



EMPLOYMENT TRIBUNALS

Claimant: Mr J Harwood

Respondent: Liquid Capital Markets Ltd

Heard at: London Central **On:** 14 December 2021 & 22
February 2022

Before: Employment Judge Emery

Representation: Claimant - In person
Respondents Ms G Boorer (counsel)

PRELIMINARY HEARING

JUDGMENT

1. All claims are struck-out on the basis that they stand no reasonable prospects of success

REASONS

2. The 22 February hearing was requested by the respondent's representatives, arguing that there had been an error in the written reasons dated 22 January 2022, which followed a Preliminary Hearing on 14 December 2021. The respondent argued that the claims had been struck-out at the 14 December 2021 hearing.
3. At the 22 February 2022 hearing, Ms Boorer renewed the respondent's application to strike out the claims of age discrimination and unfair dismissal. Ms Boorer argued that at the 14 December hearing, there had been a discussion about these claims, that I had discussed the issues with the claimant – what his claims were, and the factual basis on which he was making them. The Order

sent out deals only with the issues in *Selkent* – amendment, time, and delay – and not the other substantive issue, the strike-out application. She said that I had determined that the claims stood no reasonable prospects of success, and should be struck-out. The claimant accepted that issued had been discussed which were not in the Order, although he was not clear what.

4. In light of this, I re-heard arguments from the claimant and from Ms Boorer.

Prospects of success

5. The claimant was employed by the respondent for over 15 years, latterly as a Senior Operations Analyst when, the respondent argues, his role in London was made redundant.
6. The claimant's ET1 alleges at Box 8.1 unfair dismissal and age discrimination. His case is that he worked with the respondent's traders who worked in London, Sydney and Hong Kong. He says two roles were recruited just before he was made redundant – one of which was an Operations Analyst based in Sydney, a more junior role to his own, the 2nd was Head of Regulatory Reporting and Operations in London "*neither of these positions had been advertised internally*".
7. In his Further Particulars the claimant argues that his role was not redundant – there were two members of staff required to undertake the Analyst role, that the hire in Sydney had resigned while he was on garden leave, as had other Analysts within the global company. Why therefore, was he not kept on. He argues that the Operation Analyst roles based abroad were the same role as his, but for a lower salary.
8. He argues that he was not given the opportunity to apply for the Head of Regulatory Reporting and Operations role, which he was well qualified to be considered for, but this was filled by a "*younger new member of staff*" (page 32 PH bundle).
9. During the hearing, the claimant argued that his dismissal was an act of age discrimination because the COO had decided that he would like to restructure the department - and he had someone one in mind - "*new blood*". He decided to send the Analyst role to Australia and created his redundancy as a consequence.
10. In the hearing, the claimant accepted that in the short-term at least half of his role had transferred to the Analyst position in Sydney, and some of his role was done by the new Head of Regulatory Reporting and Operations. For the claimant, his main issue, as he clarified it, was that it was the failure to offer him, or at least interview him for the Head of Regulatory Reporting and Operations role.
11. The claimant argues that his experience shows that he was responsible for multiple regulatory reporting types – that as a small company with no manager, "*... we were doing the regulatory reporting on the Trade side ... On the Financial side – we were gathering the data ...*". He argued that the respondent knew his skill set; that he was "*not the new bloke ... this is tenure, not age...*"

12. The respondent argues that a decision was taken to move the role of Analyst to Australia for operational reasons; this was clearly fair. The claimant stood no reasonable prospects of gaining the Head of Regulatory Reporting and Operations role, there is no evidence he had the skills for this role. Also, the only argument made by the claimant was that this role was filled by someone younger. Without 'something else' – some other argument, this cannot amount to discrimination. There is no evidence in support of the new blood argument.
13. Ms Boorer argued that if the age claim falls away, there was no suitable alternative role for him, and so his claim for unfair dismissal must also fail.

The Law - Strike out

14. *Employment Tribunal Rules 2013 (Rule 37)*

(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;

15. *Cox v Adecco [2021] I.C.R. 1307:*

Paragraph 28” *From these cases a number of general propositions emerge, some generally well- understood, some not so much:*

- (1) No-one gains by truly hopeless cases being pursued to a hearing;*
- (2) Strike out is not prohibited in discrimination or whistleblowing cases; but special care must be taken in such cases as it is very rarely appropriate;*
- (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;*
- (4) The Claimant's case must ordinarily be taken at its highest;*
- (5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;*
- (6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;*
- (7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;*
- (8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if*

it may not be explicitly pleaded in a manner that would be expected of a lawyer;
(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

Conclusions on the evidence at the law

16. It is rare to strike out discrimination cases, and I was careful to take the claimant's case at its highest. His case is that some of his role was moved to Sydney, and he accepts after his redundancy it was no longer being undertaken in London. He accepted that this may meet the definition of redundancy as there was no-one undertaking a Senior Analyst role in London. His argument in part was that younger and cheaper employees were undertaking the same role in Sydney.
17. His main case on age was there was a failure to consider him for the Head of Regulatory and Operations role; that 'new blood' was sought instead of him.
18. I did not accept that the Head of Regulatory and Operations role could be considered a suitable alternative role for redundancy purposes. It was a more senior position. It follows that to stand any prospects of succeeding in his claim, the claimant must show he was suitably qualified for the role, that the respondent knew or should have known this, and the failure to offer him/interview him was because of his age.
19. The claimant has provided no arguments on any of these issues: he has not provided any argument to show that he has the suitable skills and experience for this role; on the face of it while he may have done some regulatory reporting, he has demonstrated no experience of being the person responsible for this function across the business. He has not provided any suggestion that the respondent knew he was suitable and had the skills and experience for this role.
20. The claimant has not provided any suggestion that this was a decision which had any connection with his age, other than a speculative argument that new blood was wanted.
21. I concluded that the allegation he should have been interviewed for the Head of Regulatory and operations , and a failure to do so amounts to unfair dismissal and age discrimination, is a speculative allegation, and one which based on the arguments I heard stands no reasonable prospects of success.
22. I concluded that the allegation that it was because of his age that the role of Senior Analyst was transferred to Australia to be undertaken by Analysts, to again be speculative, and not based on any evidence.
23. The claimant accepted that his role no longer existed in London, a lot of it was being undertaken in Sydney. It follows that the definition of redundancy has been met: for a business reason the respondent decided to relocate a role abroad. As long as there is no ulterior or discriminatory reason for doing so – and the claimant

has not shown that this could be the case – then this is a fair redundancy. It follows that the claim of unfair dismissal also has no reasonable prospects of success.

24. For these reasons, the claims are struck-out.

Employment Judge Emery
Dated: 25 February 2022

ORDER SENT TO THE PARTIES ON

17/08/2022

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS