



EMPLOYMENT TRIBUNALS

Claimant: Mr J Mitchell

Respondent: Royal Mail Group Ltd

JUDGMENT – STRIKE OUT APPLICATION (PART CLAIM ONLY)

1. The respondent's application to strike out the claimant's complaint that his dismissal amounted to direct discrimination or harassment related to religion or belief is refused.

REASONS

1. The parties should refer to the Tribunal's case management orders which are set out in a separate document of the same date as this Judgment.
2. The respondent applied in its email of 11 November 2022 to strike out the claimant's complaint that his dismissal amounted to an act of discrimination, related to his religion or belief. In the alternative, the respondent applied for the Tribunal to make a deposit order in relation to the claimant's RB Complaint.
3. I clarified with the parties during the hearing that the claimant's discrimination complaints relating to religion or belief was a complaint of direct discrimination – i.e. that he was dismissed because of his belief and not due to his conduct in early November 2021, as stated by the respondent.
4. The questions that the Tribunal had to decide were whether the claimant had no reasonable prospects or little reasonable prospects at a final hearing of his complaints of persuading a Tribunal that:
 - 4.1. the claimant's belief is a religious belief or a philosophical belief for the purposes of section 10 of the EQA (a "Qualifying Belief"); and

- 4.2. if it is a Qualifying Belief, he was dismissed because of that belief (i.e. that his dismissal was an act of direct discrimination).

LAW

5. Under Rule 37, a Tribunal may strike out all or part of a claim on various grounds, including that it has 'no reasonable prospects of success'.
6. The Tribunal must consider a number of factors in relation to a strike out application. I noted that:
 - 6.1. strike out is an order given only in exceptional circumstances;
 - 6.2. the Tribunal must take the claim at its highest; and
 - 6.3. the Tribunal should consider whether other case management directions would be appropriate instead of striking out the claim.
7. Under Rule 39, where a Tribunal at a preliminary hearing considers that any allegation or argument in a claim has little reasonable prospect of success, it may make an order requiring the party to pay a deposit of not more than £1000 as a condition of continuing to advance that allegation or argument. Rule 39(2) requires the Tribunal to make reasonable enquiries about the party's ability to pay the deposit and to have regard to that when deciding the amount of the deposit.
8. The threshold for making a deposit order, "little reasonable prospect of success", is lower than that for striking out a claim, but the Tribunal must have a proper basis for doubting the likelihood of the party being able to establish the essential facts. The Tribunal is entitled to take into account not only the purely legal issues, but also the likelihood of the party being able to establish the facts essential to his or her case, and in doing so, to reach a provisional view as to the credibility of the assertions being put forward: see: *Van Rensburg v Royal Borough of Kingston-upon-Thames* UKEAT/0095/07.

Religion or Religious belief

9. Section 10 of the Equality Act 2010 (the "EQA") defines 'religion' and 'belief' for the purposes of the EQA:
 - (1) *Religion means any religion and a reference to religion includes a reference to a lack of religion.*
 - (2) *Belief means any religious or philosophical belief and a reference to belief includes a reference to lack of belief.*
 - (3) *In relation to the protected characteristic of religion or belief:-*

- (a) *A reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;*
- (b) *A reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.*
10. The EHRC Code of Practice on Employment (2011) (the “**EHRC Code**”) states at paragraph 2.56 that the notion of religious belief:
- “...goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.”*
11. The same point was made in the case of *Mba v London Borough of Merton* 2014 ICR 357 CA (an indirect discrimination claim), in which Elias LJ stated that:
- “...it cannot in any way weaken [the claimant’s] case with respect to justification that her beliefs are not more widely shared or do not constitute a core belief of any particular religion.”*
12. The Employment Appeal Tribunal (“**EAT**”) clarified the definition of ‘philosophical belief’ in the case of **Granger plc v. Nicholson** [2010] IRLR 4 and set out five criteria (the “**Grainger Criteria**”):
- (i) *The belief must be genuinely held.*
- (ii) *It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available.*
- (iii) *It must be a belief as to a weighty and substantial aspect of human life and behaviour.*
- (iv) *It must attain a certain level of cogency, seriousness, cohesion and importance.*
- (v) *It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.*
13. The reference to the case of McClintock is to the EAT decision in McClintock v. Department of Constitutional Affairs [2008] IRLR 29. I note the following criterion identified at paragraph 45:
- “As the Tribunal in our view correctly observed, to constitute a belief there must be a religious or philosophical viewpoint in which one actually believes, it is not enough ‘to have an opinion based on some real or perceived logic or based on information or lack of information available.’”*

14. The EHRC Code at paragraph 2.59. sets out the *Grainger Criteria* (above). Paragraphs 2.57 and 2.58 of the Code also state as follows:-

“A belief which is not a religious belief may be a philosophical belief. Examples of philosophical beliefs include Humanism and Atheism. A belief need not include faith or worship of a God or Gods but must affect how a person lives their life or perceives the world.”

15. The EAT in *Forstater v CGD Europe and ors* 2022 ICR 1 EAT, considered the fifth *Grainger Criterion*. In that case, the Employment Tribunal at first instance that many aspects of the claimant’s belief that sex is biologically immutable was not supported by scientific evidence. However, the EAT upheld the claimant’s appeal and commented that:

15.1. the types of belief that are excluded by the fifth *Grainger Criterion* were defined by reference to Article 17 of the European Convention on Human Rights, which prohibits the use of Convention Rights to destroy or limit the Convention Right of others;

15.2. beliefs which are offensive, shocking or even disturbing to others can still qualify for protection.

ANALYSIS

Claimant’s complaint

16. The claimant set out his religion or belief direct discrimination complaint at Part 8.2 of his claim form:

“I believe I was dismissed due to my beliefs. They behaved in a fascist dictatorial way and dismissed me although I was a high-performing manager with a clear disciplinary record.

They stated within some of the charges that I was not allowed to share my beliefs.”

(the “**RB Complaint**”).

17. The claim form did not mention any other factual allegations relating to religion or belief discrimination or harassment. The claimant confirmed during the preliminary hearing on 9 March 2023 that the RB Complaint related to his dismissal only. He instead stated when I asked him about this point:

“They offered me a demotion, a different job, managers’ salary for a few months – I said I was happy to take that as long as give me the correct annual leave money. They never did – that’s why we’re here today.”

Claimant's belief

18. The claimant did not provide any details of the belief on which he relied in his claim form. During the preliminary hearing on 9 March 2023, I asked the claimant to provide details of the belief on which he relied.
19. The claimant stated that his belief originated from his Church's views in 2020 and early 2021 on the Covid-19 vaccination. The claimant described the Church that he attended as being a Christian Church and stated:

"I shared same belief as my Reverend – the Church what they were sending out to the congregation a couple of years ago that we should not be getting the mark of the beast. That stance did change after a period of time. But I had two members of staff – one was Jehovah's witness and a lady who was married to local reverend who covers several churches in local area – I had a conversations with both of them. I was mocked by some members of staff and I was not supported by my manager and I never brought it up again. There was no support there."

"The Church was saying the Covid vaccine was what was noted in the bible as the devil behind the vaccine – "the mark of the beast" was quoted by the Church. They felt the vaccine was "the mark of the beast" so the congregation should not be getting it."

"I have been baptised as a Christian but me and my family used to go to a Methodist Church quite a lot. But that's another form of Christianity. There's lots of different ones. As well I've been to Catholic Churches. The Catholics did not support the Johnson & Johnson jab."

20. The claimant clarified that by 'the mark of the beast' the Church was referring to 'the mark of the devil'.
21. I asked the claimant to clarify when the Church's 'stance' changed and the claimant stated:

"They were saying that prior to when it was released. Definitely in 2020 and part of 2021. Then for whatever reason the stance started to change which was quite confusing."
22. I noted that the claimant was dismissed with effect from 1 July 2022 in relation to events that happened on or around 6 November 2021. I asked the claimant if he shared the Church's change of 'stance' or not and he stated:

"I shared what the Church was telling me. When the Church changed its mind – it just seemed a bit bizarre to be honest. I never changed my mind on it just because the church did."

"The bible has not changed since then so my beliefs have not changed either. There's been lots of coverage in mainstream press recently of Matt Hancock."

"The Church gave a very clear position in 2020 and early 2021 that they believed there was a lot of scepticism in Church and that they believed it was part of what was in Revelation. They believed that the vaccine was the mark of the beast and that we should not get it. At some point in 2021 the stance of the Church changed and they felt it wasn't the mark of the beast."

"The Church had basically said that the vaccine – they were going to put something inside the vaccine that would be able to scan you and that's what they were referring to as the mark of the beast. And that people would have to have the mark of the beast."

23. The claimant also quoted the following parts of the Bible which he stated supported his belief:

Revelation 13:16 – And he who causeth all both small and great, rich and poor, free and bond, to receive a mark in their right hand or in their foreheads.

Revelation 13:17 – And that no man might buy or sell, save he that had the mark or the name of the beast or the number of his name.

24. I asked the claimant to summarise his belief in a couple of sentences and he stated:

"My belief is what it says in the Bible – that the Covid vaccine was the mark of the beast and for us not to get it. That does not change in my view point."

Religion or Religious belief?

25. I note that when considering a strike out application, I am required to take the claimant's evidence at its highest. This does not mean that the claimant would succeed in his RB Complaint at a final hearing, where the Tribunal would have the benefit of hearing witness evidence from both parties and reading the relevant documents.
26. I considered first whether the RB Complaint should be viewed as part of his religion or a religious belief. I concluded that the RB Complaint did not relate to the claimant's religion per se (which he described as 'Christian'), but to a specific religious belief that he held because:

26.1. the claimant explained that there were different views within Christianity as to whether or not individuals should accept the Covid-19 vaccine. For example, he stated:

26.1.1. his Church's original stance was that: "*they were going to put something inside the vaccine that would be able to scan you and that's what they were referring to as the mark of the beast*";

26.1.2. "*the Catholics didn't want their people to have the Johnson & Johnson vaccine because of the trials or test processes used to produce the vaccine*";

26.2. the claimant's own Church had changed its views regarding the Covid-19 during the course of 2021 and 2022;

26.3. the claimant's view had remained the same since 2020, based on the Church's earlier interpretation of verses 13:16 and 13:16 of Revelation in the Bible, which the claimant referred to and are quoted earlier in this judgment.

27. I concluded that the claimant's belief, **taken at its highest**, may amount to a religious belief for the purposes of the EQA. I therefore do not need to consider whether or not the claimant's belief may amount to a philosophical belief under the *Grainger Criteria*.

Reason for the claimant's dismissal

28. The respondent provided copies of the following documents in support of its contention that it dismissed the claimant due to misconduct:

28.1. the decision letter dated 28 June 2022, confirming the claimant's dismissal;

28.2. an eight page dismissal report, which set out in detail the investigation carried out and the reasons for the claimant's dismissal;

28.3. the claimant's handwritten notice of appeal dated 4 July 2022; and

28.4. a 14 page appeal report dated 27 September 2022.

29. The claimant did not provide any documents relating to his contention that he was dismissed due to his belief.

30. The respondent stated that:

30.1. the disciplinary investigation was triggered by the events that took place on or around 6 November 2021, not by the claimant's expression of his belief in 2020 or 2021;

- 30.2. one of the reasons why the claimant was dismissed was due to the fact that he was a manager and that the respondent had serious concerns about the way in which he expressed his beliefs in the workplace, as set out in the witnesses statements referred to in the dismissal and appeal reports;
- 30.3. there were other misconduct incidents which led to the claimant's dismissal that were unrelated to his beliefs, including:
- 30.3.1. text messages sent by the claimant to a trainee manager, which the dismissal report stated were of a 'derogatory nature' and 'served to ridicule her, causing undue stress';
 - 30.3.2. the claimant did not tell the trainee manager that the messages were a 'joke';
 - 30.3.3. the claimant had left answerphone messages pretending to be other colleagues calling to say that they would be absent from work; and
 - 30.3.4. the claimant had called a colleague and asked them to ring in sick.
31. The claimant stated that in relation to the documents referred to by the respondent:
- 31.1. the respondent was selective as to which individuals they interviewed and only one of the respondent's witnesses signed their statement that was included in the packs for the disciplinary and appeal proceedings;
 - 31.2. the witnesses who gave evidence as part of the disciplinary proceedings were those who had previously 'mocked' the claimant's beliefs;
 - 31.3. the claimant was not allowed to speak to other staff during his suspension period and this restricted his ability to defend the allegations against him.
32. Taking the claimant's case at its highest, I cannot conclude that the claimant's RB Complaint has no reasonable prospects of success. The claimant contends that the respondent's witnesses for the events that triggered his disciplinary proceedings were influenced by his expression of his belief to them in 2020 or early 2021. The Tribunal would have to hear evidence from those witnesses and from the claimant to reach a conclusion on that matter.
33. However, I have concluded that the claimant's RB Complaint has little reasonable prospects of success for the following key reasons:

- 33.1. the claimant originally expressed his belief to his colleagues in 2020 or early 2021. He states that he was 'mocked' by some members of staff, not supported by his manager and never expressed his beliefs again;
- 33.2. the disciplinary proceedings against the claimant were triggered by incidents that took place in early November 2021. The claimant did not suggest that his belief was the trigger for the disciplinary proceedings;
- 33.3. only one of the eight allegations against the claimant could be viewed as relating directly to the expression of his belief (see paragraph 2.8 of the dismissal report);
- 33.4. the claimant accepted some of the conduct alleged against him had taken place, including that he had sent text messages to a trainee manager regarding staffing issues and allowed her to continue under the mistaken belief that they were not a 'joke'. However, his view is that he should not have been dismissed for the conduct that he has admitted. He pointed to the fact that the respondent had offered him a transfer and demotion if he wished to remain employed by the respondent;
- 33.5. the claimant stated that the respondent's occupational health advisers considered him unfit to attend disciplinary meetings, however he wanted to resolve the matter because it was contributing to his depression. The claimant stated *"it was me who pushed to progress the case"*.
34. I have therefore decided to make a deposit order of £50 for the claimant to continue with his RB Complaint. I heard evidence from the claimant during the preliminary hearing regarding his financial means. The key reasons for making a deposit order of £50 are that:
- 34.1. the claimant is working, however his earnings are significantly less than his current outgoings. The claimant is seeking an additional job in order to meet his living costs;
- 34.2. the claimant is in rented accommodation and has no savings.

CONCLUSION

35. The respondent's application for strike out of the RB Complaint is refused.
36. The respondent's application for a deposit order is granted. Please refer to the deposit order which has been sent in a separate document to the claimant.

Case Number: 1805473/2022

Employment Judge Deeley

15 March 2023

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