



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

J Tapi

Tesco Stores Limited

**Heard at:** Watford by CVP  
**Before:** Employment Judge Anderson

**On:** 8 March 2022

## **Appearances**

**For the Claimant:** In Person

**For the Respondent:** Mr Way (counsel)

## **JUDGMENT**

1. All claims by the claimant that the respondent has breached section 29 of the Equality Act 2010; the Data Protection Act 2018; the Protection of Freedoms Act 2012 or the Computer Misuse Act 1990 are struck out as the tribunal has no jurisdiction in these matters.
2. The claimant's claim of victimisation is struck out as it has no reasonable prospect of success.
3. In order to continue with his claims of indirect discrimination the claimant is required to pay a deposit order in respect of each of the four PCPs relied upon.
4. The claimant's claim of harassment is not struck out and no deposit order is issued.
5. The respondent's response is not struck out.

## **REASONS**

### **Claims and issues**

6. The claimant brings a claim of race discrimination against the respondent by way of a claim filed on 23 March 2021. On 24 April 2021 the respondent filed with its response an application for parts of the claim to be struck out on jurisdiction grounds, and for strike out of the remaining claim on the ground that it stands no reasonable prospect of success. The respondent seeks deposit orders if the tribunal decides not to strike out the claim.

7. The claimant filed two applications to strike out the respondent's response on 26 November 2021. These applications relied on the ground that the respondent's response was scandalous or vexatious.

### **The hearing**

8. The respondent provided a bundle of 87 pages, written submissions and an authorities bundle. The claimant had copies of these documents. The respondent also provided a draft list of issues. I went through this list with the claimant at the beginning of the hearing and the list was amended so that it fully represented the claim he is bringing.
9. Both parties made submissions on the respondent's application. After I had given my decision on that application, I heard witness evidence from the claimant on his means before making a deposit order. The terms of that order are recorded separately. The claimant withdrew the second of the two strike out applications he made on 26 November 2021. The application filed at 10:36 on 26 November 2021 was pursued and I heard submissions from both parties before making a decision.
10. After the applications were decided I agreed case management directions with the parties which are recorded in a separate order.

### **The Respondent's Application**

#### **Submissions**

11. The respondent sought strike out orders under Rule 37(1)(a) or deposit orders under Rule 39(1). Mr Way for the respondent said that there were a number of references in the claimant's pleadings to acts or parts of acts in relation to which the tribunal has no jurisdiction and any claims based on those acts should be struck out. He said that the claimant's claims of indirect discrimination, victimisation and harassment had no reasonable prospect of success and should be struck out. If the tribunal did not agree that the claims should be struck out he requested that the tribunal issue deposit orders for each allegation. Mr Way also relied on his written submissions.
12. The claimant said that he relied on the submissions he had made in writing on 1 June 2021 and 15 August 2021 to the respondent's strike out application. He said that his allegations and claims were connected. He said that in relation to the PCP of the CCTV policy it may be an everyday business practice but there was room for improper use and it depends on who was operating the policy. He said that the CCTV policy had been breached or improperly applied and that he had been victimised and harassed in the grievance and disciplinary processes because the respondent had minimised the fact that they had breached their own CCTV policy. He said the respondent had other ways of dealing with the incident on 2 January 2021 which did not involve the use of CCTV.

### **Decision and reasons**

#### **Jurisdiction**

13. I agree with the respondent that the Tribunal has no jurisdiction to hear any claims brought under
- a. section 29 of the Equality Act 2010
  - b. the Data Protection Act 2018
  - c. the Protection of Freedoms Act 2012
  - d. the Computer Misuse Act 1990
- and claims relating to alleged breaches of those statutes are struck out. I have noted the claimant's comments that proportionality dictates that his claims should be dealt with together, however, the fact is that the Employment Tribunal does not have jurisdiction in respect of those acts or sections of acts.

#### Indirect Discrimination

14. S19 of the Equality Act 2010:
- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
  - (c) it puts, or would put, B at that disadvantage, and*
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.*
15. The claimant relies on the following PCPs:
- a. The respondent's CCTV policy:
  - b. The requirement to use a meeting card during authorised absences in working time:
  - c. The respondent's disciplinary policy: and,
  - d. The respondent's grievance policy.
16. The claimant says that there is evidence from studies, including a TUC study, that Black, minority and ethnic employees are excessively monitored in the workplace and that he was excessively monitored in relation to the disciplinary process that was instigated when he was allegedly late returning from a meeting.
17. The respondent says that the policies are inherently neutral and, in some cases, administrative and cannot therefore be relied upon by the claimant to give rise to a disadvantage he has personally suffered. The respondent states that even if the policies were discriminatory the respondent has a legitimate aim defence in that these policies were used by the respondent in the running of its company, to ensure that there was discipline in the workplace and that every competent company has such policies for obvious good reasons.
18. I do not accept that because the PCPs relied upon are apparently neutral or administrative in nature that the existence of the policies is such that they could not be relied upon to found a claim of indirect discrimination. I agree that these are policies that are held by many if not all companies and for good business reasons and I also note that the evidence of group disadvantage referred to in the pleadings is not particular to the respondent

and its practices but relates to a general workplace study. Furthermore, this is evidence particular to the PCPs of the CCTV policy and the meeting card requirements. The claimant has not pointed to why he believes there is a group disadvantage in relation to the grievance and disciplinary policies or why there was a particular disadvantage to him. I find that without further evidence I cannot determine that these claims have no reasonable prospect of success, so I refuse the application to strike them out. However, I find that there is little reasonable prospect of the allegations succeeding and I will make a deposit order in relation to each of the four PCPs relied upon after hearing from the claimant on means.

### Victimisation

19. S27 of the Equality Act 2010:

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

20. The claimant relies on his attendance at an investigatory meeting as a witness for a colleague as the protected act. In his submissions at this hearing, he referred to that colleague raising discrimination with him at a private meeting between the two of them before they went into the investigatory meeting. The minutes of the investigatory meeting at which the claimant attended with his colleague were provided in the hearing bundle. No reference was made by either the claimant or his colleague to discrimination.
21. The detriment identified by the claimant is that an investigation was instigated into his alleged late return to his workplace from that meeting.
22. I find that this claim has no reasonable prospects of success, and it is struck out. The minutes do not disclose any reference to discrimination and on the claimant's own account the meeting at which he alleges that discrimination was raised was a private one between the claimant and his colleague. The claimant has not provided any reason why it could be the case that the respondent believed he had or may do a protected act. The protected act he relies upon is either a private conversation which the respondent was not party to, or a meeting at which no matters of discrimination were raised.

### Harassment

23. S26 of the Equality Act 2010:

*(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

24. The claimant's protected characteristic is race and he relies on the following unwanted conduct: the use of CCTV to track his movements; the instigation of a disciplinary procedure; the failure to deal with the grievance he raised on 22 February 2021. I find that for the tribunal to conclude whether the use of CCTV, the disciplinary process and any failure to deal with a grievance did constitute harassment, a full consideration of the relevant facts of the case will be necessary. I therefore refuse the respondent's application to strike out this claim and I also refuse the application for a deposit order. The claim is not obviously without merit without a full consideration of the facts.

### **The Claimant's application**

#### **Submissions**

25. The claimant sought a strike out of the respondent's response under Rule 37(1)(b) and (c) on the grounds that it was scandalous or vexatious. The claimant said that on his view, the respondent had overturned the disciplinary sanctions against him on appeal and this was evidence of a discriminatory breach of the respondents' CCTV policy. He said that in overturning the sanction the reasons given minimised the breaches the respondent had committed, and this was scandalous as was its defence of his claim for the same reasons. He said that there was case law on the point that he could raise discrimination in a claim without having raised it to a respondent before issuing the claim.
26. Mr Way for the respondent said that it could not be the case that the overturning of an internal decision on appeal constitutes an admission that the acts of the respondent were unlawful. He said that the response was nowhere near the bar of scandalous or vexatious which is in essence an abuse of tribunal process. He said there was no scandal in the respondent putting forward a defence which on today's hearing had already been shown to have some merit.

#### **Decision and reasons**

27. The claimant's application for strike out of the respondent's response is refused. There is a high threshold to be met in finding conduct scandalous and I find that the response is not scandalous at all. The claimant has brought a claim of race discrimination against the respondent, a claim which he had not raised to it before, and it has defended that claim, as is its right.

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Employment Judge Anderson

Date: 9 March 2022

Sent to the parties on: 24/3/2022.

N Gotecha  
For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.