



EMPLOYMENT TRIBUNALS  
London Central Region

OPH heard by CVP/BT Meetme on: 20 May 2021

Claimant: Ms N Khatun

Respondents: Marks and Spencer PLC

Before: Tribunal Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Mr M Khoshdel (Counsel)

JUDGMENT

The Claims are struck out as having no reasonable prospect of success.

REASONS

1. The hearing started on CVP but the Claimant's internet connection was so slow that we could not make progress and at the request and with the consent of both parties we continued by telephone using BT Meetme. The Claimant confirmed today that she was well and wished to proceed with the hearing. She elected not to give evidence but simply to make submissions in response to those of Mr Khoshdel. I was referred to a PH bundle of 69 pages.
2. I have read the ET1 and the ET3 and the written submissions made by the Claimant at pages 49/50 and at pages 66-68 of the OPH bundle and also listened to her oral submissions in response to those of Mr Khoshdel, (which were based on his skeleton argument – at pages 38 – 44 OPH bundle).
3. The threshold for striking out a discrimination claim before trial and particularly before disclosure is high. Discrimination claims should not be struck out except in the most obvious and plainest cases (Anyanwu v South Bank Students Union [2001] IRLR 305). However in a proper case of discrimination a claim can be struck out Jeffrey v Department of the Environment [2002] IRLR 688. The need for caution does not mean that the power should not be exercised at all: As Moses LJ observed when giving permission to appeal in the Methuen case: "It would be quite wrong as a matter of principle, it seems to me, that claimants should be allowed to pursue hopeless cases merely because there are many discrimination cases which are sensitive to the facts, and the whole area requires sensitivity, delicacy and therefore caution before access is deprived to the tribunals on an interlocutory basis." Community Law Clinic Solicitors Limited & Others v Mr S Methuen [2012] EWCA Civ 571 at [6]. In Ahir v British Airways plc [2017] EWCA Civ 1392, the Court of Appeal said that tribunals should not be deterred from striking out even discrimination claims that involve disputes of fact if they are entirely satisfied that there is no reasonable prospect of the facts necessary to find liability being established, provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been explored.

4. The Claimant was employed as a customer assistant at the Respondent's Marble Arch store for 15 hours a week from 9/9/2018 to 1/6/2019 when her fixed-term contract expired. She presented a claim on 17/6/2019 for unfair dismissal and unspecified disability discrimination. The unfair dismissal claim was struck out on 21/11/2019 because the Claimant did not have two years' continuous service.
5. At a case management hearing on 10/1/2020 limited progress was made to identify and clarify the claims. Judge Hodgson explained to the Claimant on that occasion that she would need to clarify her claims if they were to be permitted to proceed. An OPH was listed on 11/2/2020 to consider the Respondent's application to strike out or deposit the claims based on lack of prospects of success, but the OPH was adjourned firstly because of the Claimant's ill-health, and subsequently because of the pandemic.
6. The matter came before Judge Walker on a telephone/teams audio PH on 25/3/21. Judge Walker spent a considerable period of time discussing the allegations with the Claimant and recorded what she understood to be 5 allegations in a lengthy note. Having done so she listed the OPH for 20 May 21. She ordered the Claimant to provide further particulars (which resulted in the Claimant's narrative document at pages 66-68 of the OPH bundle) and encouraged the Claimant to try to get legal assistance.
7. As noted by Judge Walker, it is unclear how 4 out of the 5 allegations are said to be discriminatory acts or relate to the claimed disability in any way, and notwithstanding the Claimant being given repeated opportunities to do so, she has failed to set out her allegations coherently and by reference to the relevant legislation in the Equality Act 2010.
8. The closest the Claimant has come to formulating a recognisable claim is in allegation 5, which Judge Walker recorded "appeared to be a complaint about harassment". This refers to an undated incident when Alexandria allegedly told the Claimant to sweep faster, and the Claimant noted that two others nearby were laughing. The Claimant's explanations, as recorded in Judge Walker's note, indicate that the Claimant herself is unclear (i) why she was sweeping slowly and (ii) why she was told to sweep faster. As the Claimant was, on her own admission, sweeping slowly, it is not surprising that she was told to sweep faster, and the most obvious explanation for this would have been simply because she was sweeping slowly. The Claimant is unable to explain why or what the others were allegedly laughing at.
9. Accepting for the sake of the argument that being told to sweep faster and seeing people laughing was unwanted conduct, the Claimant has failed to relate this to her claimed disability. In any event, I find that it would not be reasonable for purposes of section 26 EA 2010 to regard this isolated incident as harassment, and I do not regard it as appropriate or proportionate to allow this vague, uncertain complaint about a minor matter to proceed further.
10. Notwithstanding considerable attempts by different judges over a prolonged period the Claimant has failed to put forward a claim which has any reasonable prospect of succeeding at trial and hence it must be and is struck out under Rule 37(1) of the Tribunal Rules.

J S Burns Employment Judge  
London Central  
20/5/2021

For Secretary of the Tribunals:  
Date sent to parties : 20/05/2021

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