



EMPLOYMENT TRIBUNALS

Claimant: Mr. W. Saleh
Respondent: New City College

London Central (Remote hearing by CVP)

23 November 2022

Employment Judge Goodman

Representation:

Claimant: in person

Respondent: Sean Batterton, counsel

PRELIMINARY HEARING

JUDGMENT

1. The unfair dismissal claim is dismissed because the claimant was not employed by the respondent.
2. The claims of discrimination because of race, religion or disability are struck out under rule 37 because they have no reasonable prospect of success: the employment tribunal has no jurisdiction to decide discrimination claims brought against a further education college.

REASONS

1. This hearing has been listed to decide whether the claims presented on 29 June 2022 should be struck out as having no reasonable prospect of success, or whether the claimant should be ordered to pay a deposit because they have little reasonable prospect of success.

2. Claims have been presented for unfair dismissal, for discrimination because of race, religion and belief, and disability. The claim form was brief and the narrative cut off part way through the page. At a case management hearing on 29 September 2022 Employment Judge Palca ordered the claimant to send further information about his claim by 21 October. He has not done that. The respondent has filed a bundle of documents. The tribunal file also has some documents sent in by the claimant. Today I was able to explore the factual background a little more.
3. The claimant was employed by E J Interiors Ltd, a small interior fitting company, as a carpentry apprentices. He had a contract of employment providing for 20% of his time to be spent in off -site learning. The apprenticeship was to start 29 October 2019 and end two years later on 29 October 2021. There is a training services agreement between E J Interiors and the respondent, New City College, where the claimant was to spend one day a week at the Hackney campus.
4. Five months after he started work on this arrangement, lockdown began and he was furloughed. E J Interiors' work dried up, and he was likely to be (or was) made redundant. It seems that for some of the lockdown period he was living in a hostel and was mentally ill. He found a new employer, Horohoe Construction Ltd and started there on 1 May 2021. His apprenticeship term was extended to 29 January 2023, and they made a training agreement with New City College.
5. In February 2022 Horohoe Construction dismissed him. They said they his workmanship was poor for the stage he had reached (giving examples), and his attendance both at work and at college was also poor. It was also said he had dishonestly told them he was attending college when he had not.
6. The claimant explained that he had to take a knowledge test before he could sit a practical test for his City and Guilds qualification. A knowledge test was booked for December 2021. He said he could not attend because he had Covid. He understood the second test had been booked for 2 February 2022 as a candidate with City and Guilds. His training with New City College ended 5 March 2022. I was told by the respondent this was by reason of the claimant's performance and attendance record.
7. The claimant has made claims for discrimination because of race, religion and disability. He is a Muslim of Somali origin, and suffers depression and anxiety. What the college is said to have done or not done is not clear, but the claim form states he had no training at college after September 2021, and was not entered for a City and Guilds practical exam, being told he was not good enough to pass it.

This morning the claimant explained that he was badly treated by college staff because they saw him as aggressive, making stereotypical assumptions about his behaviour. He said they knew he was ill, they could see he was black, and they could tell from his beard that he was a Muslim.

8. As well as being ordered to file further information about his claim, the claimant was also ordered to send his medical records. The tribunal file shows that the claimant has on more than one occasion emailed the employment tribunal, with missing attachments. This morning I asked the claimant about his records. He had a list of his medication. This shows he is prescribed Sertraline, and for panic attacks he takes Citalopram, which replaced Fluoxetine. He explained that he sees a nurse (I assume this is a mental health nurse) once a week. These prescriptions suggest a diagnosis of depression and anxiety, but I am not aware when his mental ill-health began.
9. At 10 am, the start of the hearing the claimant had not joined and the clerk telephoned him. He told her that he was losing his voice and near suicidal. He was asked to join the hearing so that I could discuss this with him, and I did, with counsel for the respondent present but with his camera switched off. In this conversation the claimant outlined some of the history, his current medication, and the trouble he had had finding an employer to take him on to continue the apprenticeship when from time to time he was homeless and ill. His communication was loud and agitated, but as the conversation progressed, it was clear he was able to understand instructions, convey information, and could listen and understand.
10. At 10.20 the hearing was made public and counsel switched on his camera. The Respondent's human resources director was in attendance and partway through switched off his camera to help the claimant when he became upset.
11. The respondent applies to strike out the claim because it has no reasonable prospect of success. Their case is that the claimant was not employed by the City College, he was their student. Accordingly, the employment tribunal has no jurisdiction to decide any dispute about the provision of education. There is an exception, in the field of education, for qualifications bodies, but the college did not award any qualification, they only taught for one. The employment tribunal has no jurisdiction to decide discrimination claims because of race or religion and belief, as in the field of education, they should be brought in the County Court. Insofar as there is a disability claim, that is to be brought in the first Tier Tribunal (Health Education and Social Chamber), under sections 113, 114 and 116 of the Equality Act. As for the unfair dismissal claim, the claimant was not employed by New City College.

As a subsidiary argument, proceedings have been brought out of time. He ceased to be a student from 9 March 2022, he went to ACAS for early conciliation on 10 June, and the certificate was issued the same day. He presented his claim on 29 June 2022.

12. I explained to the claimant that it was being argued that the claim was brought in the wrong place, as an employment tribunal only has power to decide claims about employers or qualifications bodies, such as city and Guilds. Claims by students about colleges should be brought in the County Court. He said he had consulted Citizens Advice Bureau on more than one occasion but had little understanding of relevant law or its enforcement.

13. After hearing both sides I reserved judgement. I explained to the claimant that I was doing this because the law in this area was quite technical and having the reasons in writing could help him if he wanted to take more advice.

Relevant law

14. Under the Employment Tribunals (Rules of Procedure) 2013, an employment tribunal has power to strike out a claim if it has no reasonable prospect of success. In making a decision at a stage before there is a hearing of evidence, a tribunal should take the case claimant's case at its highest (that is, assume he can prove what he asserts, subject to incontrovertible contrary documents) when assessing his prospects of success.

Unfair Dismissal - relevant law

15. The right to claim unfair dismissal is conferred by the Employment Rights Act 1996 on employees with two or more years' service, (with some exceptions as to service). An employee is defined in section 230 as someone who works under a contract of service or apprenticeship.

Unfair dismissal claim – discussion and conclusion

16. Having regard to the contracts and agreements which appear in the hearing bundle, I find that the claimant was employed at the relevant time by Horohoe Construction Ltd, where he worked four days a week and who paid his wages. He has never been employed by New City College, indeed, the claimant does not assert that he was employed there.

17. The unfair dismissal claim has no reasonable prospect of success, because the claimant was not an employee of the respondent.

Equality Act Claims- relevant law

18. In Section 2 headed “prohibited conduct”, the Equality Act 2010 prohibits discrimination because of protected characteristics. Race, religion and disability are protected characteristics. For a claim to succeed it must be shown that the respondent to the claim treated the claimant unfairly because of the protected characteristic. A claim could fail if it was found there was no unfair treatment, or that was unfairness, but the reason for any unfairness had nothing to do with race or religion or disability.
19. Further sections of the Equality Act set out the areas where prohibited conduct is forbidden, and where disputes about that conduct should be brought.
20. Part 5 is headed “Work”, and sets out different kinds of employment. This section also applies to qualifications bodies, which confer qualifications enabling people to work in particular fields.
21. Part 6 of the Act is headed “Education”, and includes further and higher education. Section 91 of the Act sets out the areas where students may bring claims of discrimination, for example in relation to admission, and treatment on the courses.
22. Part 9 of the Act is headed “Enforcement” and sets out where claims can be brought. By chapter 2, section 114, claims under part 6, Education, are to be brought in the County Court. Section 116 is about education cases and provides that a claim can be within the section if it may be made to the First Tier Tribunal if it falls within Part 2 of schedule 17, about disabled pupils. The schedule however indicates it is about provision of education in schools, rather than further education colleges. By chapter 3, claims under part 5, Work, are to be brought in the employment tribunal.
23. Time limits: in Work claims decided in the employment tribunal, claims must be brought within the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable – section 123 (1). In the County Court, claims under section 114 of the Equality Act may not be brought after the end of the period of six months starting with the date of the act to which the claim relates, or such other period as the County Court thinks just and equitable”- section 118 (1).
24. Time limits in the employment tribunal are extended by the early conciliation rules if the claimant goes to ACAS for early conciliation within the three month period.

Equality Act Claims – discussion and conclusion

25. The claims presented to the employment tribunal all concern New City College, where he was a student. The claimant has not mentioned any difficulty with his employer, Horohoe Construction Ltd.
26. The Equality Act claims have no reasonable prospect of success in the employment tribunal, because the tribunal has no jurisdiction to decide claims about the training and education provided by a further education college. Disputes with the college have to be decided in the County Court.
27. If the claims *were* to be heard in the employment tribunal, the claimant has a difficulty because he did not go to ACAS for early conciliation until more than three weeks after the three-month period had ended, taking the end of his agreement with City College, 5 March, as the relevant date. Then respondent also argues that the act complained of occurred much earlier, for example in December 2021 or January 2022 when there was some failure to enter him for the knowledge exam with City and Guilds. Whichever date applies, he would have to ask an employment tribunal to extend time on grounds that it was just and equitable to do so. Mental ill-health, or homelessness, could be factors that might persuade an employment tribunal to extend time, but I do not have enough factual information about his circumstances earlier this year to assess the risk that he may fail to persuade the tribunal to extend time. It cannot be said that he has no reasonable prospect of success because this claim was late. There is little point to assessing whether he has little reasonable prospect of success and whether a deposit order should be made instead, given the finding that the tribunal has no jurisdiction against New City College anyway.
28. The claimant should heed the fact that there is a time limit in the County Court, which on the face of it has expired, and if he wanted to persuade the County Court to extend the time because it is just and equitable to do so, it may be wise to get advice and bring a claim there sooner rather than later. He was sent a list of sources of advice with Employment Judge Palca's case management orders, and he may find that helpful, if he has lost confidence in the Citizens Advice Bureau.
29. The claimant has had a difficult time with his apprenticeship, what with lockdown, redundancy, having to transfer employer, periods of homelessness, and mental ill-health. He deserves some sympathy that he has not succeeded in qualifying as a carpenter as he had hoped. I do not know if it is possible to restart.
30. What is clear, is that the employment tribunal has no jurisdiction to hear his unfair dismissal claim, as he was not employed by the college, nor does it have jurisdiction to decide claims of discrimination against the college, as that lies in the County Court. Accordingly the claims

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presented in the employment tribunal are dismissed for want of jurisdiction, meaning they have no reasonable prospect of success.

Employment Judge Goodman
23rd November 2022

JUDGMENT AND REASONS SENT to the PARTIES ON

23/11/2022

FOR THE TRIBUNAL OFFICE