



EMPLOYMENT TRIBUNALS

Claimant: Mr Simon Gourley

Respondents: Shropshire Doctors Co-Operative Limited

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Birmingham (CVP)

On: 05 June 2023

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr John Merry (Solicitor)

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Preliminary Hearing held in public:

1. The claimant's application to amend his application, to include his October 2021 suspension as an act of disability discrimination does not succeed. Having considered the *Selkent* Principles from the case of *Selkent Bus Co v Moore* it is found that the nature of the amendment is significant, out of time and the evidence presented does not support that the claimant was unaware of acts of disability discrimination at that time.
2. The claimant's application to extend the time limit, on his claim of being called racist in September 2021 by the respondent was an act of disability discrimination, does not succeed. The evidence shows when the claimant

became aware of disability discrimination and its unlawfulness, as well as his own evidence that he was seeking advice from ACAS during that period, it is not accepted that the 3-month time limit would not have been known to him.

3. The claimant did not suffer from a physical impairment which meets the definition of a disability as defined in Section 6 of the Equality Act 2010 at the time of the events the claim was about. I find that the evidence produced does not support that there were any substantial adverse effects on his day-to-day activities, such that the impairment was only raised when the investigation commenced against him.
4. The application under rule 37 to Strike Out the application succeeds it meets the high threshold, as discussed in the case of *Anyanwu v South Bank Student Union [2001]*, given that the only remaining act of direct discrimination in September 2021 is out of time.

REASONS

1. The issues in this matter are as follows:
 - 1.1. Should the claimant be permitted to amend his claim to include an allegation that his suspension in October 2021 was an act of disability discrimination?
 - 1.2. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 1.4.1 Did he have a physical or mental impairment: vocal cord paralysis?
 - 1.4.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?
 - 1.4.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.4.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
 - 1.4.5 What the effects of the impairment long term? The Tribunal will decide:

- (a) Did they last at least 12 months, or were they likely to last at least 12 months?
 - (b) If not, were they likely to reoccur?
- 1.3. The claims of disability discrimination being brought outside the 3-month time limit in section 123 Equality Act 2010, would it be just and equitable to permit the claims, or either of them, to proceed?
- 1.4. Should the claim(s) be struck out as having no reasonable prospect of success?
- 1.5. In the alternative should the claimant be subject to a deposit Order for the sum of £1,000?
- 1.6. The consideration of Case Management Orders, and the listing of the Final Hearing if relevant.

Background

- 2. The claimant was employed by the respondent, Shropshire Doctors Cooperative Limited, as a Relief Primary Care Assistant/Driver from the 1 May 2020 to 15 March 2022. Early conciliation started on the 17 March 2022 and ended on 21 March 2022. The claim form was presented on the 21 March 2022.
- 3. The claim arises from an incident which occurred on the 25 August 2021 when a colleague complained that the claimant had been using a fake Asian accent on the telephone. The claimant says that his tone and manner of speech during the telephone call was something arising from his disability of vocal cord paralysis and that the respondent's subsequent suggestion to him on the 7 September 2021 that he was being racist, was discrimination arising from that. He also alleges that his subsequent suspension in October 2021 was related to this incident and was discriminatory.
- 4. The respondent's defence is that the claimant is not disabled and/or it did not know of his disability at the time of the telephone call in any event. Further, that the claimant's conduct during the telephone call, for which he received an informal warning, had nothing to do with his vocal cord paralysis.
- 5. The respondents submitted an application to strike out the claimant's application, or in the alternative to make a deposit order of £1000 and it was also submitted that the claimant's ET1 failed to claim disability discrimination in relation to the claimant's suspension in October 2021. In which case the claimant would need to apply to amend his claim, which they contest. It is for this reason that a further preliminary hearing was listed to deal with these issues.

The Hearing

6. The tribunal heard evidence from the claimant, and Field Team Manager Ms Mansell-Jones.
7. The claimant attended the hearing via telephone as he was unable to join the CVP platform, the claimant was happy to attend in this manner, he set out that his tone may change or be difficult to understand due to his impairment but to simply request he repeat himself. The respondent expressed it was not ideal to conduct cross examination in this manner but considering proportionality wished for the hearing to go ahead.
8. The issues were agreed with both parties and significant case law on each of the issues was briefly explained to the claimant and two points during the course of the hearing, given he was not legally represented. The respondent kindly agreed to make closing submissions first so that the claimant could get an idea of how this was done. Mr Merry also agreed to briefly explain what any case law he cited was about for the benefit of the claimant.

Employment Judge Hena
05 June 2023