Case: 1802559/2023

EMPLOYMENT TRIBUNALS

Claimant: Mr A Dunn

Respondents: (1) Altrad Employment Services Limited
(2) Alpha Labour and Recruitment Limited
(3) Powertherm Contract Services Limited

AT A PUBLIC PRELIMINARY HEARING

Heard at: Leeds by telephone conference call **On:** 10th July 2023

Before: Employment Judge Lancaster

Appearances
For the claimant: In person
For the respondents: (1) Mr A Tembe, Make UK Legal Services
(2) Ms K McDermott, Head of Finance
(3) Mr T Pochron, solicitor

JUDGMENT

All claims are dismissed as having no reasonable prospect of success

WRITTEN REASONS

1. Written Reasons are provided instead of the oral judgment that would ordinarily have been given immediately on the conclusion of the hearing, because the disruptive conduct of the Claimant would not permit this to be delivered.

2. The Respondents are all engaged in the employment or recruitment of staff to work at the Ineos site at Grangemouth.

3. The Claimant is a thermal insulation engineer who has over time sought work at this site.

4. The Claimant is, in fact, currently employed by the First Respondent (Altrad) and has been since 9th May 2023, having been recruited on 5th May 2023 through an agency, NRL. At the present time he is, however, signed off as unfit to work. It is, in my view, unlikely that this offer of employment was only made, as the Claimant believes, because the First Respondent was in fact aware that following his previous unsuccessful claim against it he had only just initiated another short 5 day period of

ACAS early conciliation ending on 2nd May – and clearly therefore not with a view to any meaningful negotiations to settle the claim. I do not however have to determine this point.

5. Previously the Claimant had also been employed by the First Respondent for five days in 2021, as confirmed in the ET1 – though he says that he was "not allowed to work" – and also by their predecessor in title in 2015..

6. He had also been introduced through the Second Respondent (Alpha) to various employers - including it is pleaded the Third Respondent - on eleven separate, and not continuous, occasions between November 2020 and January 2022.

7. It is accepted that since that time the Second Respondent has not entertained further applications from the Claimant because of the previous legal actions brought by him against them, which although they have all been unsuccessful are still continuing because the Claimant has entered appeals to the Employment Appeal tribunal which have not yet been determined.

8. The Claimant has also brought previous unsuccessful claims against the First and Third Respondents, which are similarly currently pending the determination of an appeal, including an appeal against a costs order made in favour of the Third Respondent. These claims, together with similar ones brought against other Respondents are all, as I understand it, virtually identical both to each other and to his present claim. The Claimant has also expressly stated that he will continue to submit further claims in the future. The Claimant says that he has today submitted yet further job applications which e anticipates will , f rejected, form the basis of new claims: this is notwithstanding the fact that as at this time he is however still employed and certified unfit to work.

9. The present claims are not at all particularised but are on the general basis that the Claimant has "applied for all the companies in mention" but that "they all ignore me now and still need workers and will throughout the year" so that he complains of "blacklist for union duties and whistleblowing the bad practice".

10. Although it is disputed that he has in fact done so, I am prepared to assume for the purposes of this hearing that the Claimant would, as he asserts, be able to provide the details of specific and actual job applications which he has made and which have not been accepted.

11. A complaint under the Employment Relations Act 1999 (Blacklists) Regulations 2010 mat be made (under regulation 5) where employment is refused for a reason that relates to a "prohibited list". Such a list is defined in regulation 3 as

"(2)…a list which—
(a)contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and
(b)is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.
(3) "Discrimination" means treating a person less favourably than another on grounds of trade union membership or trade union activities."

12. In the course of this hearing the Claimant has expressly withdrawn any allegation that the Third Respondent was discrimination against him on the basis of any such list.

13. It is clear in context that the Claimant is asserting that his is the only name on any such relevant list.

14. I am informed that in previous proceedings the Claimant asserted that he could produce the list in question, or evidence of it, and was therefore directed to do under an unless order. When he failed to provide the list by the due date the claim was accordingly struck out.

15. Certainly, no relevant prohibited list has been identified or particularised within the current claim.

16. Alternatively a claim may be brought under section 137 of the Trade Union and Labour Relations (Consolidation) act 1992 that a person has unlawfully been refused employment because he is or is not a member of a trade union. Trade union membership is to be purposefully construed so that it includes trade union activities: Harrison v Kent County Council [1995] ICR 434.

17. Whether under the 2010 Regulations or under the 1992 Act , it is therefore essential to establish what are the trade union activities relied upon by the Claimant.

18. When an attempt was made by the Judge to clarify this key issue in the course of this hearing, the Claimant's reply was "I'm not answering your questions about what my union activities were."

19. The only extremely limited information available to the Respondents and to the Tribunal is therefore as follows:

- The Claimant is understood not to be a union member at the present time, but is relying on past union activities.
- These activities are very generally identified as the Claimant having been prepared to be vocal in meetings.
- The Claimant has referred to one particular occasion, understood to have ben in 2012, when he featured in a BBC news report on industrial action being taken at that time.

20. There is no present indication of any evidence that the Claimant was in fact refused employment because of the existence of a prohibited list or because of trade union membership.

21. Quite apart from the substantial evidential difficulties which are apparent in the circumstances, the Claimant has in any event either failed or refused to provide any proper factual basis for asserting either potential claim for a refusal of work on the grounds of actual union activities, particularly in circumstances where he has in fact been previously engaged to work on occasions for all three Respondents. Therefore, these claims have no reasonable prospect of success.

22. The Claimant has not given any particulars of his possible protected qualifying disclosure ("whistleblowing") claim.

23. It appears that he is now asserting that the unspecified qualifying disclosures of information were made in the ET1 forms in the previous proceedings.

24. Unless, however, he did then identify the factual basis in respect of his trade union activities upon which he claimed that he had been refused employment on earlier occasions, it is hard to see how this would amount to any disclosure of relevant information rather than a mere unsupported allegation, such that it is unlikely to qualify for protection under the Act.

25. Any such "disclosures" were not in any event made to an "employer". The provisions of section 47B f the Employment Rights Act 1996 do not apply to recruitment, but only to detriment suffered by a worker in the course of employment (or potentially post-employment): BP Plc v Elstone [2010] ICR 879

26. Nor would any such qualifying disclosure, if in fact made in these circumstances be evidently in the public interest rather than purely for the Claimant's benefit and for personal gain. Given that the previous claims (albeit still subject to appeal) apparently disclosed no proper basis of complaint and were dismissed, there is also a potential issue as to whether they were made in good faith.

27. In these cumulative circumstances any claim for protected qualifying disclosure detriment similarly had no reasonable prospect of success.

28. In the course of this hearing the Claimant has constantly interrupted, has made repeated accusations, some of which have been gratuitously offensive, has spoken very loudly over everybody else, including the Judge, and has rudely refused sensibly to engage with the attempted clarification of his claims.

29. At this early stage of proceedings this conduct is not, however, so unreasonable that it should in itself lead to a strike out of the claim. If, ,however, it were to be repeated at a final hearing had the claim been permitted to proceed it would very likely then have led to it being impossible to conduct a fair hearing.

30. Nor, having concluded that these present claims on their face have no reasonable prospect of success, is it necessary to give separate consideration to the question of whether or not they are also, given the history of previous rejected claims, scandalous or vexatious. If, however the current outstanding appeals are unsuccessful and the Claimant persists in bringing further claims on the same grounds a future tribunal may well be entitled to come to such a conclusion

EMPLOYMENT JU DGE LANCASTER
DATE 14th July 2023