out imposes a very high threshold. The Claimants case should be taken at its highest.

10. Those occasions on which a strike out should succeed before the full facts of the case have been established are rare, particularly so where the claim is one of discrimination as the Tribunal will be required to consider why the employer acted as it did, evaluating the evidence and drawing any necessary inferences particularly as it is unusual in discrimination claims to find direct evidence. Nevertheless, as Langstaff P held in **Chandhok v Tirkey** UKEAT/0190/14/KN at paragraph 20, this is not a blanket ban and there may still be occasions when a claim can properly be struck out.

Conclusions

11. I consider that it is appropriate to decide the strike out application first. In doing so, I took the Claimant’s case at its highest and assumed that he would be able to establish that his philosophy of Kantian Rationalism meets the **Grainger** test. The key aspects of the Claimant’s belief system as he explained it to me today are summarised as relevant below.

12. In essence, the Claimant’s Kantian Rationalism is based upon the fundamental principal of human autonomy, which he then explained further under a number of different headings.

12.1 Welfare assessment. The Claimant believes that a person should take rational decisions following a fully informed risk analysis. The person is then fully responsible for any risk, harmful or beneficial consequences which flow. The Claimant gave by way of example the well-reported comments by Lord Sumption on personal responsibility for assessing risk and acting accordingly in the context of the Covid Pandemic.

12.2 Values. The Claimant’s value system as a Kantian Rationalist is

subjective and self-ascribed, based upon his individual assessment of the merits or values of a particular situation. The Claimant describes his Kantian Rationalism as the rejection of a societal model or concept of a prevailing ethos, rather he makes his own informed subjective view about what he rationally considers to be an appropriate course of behavior.

- 12.3 Importance and priorities. Key to his Kantian Rationalism for the purposes of this case, the Claimant does not believe that there is some objectively ascribed concept of what is important. It is his belief that "importance" is a subjective concept which will differ for each person, according to their experience and own assessment of the values to be attached. Accordingly, the Claimant believes that it is not for any other person (whether parents, doctors, teachers or perhaps even judges) to decide that something or someone is generally important.
- 12.4 Work. The Claimant believes that work is an effort in concurrent social interaction, drawing an analogy with Newton's laws of action and reaction. He believes in the concept of dignity and respect in the world of work which he describes as doing no more and no less than that for which you are paid, not arrogating or abrogating power or importance over others.
- 12.5 Relationships with others. The Claimant believes that Kantian Rationalism requires him to avoid exploitation or cruelty. In a person's dealings with other people, it is their actions and not their intentions which matter. The Claimant describes a contractual or transactional approach to dealings with other people. Even in a domestic relationship he believes that it not for one person to care for the other, as one might do for an animal in his view, but to arrange domestic affairs on a rational basis.

13. The Claimant gave examples of the way in which these principles inform his day to day life. The Claimant works in the equine economy and has professional and financial dealings with a woman who has early stage dementia which has caused some safety concerns. The Claimant believes that it is not his role to judge or presume to help her on the basis of his interpretation of what he thinks that she wants or is in her best interests. Instead, he believes that it is his individual responsibility to deal with her rationally, for example taking steps to ensure compliance with health and safety and display honesty in financial transactions with her. Another example was that he would pay his partner for her services driving him to a court hearing rather than accept it as help or care.

14. It is not in dispute that the Claimant applied for a position as Special Constable with the Respondent. A Special Constable is unpaid save for reimbursement of expenses. The Claimant completed an application form, a copy of which is in the bundle today, but was not short-listed for interview. It is not in dispute that the Claimant completed the application form in the manner set out below and that he was rejected for his answers to two questions. The two relevant questions are: (i) what skills and experience would the Claimant bring to

the role of Special Constable; and (ii) why are Special Constables important within Essex Police.

15. In response to the first question, the Claimant answered:

“I bring the specific skills of Principle 7, Policing by Consent for policing the welfare state's human rights abuses on a freelance basis.

I would be available to the Essex Police on demand and be responsible for my own continuing professional development. I would be a very flexible and cost effective resource.

I would wish to adopt the 'blood money' approach to prosecuting crime of Shariah law. Is the defendant willing to buy off the victim to avoid prosecution? Good for the victim and good for the penal system. Not good for getting the 'hangers and floggers' elected.”

16. The Claimant explained today that this was a reflection of his belief in the value of restorative justice as opposed to a system where a person, such as a policeman, abrogates to themselves the position of standing in judgment on others by applying an objective or societal approach.

17. The Claimant's answer to the second question was:

“I have no idea. I am only concerned with what I can do for Essex Police so that they will pay me to do so.”

18. For the purposes of considering whether the indirect discrimination claim should be struck out as having no reasonable prospects of success, I shall take the Claimant's case at its highest and assume that the Respondent did apply a PCP relating to the importance of the role of Special Constable.

19. The Claimant's case is that there are seven political factors in the overall importance criterion which were incompatible with his belief system as a Kantian Rationalist. These are high visibility policing, restoring public faith and confidence, arising crime needs support, keeping Essex safe, community low key policing, valuable resource and making a difference. He submits that he was placed at a particular disadvantage in answering the two material questions by reason of his belief system.

20. In assessing whether there was no reasonable prospect of success for the indirect discrimination claim, I took into account the Claimant's acceptance today that he expressed his views poorly, even provocatively, in the application form. This is clear as the Claimant was able to cogently explain his beliefs to Judge Burgher at the earlier Preliminary Hearing, as recorded at paragraph 16 of the Summary. The Claimant explained that he believed that Special Constables could contribute to the efficient and effective delivery of current policing in accordance with Section 1 of the Police Reform Act. That is a perfectly legitimate answer, consistent with the Claimant's Kantian Rationalism yet properly answering the question in a more persuasive way.

21. I conclude that the inadequate answers provided by the Claimant were not

in any way because of his beliefs as a Kantian Rationalist but because of his decision to give what he accepts were provocative answers to key questions. In other words, I do not accept that the application of the PCP put the Claimant at any particular disadvantage even taking the case at its highest as his beliefs did not affect his ability to provide a satisfactory answer on the application form.

22. There is a further fundamental difficulty which I conclude renders the claim of indirect discrimination without any reasonable prospects of success. For the claim to succeed, the Claimant must show that the PCP puts or would put persons with whom he shares the protected characteristic of Kantian Rationalism at a particular disadvantage. In his submissions today, the Claimant stated on more than one occasion that he is, as he put it, “a one-off”. He accepts that there is there is no body, peer group, consensus or administrative aspect to Kantian Rationalism, rather this is a personal philosophy which he has arrived at as part of a better understanding of his Asperger’s Syndrome. Even taking the Claimant’s case at its highest, he has no reasonable prospects of establishing the necessary group disadvantage for a claim of indirect discrimination.

23. I am grateful for the careful and interesting way in which the Claimant explained to me the principles of his Kantian Rationalism and its effect upon his way of living. However, in all of the circumstances I am satisfied that this is one of those rare discrimination claims which the Tribunal should strike out as it has no reasonable prospects of success as a matter of law even on the Claimant’s own case.

24. The Claimant also brings a claim under section 63 of the Employment Rights Act 1996. Section 63F of the Employment Rights Act 1996 sets out the employer’s duties in relation to an application made by an employee for study or training. Section 63D of the Employment Rights Act 1996 provides that the statutory right to make a request in relation to study or training within part 6A of that Act accrues only to a qualifying employee. A qualifying employee for the purposes of the statutory right to make a request and the employer’s duties in relation to such a request is a person with 26 weeks of continuous service with the employer. Unlike the Equality Act, therefore, the rights conferred by section 63 ERA do not apply to applicants for employment. For these reasons, and even taking the Claimant’s case at its highest, the claim has no reasonable prospect of success and is struck out.

25. After giving Judgment with reasons the Claimant confirmed that he did not pursue his application for a preparation time order.

Employment Judge Russell

15 February 2021