



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Iftikar Hajee-Adam

v

Drywall Solutions UK Limited

**Heard at:** Norwich (by CVP)

**On:** 9 June 2022

**Before:** Employment Judge Postle

## Appearances

**For the Claimants:** Mr Green, Counsel

**For the Respondent:** Mr Buch, Counsel

## JUDGMENT on APPLICATION for STRIKE OUT and / or DEPOSIT ORDER

1. The Respondent's Application for a Strike Out of the Claimant's claims under the Equality Act 2010 for the protected characteristic of disability is not granted.
2. The Respondent's Application for a Deposit Order is not granted.

## REASONS

1. The Claimant has claims under the Equality Act 2010 for the protected characteristic of disability, particularly a claim for direct discrimination under Section 13, discrimination arising from disability under Section 15, indirect discrimination under Section 19, failure to make reasonable adjustments Section 20 and a claim for harassment Section 26.
2. These all arise out of the Claimant's job application in September 2019 for the position of part time Finance Director. The Claimant was invited for a second interview on 8 October 2019. On that day a verbal offer was made to the Claimant. On 24 October 2019 the Claimant received a telephone call from the Respondents withdrawing the job offer.
3. On 25 October 2021, the Claimant submitted a letter to the Respondent questioning the withdrawal and the reason why. The response was sent by

the Respondents on 7 November 2019. The dispute arises between the reason why the job offer was withdrawn. The Claimant says it was a result of his disability.

4. The Claimant has a number of disabilities, particularly chronic IBS and prostrate and bladder neck obstruction which the Respondents concede. The Claimant has other disabilities, namely: stress, depression, panic attacks and generalised disorder of Seasonal Affective Disorder. At the time of this Hearing, it is believed those disabilities were not conceded.
5. For this Tribunal we have had a Bundle of documents consisting of 147 pages.
6. A separate Psychiatric Report on the Claimant dated 6 April 2022 was also in front of the Tribunal. That report is a very lengthy and detailed document of which Employment Judge Postle was asked to read paragraphs 5, 9 and 10.
7. The Tribunal also had the benefit of very helpful submissions on behalf of the Respondent and likewise on behalf of the Claimant.
8. The basis of the Respondent's Application for Strike Out was on three grounds. Namely:
  - 8.1 unreasonable conduct;
  - 8.2 not actively pursuing the claim; and
  - 8.3 a fair Hearing was no longer possible.
9. The Tribunal reminds itself that a Strike Out is a most draconian step and should only be ordered in the most exceptional circumstances. It must be proportionate. It is an extremely high hurdle to achieve the component to establish that a claim should be properly struck out.
10. It is said by the Respondents that the Claimant's refusal to agree to having the case heard by CVP is unreasonable. The Tribunal reminds itself that the Cloud Video Platform was brought in for the Covid-19 pandemic and it proved very useful during the pandemic. However, the pandemic has subsided and the road map out of the pandemic, particularly in the Presidential Guidance and indeed recently the Lord Chief Justice has said we should, wherever possible, return to 'In Person' Hearings. A Cloud Video Platform Hearing should be a default position and only used in the most exceptional cases for particular reasons. Hearings in person are always more desirable as assessments of evidence can better be made. There is the added problem in this case that the Claimant apparently is aged 60 and is not comfortable with technology, as many people in society are not, and apparently does not have a laptop with a camera. If he were to use such a device the medical evidence suggests that may exacerbate stress. The equal treatment bench book supports where appropriate Tribunals should accommodate parties with reasonable adjustments they are comfortable with to ensure justice is achieved.

11. In those circumstances it is clear that the Claimant's objection to CVP is not unreasonable conduct.
12. The Claimant has requested a late start time for the proceedings on each day because of his disability. The Respondents say this is inconsistent and not properly supported by medical evidence. Though it appears that the Respondents have slightly shifted from their original stance as the most recent medical evidence suggests that due to the Claimant's disability, a late start is appropriate. The Claimant has difficulty with his medical issues, particularly in starting his day, this is clear from the most recent medical evidence.
13. The Respondents have also suggested that the Claimant need not be at the Tribunal all the time. In the Tribunal's mind that is not putting the parties on an equal footing as required by the overriding objective of Tribunals and enshrined in the Employment Tribunal Rules of Procedure.
14. In order for justice to properly be done, it is fair to the Claimant to expect he is present throughout his Hearing and he is indeed entitled to be at the Hearing throughout. Again the equal treatment bench book clearly supports measures such as late starts, to accommodate parties with medical issues.
15. The Full Merits Hearing had originally been listed at the Watford Employment Tribunal for 24 – 28 October 2022. The Claimant, in an Application well in advance – approximately one year in advance, that the listing which had been sent out by Watford without consultation with the parties, the Claimant had a pre-booked holiday abroad which was again beneficial for the Claimant's health. Clearly the Tribunal when considering the Application to Postpone, did not consider it an unreasonable request given the strict approach adopted by Judges in dealing with Applications for Postponement. The Tribunal could not conclude in those circumstances it was unreasonable behaviour.
16. The Claimant has made an Application to transfer the case from the Watford Employment Tribunal to the Central London Tribunal on the grounds that he has difficulty in travelling to Watford; Central London is a circuitous route apparently requiring one train journey, whereas travelling by train to Watford requires more than one. If he were to travel by road to Watford it would take some considerable time and the Claimant has certain anxiety about travelling on certain roads, particularly the M25, which would most likely be the route to take. If he were to go to Central London, apparently that requires just one direct train journey. The Application to transfer was ultimately granted by Regional Employment Judge Foxwell. It is clear there are cogent reasons advanced by the Claimant why the transfer is appropriate and that is supported by medical evidence. If the Hearing remained in Watford or was transferred to Central London the listing time is unlikely to vary much in terms of when. The request was not unreasonable.

17. It cannot therefore be said that the Claimant was not actively pursuing his claim. He is simply asking for appropriate adjustments given his disability, which are not unreasonable.
18. The suggestion that a fair trial is not possible, given that none of the above conduct is in the threshold for unreasonable conduct, arguably there is no need to go on to consider if a fair trial is possible.
19. However, for the avoidance of doubt, the Tribunal take the view that it is possible to have a fair trial. Both parties have known from an early stage what the fairly narrow issues are in this case. They would be able to have taken, again at an early stage, proof of evidence from the relevant witnesses. At the moment the pandemic has not helped many cases in terms of delaying justice, the Tribunal is well used to dealing with cases which involve facts going back many years and given the discreet and narrow issues in this case, a fair trial would in any event still be possible.
20. With reference to the Respondents Application for a Deposit Order, there is a clear factual dispute on the evidence as to the reasons for withdrawing the job offer. That evidence will have to be heard by a full Tribunal, assessed to who is to be believed and what was the real reason for the job offer withdrawal.
21. In those circumstances it cannot therefore be said the claim has little reasonable prospect of success.

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Employment Judge Postle

Date: ...22 August 2022.....

Sent to the parties on: .....

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For the Tribunal Office.