



EMPLOYMENT TRIBUNALS

Claimant: Mr Leon Dyer

Respondent: Islington Council

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford (By CVP)

On: 19 April 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms Siniad King (Counsel)

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

JUDGMENT

1. The judgment of the tribunal is that:
 - 1.1 The claimant’s claim of race discrimination is dismissed upon withdrawal.
 - 1.2 No strike out order or deposit order is made.

REASONS

1. This open preliminary hearing was directed by Employment Judge Warren on 13 December 2020 to determine the following issue:

“Whether the claim should be struck out as having no reasonable prospect of success or a deposit order made.”

2. The claimant was employed by the respondent from 1 or 24 April 2009 as an Estate Service Co-ordinator. He was dismissed with immediate effect on 4 February 2020, being paid in lieu of notice.
3. By a claim form presented on 4 July 2020, the claimant presents claims of race and disability discrimination. Following a request for further particulars the claimant provided further information about his claims on 15 April 2021.
4. In discussion with the claimant he informed me that he has concluded that he was not discriminated against because of his race and told me that he considered his claim to be disrespectful to genuine race claims. Accordingly, that claim is dismissed upon withdrawal.

Disability

5. The claimant told me that the disabilities he relies upon are mental health/depression and lower back pain.
6. The claimant's sickness record at the respondent appears to be as follows:-
 - 9 October 2017–6 June 2018: Sickness absence due to stress and anxiety
 - 1–15 June 2018: Migraine
 - 26-27 June 2018:
 - 21 May-26 June 2019: Urinary tract infection
 - 27 June 2019: Eye infection
 - 1 July - 5 July: Breathing difficulties
 - 6 July - 6 August 2019: Breathing difficulties and bereavement
 - 21 October 2019: Stomach upset
 - 6 November 2019-26 January 2020: Back pain
7. The claimant returned to work on full duties on 27 January 2020.
8. At a capability hearing on 4 February 2020 the claimant was dismissed. The pleaded case of the respondent is that the claimant had a total sickness absence of 300 days from October 2017 to January 2020. The majority of that absence relates to the claimant's sickness between October 2017 and June 2018.
9. As regards the claimant's lower back, it would appear that he sustained injury at work on 6 November 2019. By 26 January 2020 he was signed fit for full duties. In my judgment, the claimant stands no reasonable prospect of establishing that he had a disability of low back pain at the relevant time due to the fact that it had not lasted and was not likely to last 12 months.
10. The claimant relies upon depression following the passing of his mother in November 2017. It is noted that his absence from work was eight months. Nevertheless, the claimant has told me that following his return to work in June 2018 he has had treatment and counselling for depression to the current day and has been prescribed anti-depressants.

11. At his stage and on the basis of what the claimant has told me, it appears to me to be arguable that the claimant has had a depressive mental impairment that has lasted more than 12 months.
12. As regards the impact that such depression may have had on the claimant's ability to undertake day to day activities, the claimant told me of disturbed sleep patterns and difficulty waking up. He also referred to the impact that his memories had upon him. At this stage I am not in a position to conclude that he has little or no prospect of successfully establishing that his depression had an adverse impact on his day to day activities. The claimant will be ordered to provide an impact statement and a better assessment may be made in due course.
13. Accordingly, I do not conclude that the claimant stands no or little reasonable prospect of establishing that he had a disability.
14. In formulating the claimant's claim based on his pleaded case, it is clear to me that this is a s.15 disability discrimination claim. The something arising is sickness absence in 2017/2018 and the unfavourable treatment is dismissal. It will be for the claimant to establish a causal link between his dismissal and his sickness absence and the respondent will no doubt seek to justify any such treatment. Nevertheless, I cannot conclude that the claimant has no or little reasonable prospect of establishing his claim.
15. Accordingly, I make no strike out and/or deposit order in this case.
16. For the sake of completeness, I queried with the claimant why he had not brought an unfair dismissal claim. I explained to the claimant that if he seeks to do so he will need to make an application to amend and will have to support that with an explanation as to why he did not bring such a claim in time and why he says he has brought such a claim within a reasonable time thereafter. I also explained that he may need to deal with any access to information or legal advice about bringing an unfair dismissal claim that he had at the time.

Employment Judge Allott

Date: 17 May 2021

Sent to the parties on:

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For the Tribunal:

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