



EMPLOYMENT TRIBUNALS

Claimant: Mr H Howitt

Respondent: Blackpool Council

Heard at: Manchester (by cloud video platform)

On: 5 September 2022

Before: Employment Judge Sharkett

REPRESENTATION:

Claimant: In person

Respondent: Mr R McLean of Counsel

JUDGMENT

The judgment of the Tribunal is that:

The claimant's claims are struck out as having no reasonable prospects of success.

REASONS

1. The claimant had been a foster carer for Blackpool Council from August 2012 and became registered 26 March 2013. It was acknowledged that the claimant and his partner had been valued foster carers over the years but that following a breakdown in relationships associated with the Respondent and issues in respect of his role the claimant was deregistered in January 2022.
2. It is the claimant's case that he was an employee of the respondent and therefore entitled to all employee rights and benefits. He firmly believes that he has been badly treated by the respondent and that he was unfairly dismissed. He further claims that he was denied his right to freedom of speech under the European Convention for Human Rights. Although he had

ticked the box on the ET1 claiming discrimination on the protected characteristic of religion or belief, he confirmed that this was accidental and he did not pursue such a claim. I also informed him that the Tribunal did not have jurisdiction to hear his claim of being denied his right to Freedom of Speech.

3. I heard submissions from Mr McLean for the respondent who confirmed the respondent's position that the claimant was not an employee or worker of the respondent. He referred me to the relevant case law including the leading authority in this area of **W v Essex County Council [1998] 3 All ER 111** which established that foster carers are not employee or workers.
4. Mr McLean likened the deregistration of the claimant to being analogous to a nurse being struck off by the Nursing and Midwifery Council as opposed to being dismissed by the hospital and suggested that the more appropriate route for remedy would be by way of Judicial review. He submits that whilst the claimant suggests that much has changed in the workplace since the case *W v Essex CC* there is nothing of substance to show that foster carers do anything different which may make the current position unsafe.
5. The claimant asked the Tribunal to consider the way in which society has changed its approach to the way people are treated in the workplace and gave examples of the protections that have been given to others that would not have been thought of when *W v Essex* was decided. The claimant feels strongly that he has been treated badly by the respondent and that there has been a campaign to get rid of him for three years despite doing everything he could to love and nurture the children he cared for. The claimant submits that he was at the back and call of his masters twenty four hours a day, had no control over the amount that he was paid and was not self-employed.

Decision

6. In reaching my decision that the claimant's claims have no reasonable prospects I have had regard to the submissions of both parties and the documentary evidence in the bundle prepared for the purposes of this hearing. The Fostering Services Regulations of 2002 set out the basis on which arrangements are made between foster carers and local authorities. Whilst there can additional matters agreed between the parties, the statutory requirements govern the relationship. The claimant is not self-employed in the ordinary sense of the word because he is governed by the statutory scheme and has no power to negotiate the terms under which he works. It is not however a contract of service and there is no cogent evidence before me to allow me to depart from the precedent in *W v Essex CC*, by which I am bound.
7. The claimant's claims have no reasonable prospect of success and are struck out.

Case No. 2407501/2021

Employment Judge Sharkett

Date 24 September 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
27 September 2022

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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.