



EMPLOYMENT TRIBUNALS

Claimant

Christian Mallon

Respondent

(1) Longman Tax Recruitment Limited

(2) Christopher Chambers, Howard
Freeman, Andrew Irvine, Malcolm
Pope, Andrew Ryder, Scott Burkinshaw
t/a Shorts (a Partnership)

v

Heard at: West Midlands ET (by CVP)
Before: Employment Judge Anderson

On: 3 March 2023

Appearances

For the Claimant: In Person

For the Respondent: T Wood (counsel)

JUDGMENT

1. The first respondent's application for the claim against it to be struck out, or for a deposit order to be made, is refused.
2. The claim against the second respondent has no reasonable prospects of success and is struck out.

REASONS

Background

1. On 18 October 2022 the respondents made an application to strike out this claim, or in the alternative for deposit orders to be made in respect of each allegation, on the grounds that it is scandalous, vexatious and has no reasonable prospect of success (Rule 37(1)(a) *ET (Constitution and Rules of Procedure) Regulations 1012 Schedule 1*).
2. I have not heard witness evidence today but was provided with an agreed bundle of 146 pages containing documents relevant to the allegations

brought by the claimant. I have had regard to those documents in reaching my decisions. I heard submissions from both parties.

3. The claimant's claim is that he was discriminated against on the grounds of disability in the way in which a job application of his was dealt with by the first respondent (a recruitment company) and the second respondent (an accountancy practice).
4. I have taken into account that in considering a strike out application a claimant's case should be taken at its highest, that in discrimination cases a strike out should not be contemplated except in the most obvious cases and that it would be very rare where there is a dispute of fact that strike out would be appropriate (*Cox v Adecco and ors 2021 ICR 1307 EAT*). I have also taken into account that where a strike out is warranted, I have discretion as to whether such a judgment should be made.
5. The claimant has autism and dyspraxia. These are accepted as disabilities by the respondents.

Claim against the first respondent.

6. The claimant claims a single allegation of direct discrimination against the first respondent. He claims, in his ET1, that it changed his CV and removed details about his disability, and this was less favourable treatment he received because he is disabled. At the time of filing the ET1 he had received a copy of a reformatted CV which the first respondent (had sent to the second respondent. He had not received a copy of an email, sent with the CV, setting out his reasonable adjustment requests and information. He has done so now and said today he maintains his claim as the first respondent did not ask his permission to take this action and he does not accept that the approach it took was to his benefit as the reasonable adjustment information should be front and centre.
7. There is no dispute that the first respondent reformatted the CV. There is evidence that the first respondent kept the reference to the claimant's disabilities on the front page of his CV and raised the reasonable adjustments and further information links in an email to which the claimant's CV was attached the first time it was presented to the second respondent. However, it did not include the section from the claimant's original CV in which the claimant states that he requires the adjustment of making an oral application. An oral application here being a step before an interview. The first respondent says that the allegation is factually incorrect. I do not think that it is. Some of the information relating to disability in the claimant's own CV was not included in the re-formatted CV. There may have been good reason for that but whether the claimant was disadvantaged because of it is not clear on the evidence today. It is not clear whether a written application made to the first respondent would usually form part of the materials forwarded to a potential employer, and whether had the information about the claimant wanting to make an oral application been known to the second respondent it would have taken any actions that were different to those it did. On the information I have today, I cannot conclude that this claim has no reasonable prospects of success and I do not have enough information

to conclude that it has little reasonable prospect of success. I refuse the first respondent's application to strike out or issue a deposit order in relation to the claim against it.

Claim against the second respondent.

8. The claimant makes two allegations against the second respondent. The first is a failure to make reasonable adjustments. The PCP is that the second respondent's practice was to insist that a recruitment agent had to conduct oral applications. The claimant, because of his disabilities, prefers to make a job application orally rather than in writing. He sought this adjustment from the first respondent and the first respondent conducted an oral application. It put his CV forward to the second respondent who decided not to invite the claimant to an interview. I find that the claimant has no prospect of successfully establishing that this was a PCP of the second respondent. On the evidence and submissions made today it is clear the respondent was using a recruitment firm rather than advertising for applications. The claimant did not dispute this. The claimant did not point me to any evidence that the second respondent operated the PCP relied upon and the claimant in his submissions did not suggest that there was any such evidence. I have considered the fact that the claimant is a litigant in person, and it is sometimes difficult to define a PCP, but note that the claimant was assisted in this regard by a judge in the preliminary hearing that took place from 27 to 29 September 2022 and there has been no complaint from the claimant about the order resulting from that hearing in which this PCP is set out. As there is no reasonable prospect of the claimant establishing that the second respondent operated such a PCP, the allegation of a failure to make reasonable adjustments resulting from its implementation has no reasonable prospect of success and it is struck out.
9. The second claim against the second respondent is of direct discrimination on grounds of disability. It is that the second respondent failed to respond to the claimant's emails of 14 October 2021 (of which there were three) and 18 November 2021. The evidence I was pointed to today show that the second respondent did respond to the claimant on 14 October 2021 stating that it had provided feedback to the first respondent, and it had nothing further to add. That feedback was provided to the claimant by the first respondent. Separately a SAR made to the second respondent was answered the same day. The facts then indicate that the claimant's allegation is inaccurate. I conclude that this allegation has no reasonable prospect of success as it is not made out on the facts, and it is struck out.
10. The respondents also sought a strike out on the basis that the claim is vexatious. The claimant has a history of bringing employment tribunal claims and currently has in excess of 20 live claims. I do not accept that the purpose of the claimant's claim is to harass respondents but I have given thought to whether the motive for bringing the claims is improper in that it is a use of the court process for a purpose significantly different to the ordinary and proper use of the court process (*Attorney General v Barker 2000 1 FLR 759, QBD (DivCt)*). I noted that the claimant spoke about his history of struggling to get a job and wanting to make life better for himself, his son

and other people suffering with a disability. Though I do not underestimate the significant problems that the claimant has faced as a person with a disability, the pursuit of litigation in the employment tribunal for the purposes of campaigning is not a proper use of the court process. However, in relation to this particular claim, where I have found that there is potentially a case to answer against the first respondent and the claimant is very clear that he believes that the actions taken by the first respondent in relation to his CV are discriminatory, I refuse the respondents' application to strike out the claim on the basis that it is vexatious.

Employment Judge Anderson

Date: 3 March 2023