



EMPLOYMENT TRIBUNALS

Claimant: Mr W Crawford

Respondent: ISG Technology Limited

Heard at: Manchester

On: 19 November 2021

Before: Employment Judge Phil Allen (sitting alone)

Representation

Claimant: In person

Respondent: Ms L Quigley, counsel

JUDGMENT having been sent to the parties on 23 November 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 of the decision to strike out the victimisation claim only, the following reasons are provided:

REASONS

1. The respondent's application to strike out the victimisation claim was considered at the preliminary hearing on 19 November 2021, alongside the application to strike out other parts of the claim. It was considered during a lengthy preliminary hearing which considered a number of matters, as has been recorded in more detail in a case management order made following that hearing.
2. The respondent was represented by Ms L Quigley of counsel and she was given the opportunity to make submissions in support of the application. The claimant represented himself, and he was given the opportunity to make submissions about why he believed the claim should not be struck out.
3. The Tribunal was provided with a bundle of documents. Included in the documents provided was the claimant's letter of 31 March 2020 to Ms Hughes which contained the grievance.
4. During the hearing some time was spent in identifying with the claimant the protected act or acts he relied upon for his victimisation claim. The claimant confirmed that he relied upon the contact he made with HR on 26 March 2020 as being the protected act (that is why he said he had been treated detrimentally). The claimant said that on the 26 March 2020 he had requested that HR provide him with information about filing a grievance. That was the only protected act upon which the claimant relied.

5. The Tribunal also considered whether the grievance raised in the letter of 31 March 2020 might also of itself have been a protected act, and whether anything in that document assisted in determining whether there was a protected act and whether the claimant's victimisation claim had any reasonable prospect of success.

6. After the submissions were made, the Tribunal reached a decision and the parties were informed of the Judgment and, briefly, the reasons for it.

7. The application to strike out the victimisation claim was made under rule 37 of the Employment Tribunal rules of procedure and, in particular, on the basis that the claim had no reasonable prospect of success (rule 37(1)(a)).

8. The respondent's representative acknowledged what was said in **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126**, that is that it would only be in an exceptional case that a claim should be struck out as having no reasonable prospect of success when the central facts were in dispute. She also referred to **Balls v Downham Market High School [2011] IRLR 217** and **Ahir V British Airways plc [2017] EWCA Civ 1392** (the latter as authority for the fact that a Tribunal should not be deterred from striking out where there was no reasonable prospect of success). She relied upon the contention that the matters relied upon as protected acts were not and could not be protected acts.

9. In determining the application, the claimant's case was taken at its highest. Even where the claim was found to have no reasonable prospect of success, I also was required to still consider whether the claim should be struck out.

10. The provisions regarding victimisation under the Equality Act 2010 are in section 27. A person is victimised if they are subjected to a detriment because they have done a protected act, or because the alleged victimiser believes that the person has done, or may do, a protected act. The identification of the alleged protected act is an essential part of what is required for there to be a successful victimisation claim.

11. Section 27(2) says that each of the following is a protected act: bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Equality Act; doing any other thing under or in connection with the Equality Act; or making an allegation (whether or not express) that someone has contravened the Equality Act. An essential component of all of those things is the Equality Act. In particular, with regard to an allegation made, it must be an allegation that there has been a contravention of the Equality Act. That does not have to be an express allegation, but nonetheless that still must be what had been alleged.

12. Applying the law to what the claimant had contended, my decision was that the contact with HR on 26 March 2020 was not a protected act. Nothing said by the claimant suggested that it could be. What was said did not fit within the meaning of a protected act.

13. The grievance itself of 31 March 2020 was also not a protected act because it did not contain what is required to be such an act by section 27(2) of the Equality Act 2010. There was nothing in the grievance which alleged a contravention of the Equality Act or could be understood as making such an allegation.

14. As there was nothing identified which had any reasonable prospect of being found to be a protected act, and there was no suggestion that the respondent believed that the claimant might do a protected act, the claimant's victimisation claim had no reasonable prospect of success.

15. As a result and where the claim had no reasonable prospect of success, my decision was that the victimisation claim should be struck out under rule 37.

Employment Judge Phil Allen

16 December 2021

REASONS SENT TO THE PARTIES ON

23 December 2021

FOR THE TRIBUNAL OFFICE