



EMPLOYMENT TRIBUNALS

Claimant

Mr D Kostakakis

v

Respondent

Charles Briggs Ltd

Heard at: Cambridge

On: 3 May 2022

Before: Employment Judge Cassel (via CVP)

Appearances

For the Claimant: Unrepresented.

For the Respondent: Mr C Briggs, Director.

JUDGMENT AT AN OPEN PRELIMINARY HEARING

The tribunal does have jurisdiction to hear the Claimant's claims of unlawful discrimination under the Equality Act 2010 in relation to the protected characteristic of a philosophical belief.

RESERVED REASONS

Background to Today's Hearing

1. On 21 February 2022 Employment Judge Tynan ordered that there be a preliminary hearing to determine whether to strike out the claimant's complaints that he was discriminated against on the grounds of religion or belief, unfairly dismissed and that he is entitled to a statutory redundancy payment, notice pay and holiday pay because they have no reasonable prospect of success. In the alternative the tribunal was asked to consider whether to order the claimant to pay a deposit (not exceeding £1000 per complaint), as a condition of continuing to advance the complaints on the grounds that the tribunal considers the allegations or arguments have little reasonable prospect of success.

2. The appellant appeared today and as before he was unrepresented. Mr Briggs appeared on behalf of the respondent company.

3. Before taking evidence from the claimant there was an open and frank discussion. It was apparent that the claimant remained an employee of the

respondent company. I explained to him that under the provisions of the Employment Rights Act 1996 the tribunal could only consider a claim of unfair dismissal and redundancy payment if a dismissal had taken place. I also explained to him the provisions of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 which gave the tribunal limited jurisdiction to consider breach of contract claims on the termination of employment. He accepted that the tribunal has no jurisdiction and he wishes to withdraw those claims. I asked him to explain the basis of the claim for holiday pay and again he accepted that given the circumstances he did not wish to proceed with that claim either. I have issued a judgment in a separate document dismissing those claims.

3. I explained that I would take evidence from the claimant in relation to his claim of unlawful discrimination to determine whether the tribunal, in my judgment, has jurisdiction to hear the complaints. The process that I outlined was that the claimant would give evidence, Mr Briggs would have the opportunity of cross-examining him and following that cross examination and any questions that I might have, I would adjourn the proceedings for later in the day to enable both parties to address me on the relevant statutory and case law. Both parties confirmed that they had considered the judgment of **Grainger Plc v Nicholson [2010] ICR360**. I also explained that I would be considering established case law in reaching my decision and that the parties would have the opportunity of sending written submissions if they wished and to have the opportunity of taking legal advice. They both made it clear that they would not wish to take advantage of that opportunity and that they would not wish to comment on any case law or guidance upon which I might rely.

4. I indicated that because of the documentation that had been provided, namely the full statements on which the claimant would rely I would adjourn the proceedings to consider the issue of jurisdiction. Before doing so I asked both parties to outline their account of events that are relevant to the claims being brought. Although the claims lack precision and I was unclear as to which sections of the Equality Act were being relied upon, it was immediately apparent that the parties' evidence would be substantially different and, subject to the tribunal having jurisdiction, it was simply not possible to say whether the arguments had no reasonable or little reasonable prospect of success. It was not appropriate to strike out the complaints or to make a deposit order.

5. As both parties are likely to represent themselves, and again subject to a finding of jurisdiction, I made orders for the disposal of the claims explaining at some length what is required of the parties and expressing my hope, given that the claimant remains in the employment of the respondent, that an acceptable solution could be reached and that a trial, estimated to take three days, would not be necessary.

The Claimant's Evidence.

6. The claimant gave evidence on oath and confirmed the truth of the two statements upon which he relies.

7. He explained at some length that his main philosophical belief can be summarised as follows. “Every individual has bodily autonomy and the right to accept or refuse any medical procedures, healthcare or medical advice, as bodily autonomy is a human right and the foundation upon which other human rights are built.”

8. He explained that for the past 12 years or so, in his words he “brought a serious and ritualistic approach to my health and well-being in the way of food and nutrition, which coincided with a strict gym exercise routine consisting of five – six days training weekly. My body and my health have been a focal point of my daily life, which is in my understanding is essential for a high quality of life and good performance.

9. He further explained that his second philosophical belief which was challenged by the testing mandates and the respondent’s action is as follows “health is predicated primarily upon one’s lifestyle and habitual tendencies, and that medical practices treat the symptom rather than the causal issue and that the use of non-essential medical intervention is subjecting oneself to the real possibility of unnecessary harm or injury and so should therefore be avoided as if I’m feeling of sound health, then I am in fact of sound health.”

10. He gave evidence that the beliefs that he holds were based on his empirical observations and in particular the manner in which his father responded to medical treatment. Fundamental to his belief is Iatrogenesis and he explained the linkage to cancers, namely lymphoma and leukaemia.

11. He gave evidence that it was his fundamental belief that his philosophical beliefs are worthy of respect in a democratic society as they are in no way aimed at the destruction or limitation of another person’s human rights and would in fact be promoting quite the opposite. His beliefs are not repugnant, he submitted, are genuinely held and they are compatible with human dignity and the beliefs enshrined in English law.

Conclusions

12. The claimant impressed me as a thoughtful and intelligent person who genuinely believed and believes that his philosophical beliefs are fundamental to his life. He stressed that the conclusions that he reached were not based on the opinions of others, that he had followed them for 12 years and that they were worthy of respect in a democratic society, that they concerned a weighty and substantial aspect of human life and behaviour and that they obtained a certain level of cogency, seriousness, cohesion and importance.

13. The claimant addressed me at length on the guidance within “**Grainger**.” I explained that I had a copy of the judgment available and I would rely heavily on the guidance provided.

14. In reaching the conclusion that I do, I have looked carefully at **Harron v Chief Constable of Dorset Police 2016 IRLR 481**, **Gray v Mulberry Company (Design) Ltd 2019 ICR 175** and **Forstater v CDG Europe and ors 2022 ICR 1**.

15. In “**Grainger**” it was made clear that a belief can only qualify for protection if it is, genuinely held, not simply an opinion or viewpoint based on the present state of information available, concerns a weighty and substantial aspect of human life and behaviour, attains a certain level of cogency, seriousness, cohesion and importance and is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

16. I was reminded in “**Harron**” that the Grainger criteria are modest threshold requirements which had not set the bar too high or demand too much of those professing to have philosophical beliefs. In **Forstater** it was made clear by Choudhry J that at the preliminary stage of assessing whether the belief even qualifies for protection, manifestation can be no more than a part of the analysis and should be considered only in determining whether the belief meets the threshold requirements in general and it was not appropriate for a tribunal to stray into the territory of adjudicating on the merits and validity of the belief itself but should remind itself that the cardinal principle is that everyone is entitled to believe whatever they wish, subject only to a few modest, minimum requirements.

17. I do find that the philosophical belief or beliefs held by the claimant to satisfy the provisions of section 10 of the Equality Act 2010 and the tribunal does have jurisdiction to hear his complaints.

Final Hearing

18. All issues in the case, including remedy, will be determined at a Final Hearing before an Employment Judge sitting with Members at the **Cambridge Employment Tribunal, Cambridge County Court, 197 East Road, CAMBRIDGE, Cambridgeshire, CB1 1BA**, commencing on **24 April 2023**, starting at 10am or as soon as possible thereafter. The first half day of the hearing will be for reading-in time for the Tribunal and for any preliminary matters to be dealt with. The parties and their representatives, but not necessarily any other witnesses, must attend by 9.30am on that day. The time estimate for the hearing is 3 days, based on the claimant’s intention to give evidence and call 2 further witnesses and the respondent to call 5 witnesses. The claimant and the respondent **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Complaints and Issues

The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the

case and the issues that arise is inaccurate and/or incomplete in any important way.

2. Further Information

- 2.1 By **17 May 2022** the claimant is to provide the following information to the tribunal and respondent:
- 2.2 In relation to each and every act of alleged unlawful discrimination precisely what it is that is being alleged by reference to unlawful acts under the Equality Act e.g. direct, indirect discrimination, harassment or victimisation et cetera, the dates of each act, the identity of any witnesses who were present and to provide sufficient detail on which the respondent is able to respond.

3. Response

- 3.1 The respondent has leave to amend its response and provide any such response to the claimant and tribunal as to claims of unlawful discrimination, if so advised, no later than **31 May 2022**.

4. Schedule of Loss

- 4.1 The claimant must provide to the respondent by **17 May 2022** a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the Tribunal will be asked to award the claimant at the final hearing in relation to the claimant’s complaints and how the amount(s) have been calculated.

5. Documents

- 5.1 On or before **10 June 2022** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the Final Hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

6. Final Hearing Bundle

- 6.1 By **24 June 2022** the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:
 - the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional/further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the

bundle, in chronological order, with all the other documents after them;

- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle;
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

7. Witness Statements

- 7.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing by **8 July 2022 on which date they must be exchanged**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of compensation or damages he is claiming, together with an explanation of how it has been calculated.

8. Final Hearing Preparation

- 8.1 On the first day of the final hearing, the following parties must lodge the following with the Tribunal:
- 8.1.1 Four copies of the bundles, by the respondent;
 - 8.1.2 Four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;

9. Other Matters

- 9.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 9.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

- 9.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 9.4 **Public access to employment Tribunal decisions**
All 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.
- 9.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 9.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Cassel

Date: 9 May 2022

Sent to the parties on: 18/5/2022

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For the Tribunal Office