



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. J. Cipa

**Respondent:** Butchers Pet Care Limited

**Heard at:** Watford (by CVP) **On:** 17 March 2023

**Before:** Employment Judge J Galbraith-Marten (sitting alone)

## Appearances

**For the claimant:** In person

**For the respondent:** Mr. A. Ross, Counsel

# JUDGMENT

1. The respondent's application for this case to be struck out pursuant to Rule 37(1)(a) & (c) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is refused.
2. The respondent's application for a deposit order pursuant to Rule 39 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is also refused.
3. This matter to be listed for a Preliminary Hearing Case Management. A draft list of issues is attached at Appendix A. A Russian speaking interpreter will be required.

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Employment Judge J Galbraith-Marten

17 March 2023

Sent to the parties on: 8/4/2023

Naren Gotecha - For the Tribunal Office:

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

## **APPENDIX A - CASE SUMMARY/DRAFT LIST OF ISSUES**

1. Following the Judgment, a case management discussion was due to take place in accordance with direction (2) of the Tribunal's Order dated 12 August 2022. The claimant experienced technical difficulties and was unable to participate in that discussion. However, he provided submissions in reply to the respondent's strike out/deposit order application prior to his technical difficulties and the draft list of issues below is reflective of that.
2. By claim form dated 7 January 2022, the claimant brings a complaint of age discrimination. The claimant has been employed by the respondent since July 2017 and he is a production operative. The claimant is 54 years of age.
3. The claimant claims the respondent has failed to provide him with and/or denied him training opportunities which has resulted in his not being able to progress from Band 1 on the respondent's grading structure and gain promotion to a team leader role. He states that is because of his age and he alleges younger colleagues he works alongside have been provided with such training opportunities and have been promoted. The claimant asserts the respondent's failure to provide him with and/or denying him training opportunities continued to the date the claim was submitted.
4. The claimant submitted a grievance to the respondent regarding these matters on 19 December 2019. He submitted a second grievance on 21 May 2021, and he submitted appeals regarding the outcome of both grievances. The claimant also complains the respondent has not adequately dealt with his grievances and he has been victimised by way of bullying and harassment as result of raising his concerns. The respondent denies all the claims.
5. This list has not been agreed by the parties and should be discussed at a further private Preliminary Hearing Case Management.

### **The Complaints**

6. The claimant is making the following complaints.

**Direct age discrimination** about the following:

6.1. Not being offered and/or denied training opportunities between December 2019 and January 2022 by Malcolm Lanman, Ian Black, Anna Downs & Maciej Michalak.

- 6.2. Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.
- 6.3. Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.

**Indirect age discrimination** about the following:

- 6.4. Not being offered and/or denied training opportunities between December 2019 and January 2022.

**Harassment** about the following:

- 6.5. Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.
- 6.6. Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.
- 6.7. Failure of Anna Downs to deliver a 12 week training programme as promised.
- 6.8. Failure of Maciej Michalak to deliver a 12 week training programme as promised.
- 6.9. Failure to investigate or adequately deal with the claimant's grievances.

**Victimisation** about the following:

- 6.10. Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.
- 6.11. Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.
- 6.12. Failure of Anna Downs to deliver a 12 week training programme as promised.
- 6.13. Failure of Maciej Michalak to deliver a 12 week training programme as promised.
- 6.14. Failure to investigate or adequately deal with the claimant's grievances.

**The Issues**

- 7. The issues the Tribunal will decide are set out below.
- 8. **Direct Age Discrimination (Equality Act 2010 section 13)**
  - 8.1. The Claimant is 54 years of age, and he compares himself with people in the age group 20-30 years.
  - 8.2. Did the respondent do the following things:
    - 8.2.1 Not offer and/or deny the claimant training opportunities between December 2019 and January 2022 by Malcolm Lanman, Ian Black, Anna Downs & Maciej Michalak.
    - 8.2.2 Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.
    - 8.2.3 Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.

- 8.3. Was that less favourable treatment?
- 8.4. The Tribunal will decide whether the claimant was treated less favourably than someone else was treated. There must be no material difference between their circumstances and the claimant's. The claimant says he was treated less favourably than Michaela Ilea, Damian Majoch and Sewim Beyham and hypothetical comparators.
- 8.5. If so, was this because of age?
- 8.6. Did this amount to a detriment?
- 8.7. Was the treatment a proportionate means of achieving a legitimate aim?

**9. Indirect discrimination (Equality Act section 19)**

- 9.1. Did the Respondent have the following PCP:
  - 9.1.1. the respondent's practice is not to provide training opportunities for those in the claimant's age group.
- 9.2. Did the respondent apply the PCP to the claimant?
- 9.3. Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic, (those in the younger age group 20 - 30), or would it have done so?
- 9.4. Did the PCP put persons the claimant shares the characteristic, (the claimant's age group over 50s), at a particular disadvantage when compared with those in a younger age group?
- 9.5. Did the PCP put the claimant at that disadvantage?
- 9.6. Was the PCP a proportionate means of achieving a legitimate aim?

**10. Harassment related to age (Equality Act 2010 section 26)**

- 10.1. Did the respondent do the following things:
  - 10.1.1. Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.
  - 10.1.2. Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.
  - 10.1.3. Failure of Anna Downs to deliver a 12 week training programme as promised.
  - 10.1.4. Failure of Maciej Michalak to deliver a 12 week training programme as promised.
  - 10.1.5. Failure to investigate or adequately deal with the claimant's grievances.
- 10.2. If so, was that unwanted conduct?

10.3. Did it relate to age?

**11. Victimisation (Equality Act 2010 section 27)**

11.1. Did the claimant do a protected act as follows:

11.1.1 By grievance dated 19 December 2019.

11.1.2. By grievance dated 21 May 2021.

11.1.3. By appeals against grievance outcomes February 2020 and August 2021.

11.2. Did the respondent believe the claimant had done a protected act?

11.3. Did the respondent do the following things:

11.3.1. Bullying by Malcolm Lanman for raising concerns regarding not being offered and/or denied training opportunities.

11.3.2. Bullying by Ian Black for raising concerns regarding not being offered and/or denied training opportunities.

11.3.3. Failure of Anna Downs to deliver a 12 week training programme as promised.

11.3.4. Failure of Maciej Michalak to deliver a 12 week training programme as promised.

11.3.5. Failure to investigate or adequately deal with the claimant's grievances.

11.4. By doing so, did it subject the claimant to detriment?

11.5. If so, was it because the claimant did a protected act?

**12. Remedy for discrimination**

12.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

12.2. What financial loss has the discrimination caused the claimant?

12.3. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?