



EMPLOYMENT TRIBUNALS PUBLIC PRELIMINARY HEARING

Claimant: Mr M Shubita

Respondents: The University of Leeds Beckett (1806695/2022)

1 The University of Warwick (1303969/2023)
2 Dan Derricott
3 Rosie Drinkwater

HELD AT: Leeds By CVP **ON:** 17 August 2023

BEFORE: Employment Judge JM Wade

APPEARANCES:

Claimant: in person

Respondents: Mr A Willoughby, counsel

JUDGMENT

The claimant's claim number 1303969/2023 is struck out.

REASONS

1. The claimant is a reader and post graduate programme director at Leeds Beckett University ("Leeds"). He brings Equality Act and Employment Rights Act - whistleblowing detriment - proceedings in connection with its failure to shortlist him for interview for a different opportunity. A final hearing in those claims is arranged for October this year.

2. Warwick University ("Warwick") assessed the claimant's application in August 2022 and in 2023, after receiving freedom of information/subject access disclosure, he brought proceedings against Warwick.
3. By consent today I joined these proceedings, the parties all consenting and preparing for today on that basis. A legal officer had previously indicated the joining Order would be made and the notice of hearing for today said that I would consider this today.
4. I explained to the claimant that Rule 26 requires an Employment Judge to read the claim and the response and assess whether any contentions have prospects of success, and I would hear from him about that in connection with the Warwick claim, taking into account the respondent's application to strike it out.

Matters of background not in dispute

5. The claimant applied for a fixed term post at a higher grade at Leeds in May of 2022 and on 23 June 2022 he was informed his application was not shortlisted. On 18 September 2022 he commenced ACAS conciliation in relation to that matter with a certificate closing conciliation on 30 October 2022. He knew in September 2022 that an external assessment of his application had been carried out.
6. His claim against Leeds was presented on 30 November 2022. There is no limitation issue in the claim against Leeds.
7. The claimant indicated he wished to pursue a formal grievance on 28 July 2022 about the shortlisting. He was accompanied by his Union representative in that grievance. On or around 3 August 2022 Leeds approached Warwick to assess the claimant's application and the Warwick assessor (the second respondent above, Mr Derricott) confirmed that he would not shortlist for interview.
8. The claimant commenced ACAS conciliation against Warwick, Ms Drinkwater and Mr Derricott on 4 March 2023 with a certificate on 13 April 2023 and claim on 1 May 2023.

9. The claimant had been ordered to clarify the complaints against Leeds in orders sent to him in March 2023, but had not done so for reasons he explained today.
10. In the claim against Leeds, it is discernible in the claim form that Ms Kennell's decision on 22 June 2022 not to shortlist the claimant is alleged as whistleblowing detriment and direct race discrimination. The claimant explained to me today why he believed that to be the case, and those allegations are to be determined at a final hearing in October.
11. The claimant also confirmed today that although the Leeds claim form details include a complaint against Ms Lancaster on 15 September, that is included for background or context and he does not pursue such a complaint (either as race discrimination or whistleblowing detriment).
12. Having clarified the complaints against Leeds today (subject to the provision of limited protected disclosure details), we discussed the contents of the Warwick claim. It is plain that the Drinkwater sisters (one employed by Leeds and one employed by Warwick), arranged the assessment by Mr Derricott. The claimant reiterated to me today that this was wrong, and outside of procedure. No doubt this will come to be discussed at the final hearing.
13. I explained to the claimant that part of my role as an Employment Judge, where a litigant in person acted without a lawyer, was to identify the applicable law, and whether I could discern arguable complaints which, through an act of Parliament, the Employment Tribunal has jurisdiction to determine. I also explained that before I could consider whether there was a time limit issue in relation to the claimant against Warwick, I needed to be clear which Act was relied upon, because different acts have subtly different time limit provisions. The claimant understood the "three months minus a day" rule, but I explained that I needed first to understand what the allegations against Warwick were.
14. As the claimant was not at any time a worker or employee of Warwick's I could not see an Employment Rights Act claim against Warwick in these circumstances (much less Ms Drinkwater/Mr Derricott). I could see that they may be acting as agents for Leeds, and as such their actions could potentially contravene the Equality Act, but in further discussion the claimant did not (and could not) tell me how, or on what basis he alleged their conduct was arguably race discrimination, or that he even believed it to be so. He referred to having

applied to Warwick in the past, but that is contained nowhere within his claim form.

15. In these circumstances I considered that the claim against Warwick has no reasonable prospects of success. Although the notice for today's hearing did not say that the Judge would consider whether to strike out the claim pursuant to Rule 37, it was clear that the respondent's application in its grounds of resistance was known to the claimant, and I gave him the opportunity today to explain the complaint against Warwick and how it was a complaint over which the Tribunal has jurisdiction. I explained that poor professional conduct (as the claimant alleged had occurred in the seeking of an external assessor through sisterly connection), might well be a matter for other regulators including in relation to data protection, but I could not see any complaint with prospects of success against Warwick in this Tribunal. He did not persuade me there was an arguable complaint.

16. The less draconian approaches of giving the claimant further time to clarify the Warwick complaint, and/or imposing a deposit order, did not appear to me in the interests of justice in the circumstances. The claimant has arguable complaints against Leeds and they are due to be heard. The Warwick context or background will inevitably be discussed. The claimant had not complied with previous orders – and imposing yet further conditions on him to pursue the Warwick case will simply distract from getting on with the Leeds case. He remains employed with Leeds, is very busy with all that entails, and the interests of all parties are best served by a timely and well prepared hearing in the Leeds case.

Employment Judge JM Wade
17 AUGUST 2023

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