



EMPLOYMENT TRIBUNALS

Claimant: Nicola Hill

Respondents: Derby City Council

Record of a Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham On: 20 January 2022

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person

Respondent: Mr P McMahon, Solicitor

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The Employment Judge gave Judgment as follows;

1. The claim of disability discrimination is dismissed.
2. The claim of unfair dismissal will proceed.

REASONS

Background to this Hearing

1. The Claimant presented her claim to the Tribunal on 14 April 2020. She had been employed by the Respondent as a Family Visitor from 14 September 2009 until 15 January 2020. She was dismissed for gross misconduct.
2. The Claimant provided very little details about her claim in the claim form but from the response form and from the other documentation it can be established that the allegation was that the Claimant had accessed files which were confidential for an extended family member. This was done on multiple occasions between March 2019 and June 2019.
3. She was not suspended immediately, and an investigation was carried out between August and November 2019.
4. She was invited to an attended a disciplinary hearing on 15 January 2020 at which she was summarily dismissed for gross misconduct. The Claimant appealed against that decision and the appeal was heard on 21 February 2020 and was dismissed.
5. Her claims are of;
 - Unfair dismissal.
 - Disability discrimination.
6. My colleague Employment Judge Ahmed conducted a Preliminary Hearing on 15 July 2020. It is clear from his Case Management Summary that he had a detailed discussion with the Claimant about her claim. He sets out in that the basis for the Claimant's unfair dismissal claim.
7. In respect of the disability discrimination claim the Claimant told him that she was suffering from;
 - PTSD.
 - General mental health issues.
 - Depression.
8. He pointed out that the allegations of disability discrimination were not clearly particularised, and he made an order for further information to be provided. He noted that the allegations only arose out of the disciplinary and dismissal processes.
9. He also determined that there would have to be a Preliminary Hearing. At that stage the Respondents had not conceded whether she suffered from a disability at the relevant time. The Preliminary Hearing would also deal with whether all or

part of the disability discrimination complaint should be struck out or a Deposit Order made as a condition of the Claimant continuing with the complaint.

10. He ordered the Claimant to provide medical evidence including her GP records and any other information. He also ordered her to provide a written statement stating how each of the impairments affected her ability to carry out normal day to day activities. This was to be provided within 42 days of the date that the order was sent out.
11. The Claimant was also ordered to provide by the same date details of the sort of claim that she was intending to bring and provide details of those complaints. It can be seen from the note that he identified 3 possible claims namely;
 - Direct discrimination.
 - Discrimination arising from disability.
 - Failing to make reasonable adjustments.
12. He also provided a copy of the relevant Provisions of the Equality Act 2010.
13. The Claimant did not comply with these orders.
14. On 21 September 2020 my colleague Employment Judge Victoria Butler directed the Claimant was to provide details of when she anticipated being in a position to provide medical records and also reminded her that she was to provide the further information about her disability discrimination claim.
15. The Claimant still did not comply although she wrote to the Tribunal on 30 November 2020 saying that she wished to claim;
 - Direct discrimination.
 - Failure to make reasonable adjustments.
16. This response did not provide the information that she was ordered to provide by Employment Judge Ahmed.
17. In respect of the impact statement this was finally provided (in so far as it was provided) on 3 September 2021. The information is scant. It says that the Claimant was diagnosed with PTSD in early 2017 and that she had been on depression medication after being in a long-term domestic abuse relationship.
18. She said that she managed the condition with Sertraline, regular appointments with GP and counselling when needed and that she also accessed phone counselling from relevant services when required.
19. She explained that her PTSD could be triggered by a number of different situations. She said that it caused her to panic, sweat heavily and avoid carrying out usual daily tasks but did not say what these tasks were.

20. She went on to explain that her symptoms were heightened by stressful and emotional situations and can result in her being impulsive and not thinking about before acting in a situation. She went on to say that she suffered from low motivation where she will do her best to avoid the daily tasks and even socialising with friends and family. She has not provided any medical evidence whatsoever.

The Hearing Today

21. I heard both from Mr McMahon and Miss Hill. I had the benefit of legal submissions from Mr McMahon and a bundle of documents.

The Disability Issues

The Law

22. Section 6 of the Equality Act provides the definition of disability namely;

“1) A person (P) has a disability if—

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities”.

23. Mr McMahon referred me to a number of cases regarding the definition of disability namely;

- ***J v DLA Piper UK LLP UKEAT/0263/09***
- ***Aderemi v London and South Eastern Railway Ltd UKEAT/0316/12***
- ***Tesco Stores Ltd v Tennant [2019] 11 WLUK***
- ***Ms M Latchman v Reed Business Information Ltd [2002] ICR1453***

24. He also referred me to the Guidance on the definition of Disability 2011 and in particular paragraphs;

- B1
- C3
- D3
- D4

Conclusions

25. The Claimant has not provided me with any evidence to satisfy me that at the relevant time she suffered from a disability.
26. She has not satisfied me that her mental health conditions had an adverse effect on normal day to day activities which should be a substantial one. I take into account that substantial is one that is more than a minor or a trivial affect.

27. She has not satisfied me that at the relevant time any impairment had long-term effects or was likely to reoccur.
28. She has not provided me with any information about normal day to day activities which are substantially affected by her condition.
29. In the circumstances I am satisfied that she has not been able to establish a disability as defined in section 6 Equality Act 2010.
30. My decision over her disability is determinative of her claim but I went on to explain to the Claimant that if I had been satisfied that she suffered from a disability I would in any event strike out her claim for disability discrimination.
31. Rule 37 the Employment Tribunals (Constitution Rules of Procedure) Regulation 2013 provides;

“(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;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out)”.

32. In this case I am satisfied that the manner in which the proceedings are being conducted by the Claimant is unreasonable, that she hasn't complied to the Tribunal orders and that she has not actively pursued it. Finally, I am also satisfied that it has no reasonable prospect of success.
33. I know that in discrimination cases the Tribunal should be slow to strike out claims without hearing the evidence because they are fact sensitive. In this case having considered the ET1, ET3 and the document provided by the Claimant comprising her further particulars dated 30 November 2021 I am satisfied that this case falls into that category. An unusual one where the claim for discrimination really does need to be struck out.
34. The Claimant says that she wishes to pursue a claim of direct discrimination. She has not provided any details of any less favourable treatment. She has not provided any comparator and there is certainly nothing in her pleading which could amount to an allegation that she has been treated unfavourably because of her disability.
35. In respect of her claim of failure to make reasonable adjustments she has not provided any details of any provision, criterion or practice which she relies upon. She has not stated what substantial disadvantage she suffered from as a result of the PCP in comparison to someone who did not share her disabilities. She has

not said what reasonable steps the Respondent should have taken to remove any substantial disadvantage.

36. The only other possible disability discrimination claim that could be made would be discrimination arising from disability. In this case she was disciplined for accessing confidential information and the Claimant has not provided any information of how that accessing of the information could be anything to do with or arise out of her disability.
37. As I explained to the Claimant her claims of disability discrimination do not have any prospects of success and she should concentrate on pursuing her claim of unfair dismissal.
38. For all these reasons the claims of disability discrimination will stand dismissed.

Listing a Final Hearing

39. **The claim of unfair dismissal will be heard by an Employment Judge sitting alone by CVP on Monday 13 June 2022 and Tuesday 14 June 2022 at 10.00am each day or as soon as possible thereafter the Tribunal can hear it. The first 2 hours of the hearing on 1st day will be reading time and the parties are to attend the hearing by 11.30am so that the hearing can commence promptly at 12.00 noon. 2 days have been allocated to hear the evidence and to determine the claim.**

CASE MANAGEMENT ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant and the Respondent must send each other a list of all documents they have relevant to the issues listed in the case summary below **by 17 February 2022**. This includes documents relevant to financial losses. If the Respondent want copies of any of the documents, they must ask for them and these must be provided by the Claimant.

Document include recordings, emails, text messages, social media and other electronic information. You must list all relevant documents you have in your possession or control even if they do not support your case.

2. **By 17 February 2022** the Claimant will provide to the Respondent a schedule of loss in accordance with the document attached.
3. The Respondent must prepare a file of the documents with an index and page numbers. They must send a hard copy to the Claimant **by 3 March 2022**. The file should contain;
 - 3.1. The claim and response form, any changes or additions to them in any relevant Tribunal orders. These should be put in the front of the file.

3.2. Other documents or parts of documents that are going to be used at the hearing in date order.

4. The Claimant and the Respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing including the Claimant needs a witness statement.

A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.

Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happen. They must also include any evidence about financial losses and any other remedy the Claimant is asking for. If the witness statement refers to a document in the file it should give the page number.

At the hearing the Tribunal will read the witness statements. Witnesses will be asked questions about their statements by the other side and the Tribunal.

The Claimant and the Respondent must send each other copies of all their witness statements **by 31 March 2022**.

5. The Respondent must deliver to the Tribunal one copy of all the witness statements and the file of documents for the use of the hearing together with an electronic version **by 10 June 2022**.

Employment Judge Hutchinson

Date: 26 January 2022

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Notes

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:

<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>

(v) The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so”. If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.