



EMPLOYMENT TRIBUNALS

Claimant: Ms M Panayiotou
Respondent: Circle Wood Ltd
Heard at: Watford Employment Tribunal (in public; by video)
On: 8 July 2022
Before: Employment Judge Quill (sitting alone)

Appearances

For the claimant: In person
For the respondent: Mr C Milsom, counsel

JUDGMENT

- (1) The complaint of disability discrimination, within the definition in section 15 of the Equality Act 2010 is struck out because it has no reasonable prospects of success.
- (2) This judgment does not affect the other complaints in the claim, which are dealt with separately.

REASONS

1. Judgment was given orally at the hearing. The Respondent requested written reasons.

Background

2. The hearing took place fully remotely by video. The Claimant briefly had some difficulties joining at the start but, after that, the hearing proceeded with no technical problems.
3. I did not hear witness evidence. I had a 56 page electronic bundle prepared by the Respondent. During the hearing, I received some emails with attachments from the Claimant.
4. The claim was issued 21 August 2021. For present purposes, I do not need to itemise all of the claims, since separate judgments and orders deal with some of

the other complaints. However, as far as relevant to the strike out application, Box 8.1 of the ET1 had a tick in the disability box.

5. Box 8.2 included:

I will like to make a claim under the discrimination section 15 Equality Act 2010 by association because of my caring responsibilities for my mother. ...

...

... I had asked Acacia if I can take some annual leave or work from home due to my fathers passing and having to arrange the funeral and take care of my mother in the mist of it all etc. I did not feel comfortable being in an office environment. Both options were declined. ...

...

... I am my mothers primary carer, I find it extremely difficult to comprehend how I could receive a phone call from HR notifying me of this redundancy on the same day I had emailed HR requesting to work from home as my mother was unwell and had been in hospital until early hours of the morning, Hr Responses was that this will be authorized as a one off however I received a message just over 7 hours to inform me of my redundancy. ...

6. Box 15 included:

... I had to ensure my mothers mental health and health was as stable as possible as she just lost her husband of 30+ years, I am her primary carer of which the company have been aware of also. I requested annual leave or to be able work from home as I was working from home during the pandemic. These options were both declined without valid reason. My job still exists as they have hired 2 other people after me to take over my work load....

7. By orders dated 16 March 2022, the Claimant was ordered to supply further information about the allegedly unfavourable treatment and the disability which she was relying on as part of her claim.

8. The replies which the Claimant sent to those orders supplied further confirmation that, as was clear from the ET1, she was relying on her mother's alleged disability. Although she did make reference as well to the stress that she, the Claimant, was under, she did not supply evidence that she, the Claimant, had a disability.

9. A notice of hearing was sent to the parties. It said:

At the hearing, an Employment Judge will consider the following issues:

a. Whether the complaint of s.15 Equality Act 2010 discrimination for a reason arising in consequence of the claimant's caring responsibilities due to her mother's disability should be struck out on the basis that it has reasonable prospect of success;

b. Whether any specific allegation or argument has little reasonable prospects of success such that a deposit order should be made as a condition of the claimant being permitting to pursue it;

- c. Clarification of the issues;
- d. Listing the claim for final hearing and any necessary case management orders.

The Law

10. Strike out is and dealt with in rule 37 of the Employment Tribunal Rules of Procedure.

37.— Striking out

(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;

11. Subparagraph (1) is the only one I need to refer to for present purposes, and only the “no reasonable prospect of success” part of that.
12. Striking out a claim is a draconian step. It is only to be taken – especially in cases alleging direct discrimination or victimization - in the clearest of cases. That principle has been established over a number of years, including, for example, by Anyanwu and Another v. South Bank Student Union [2001] UKHL 14.
13. Only in the clearest case should a discrimination claim be struck out. Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence. On a strike out application, the tribunal should not conduct a mini-trial on disputed issues. Rather the Claimant’s case must ordinarily be taken at its highest; that is it should be assumed she will be able to prove her factual assertions. However, if the Claimant’s case on a particular factual assertion is conclusively disproved by or is totally and inexplicably inconsistent with undisputed contemporaneous documents, it is not necessary to assume that the Claimant will be able to prove that particular fact, and this might form part of the basis for a strike out.
14. In any event, where particular facts are not in dispute, the decision about whether or not to strike out the claim can be made based on such facts. In particular, if, based on undisputed facts, the Claimant cannot prove an essential ingredient of the claim, then that might be the basis for a claim to be struck out.
15. There is a high bar for claims to be struck out and but it is not an absolute bar. It is appropriate for cases to be struck out in some circumstances.
16. If a claim does have no reasonable prospects of success than it ought to be struck out and it is not necessarily beneficial for either the claimant or the respondent for a claim which has no merit at all to continue through the system to a final hearing, taking up the parties’ time and resources.
17. The tribunal is also entitled to take into account the effects on other tribunal users and the delays which might be caused to their cases, if final hearings dealing with meritless were always needed. Thus, in an appropriate case, striking out without a final hearing might be in the interests of justice.

18. The fact that the threshold for strike out is met (for example, that there are no reasonable prospects of success) does not mean that the decision to strike out follows automatically. The judge must consider all relevant factors (and ignore all irrelevant factors) and make a decision about whether strike out is appropriate in all the circumstances.

Analysis and conclusions

19. During the hearing, the Claimant confirmed that the disability that she is seeking to rely on is her mother's (alleged) disability only.
20. The alleged unfavourable treatment, within the meaning of section 15 EQA, is refusing flexible working requests and terminating employment. This is unfavourable treatment is said to arise in consequence of the Claimant's mother's disability.
21. Guidance for how to approach claims brought by a litigant in person is given in the Equal Treatment Bench book. The importance of the judge making sure they understand the claim properly (and of dealing with any amendment requests if necessary) before making a strike out decision is emphasized in Cox v Adecco [2021] UKEAT 0339_19_0904.
22. In this case, I am satisfied that I understand the Claimant's arguments. There is no application to amend. She has confirmed that the allegations are as set out in the ET1 and subsequent correspondence.
23. The Claimant has not set out facts which might potentially give rise to a request to amend the claim to one brought under (for example) section 13 or section 26 EQA. She does believe that section 15 should include discrimination by association.
24. Dealing with the claim as it stands, I must consider section 15 EQA. It reads
 - 15 Discrimination arising from disability
 - (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
 - (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
25. It is clear to me from that wording that the disabled person must be the Claimant. That is clear from:
 - 25.1 the introductory words of section 15(1). A "disabled person (B)" is the person against whom there is discrimination. This must then be read with section 39, which defines the contraventions of EQA.

- 25.2 the words of section 15(1) which specifically say that an ingredient is that the (allegedly) unfavourable treatment must be because of B's (not someone else's) disability.
- 25.3 The words of section 15(2) make clear that the issue is whether the respondent knew that B had the disability, not whether the Respondent knew that someone else had a disability.
26. The Claimant has no reasonable prospects of succeeding in an argument that unfavourable treatment caused by something which arose in consequence of another person's disability (no matter how close the connection between the Claimant and the other person) is discrimination within the meaning of section 15 EQA.
27. I do strike out the claim. It is not in the interests of justice, and not in accordance with the overriding objective, for there to be a hearing on the merits of the claim, given that, even if all the facts are as the Claimant alleges, the claim will fail.

Employment Judge Quill

Date: 06 September 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
13 September 2022

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FOR EMPLOYMENT TRIBUNALS