



EMPLOYMENT TRIBUNALS

Claimant

Respondents

X

v

Secretary of State for Justice

Heard at: Watford (CVP)

On: 17 August 2023

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Ms L Robinson, counsel

JUDGMENT ON PRELIMINARY ISSUES

- (1) The claim for unlawful deduction of wages in respect of the judgment sum (the amount ordered to be paid to the Claimant in the Tribunal judgment of 28 April 2022) is struck out.
- (2) The claim for failure to make reasonable adjustments (in respect of the Claimant's home/work chair/ desk) as pleaded in her Claim Form is dismissed on withdrawal by the Claimant.
- (3) The Claimant's applications to amend in respect of (i) the allegation of failure to make reasonable adjustments by failing to provide her with disability glasses and (ii) that she has been treated unfavourably because of something arising in consequence of her disability are both dismissed.
- (4) The application that the Claimant's identity and that of her litigation friend be anonymised pursuant to Rule 50 of the Tribunals Rules of Procedure 2013 is allowed.

- (5) The application that this Public Preliminary Hearing be held in private pursuant to Rule 50 of the Tribunals Rules of Procedure 2013 is refused.

REASONS

Introduction

1. At a Preliminary Hearing on 23 May 2023, the following issues were listed for determination at a Public Preliminary Hearing:
 - i) Whether the complaints against the Respondent should be struck out as having no reasonable prospect of success.
 - ii) Whether any specific allegation or argument in the claim has little reasonable prospect of success and, if so, whether the Claimant should be required to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation.
 - iii) Whether the Claimant should be granted permission to amend the grounds of complaint to include (a) failure to make reasonable adjustments by failing to provide her with disability glasses; (b) whether the Claimant has been treated unfavourably because of something arising in consequence of her disability. The Claimant was required to set out her proposed amendments to the grounds of claim by 5 June 2023.
 - iv) Whether it is appropriate to make any Order pursuant to Rule 50 as a result of the matters the Claimant set out in her email to the Tribunal on 5 May 2023 at 16.07.
2. On 4 July 2023, in the light of the Claimant's email of 5 May 2023, EJ Barker made an Anonymisation Order pursuant to rule 50 of the Employment Tribunals Rules of Procedure 2013 in respect of the Claimant's previous claim.
3. By email of 16 August timed at 21.15 the Claimant made an application for an Anonymity Order in respect of this claim and that the hearing not be in public. That application was dealt with at the beginning of this hearing. I made an Anonymisation Order pursuant to rule 50, on the basis that to do otherwise would entirely undermine the Anonymisation Order made by EJ Barker. However, I refused the application that this hearing be heard in private. A private hearing is the greatest of all derogations from the principle of open justice and only appropriate in the most compelling circumstances. In the instant case the previous hearings had all been in public without adverse consequences to the Claimant, there was no reason why her home address or work location would need to be disclosed during the hearing, and the hearing was being held by CVP so there was no threat to the Claimant's personal safety.

Background

4. The Claimant has been employed by the Respondent as Probation Service Offender Manager since 1 February 2015.
5. On 2 March 2020 the Claimant brought a claim in the Tribunal alleging disability discrimination, arrears of pay and failure to make reasonable adjustments (case number 2300787/2020). After a full hearing in March 2022 her complaint of disability discrimination was dismissed but her complaint of unlawful deduction of wages succeeded and the Respondent was ordered to pay the Claimant the sum of £1698.26, subject to appropriate deductions for tax and National Insurance.
6. During the course of that hearing the Claimant sought amend her claim to bring an additional claim of unlawful deduction of wages in respect to an alleged overpayment of sick pay in 2017 and 2018 which the Respondent was seeking to recover in 2022. The Tribunal refused that application (judgment at paragraph 14), stating the Claimant was free to issue a fresh claim to ask another Tribunal to determine the issue (“the 2022 deductions”)
7. The Claimant conducted Early Conciliation between 26 September 2022 and 7 November 2022 and brought this claim in the Tribunal on 14 November 2022.
8. In the Claim Form she brings the following complaints:
 - (i) A complaint of unlawful deductions in respect of the 2022 deductions (“the 2022 deductions claim”);
 - (ii) A complaint of unlawful deductions in respect of too much tax having been deducted from the judgment sum of the first tribunal claim (“ the judgment sum claim”);
 - (iii) A complaint of failure to make reasonable adjustments in respect of the provision of a chair for the home and office setting and a smaller electric height adjustable desk for the home setting.

Unlawful Deductions

- (i) The 2022 deductions claim
9. As regards the complaint of unlawful deductions in respect of the 2022 deductions, the Claimant accepted in her Claim Form that the majority of the deductions had been repaid in her October 2022 payslip but asserted there was a shortfall of £41.40. The Respondent did not accept there was a shortfall but has stated it is willing to pay that sum as a gesture of goodwill.
 - (ii) The judgment sum claim
10. As regards the complaint in respect of too much tax having been deducted from the judgment sum a witness statement provided by Mr Ayodeji Ogunyemi of the Respondent states he authorised the payment of

£1698.26 less deductions for tax and National Insurance, and the payment was made by Shared Services Connections Limited, the Civil Service third party who administer pay roll and human resource matters. Mr Ogunyemi understands that the Claimant will have paid tax and National Insurance whilst on sick leave, and given the extensive sickness absences it may be she is entitled to a rebate from HMRC if her tax code changed whilst receiving reduced pay or because she paid no tax or reduced tax whilst on sick leave. However, the deduction of tax is outside the Respondent's control.

11. In any event, insofar as the Claimant is seeking to re-litigate the claim for unlawful deduction for wages that was the subject of the previous judgment against the Respondent, the Tribunal has no jurisdiction to hear it because it is res judicata. Further insofar as the Claimant is seeking to contend the Respondent has failed to implement the previous judgment and/or pay her the judgment sum, that is an enforcement matter which she must pursue in the County Court and again the Tribunal has no jurisdiction to hear it.
12. It follows that the claim for unlawful deduction of wages in respect of the judgment sum is struck out.

Disability Discrimination/Failure to Make Reasonable Adjustments

13. The Respondent's position, as explained by Ms Robinson, was that the Claimant was off work with stress between 17 April 2019 and 31 May 2020. When she returned to work in June 2020 repeated attempts were made to source her a suitable chair. The Claimant considered the first chair provided too small and the second chair provided too big. The subsequent assessment by the DSE recommended that a chair the size of the first chair be provided but recognising that would not be acceptable to the Claimant the Respondent sought to find a third chair, and also a smaller, more easily adjustable electric height desk. Those aids were in place by 12 June 2023. In the meantime, the Claimant was put on full-paid disability leave between 18 October 2022 and 12 June 2023.
14. Given this course of events, and the findings in the previous judgment of the Tribunal, the Respondent said it had done absolutely everything in its power to make adjustments for the Claimant but that there had to be cooperation from the Claimant, which there had not been. Ms Robinson argued there was no real prospect the Claimant would succeed in her claim of failure to make reasonable adjustments and asked for a deposit order to be made.
15. The Claimant did not contest the chronology of events outlined by Ms Robinson and after discussion stated that she no longer needed to pursue her claim for failure to make reasonable adjustments as pleaded in her Claim Form and was content for the Tribunal to make an order dismissing that claim on withdrawal.

Applications to Amend

16. As stated above the Claimant was ordered to set out her proposed amendments to the grounds of claim regarding (a) the alleged failure to make reasonable adjustments by failing to provide her with disability glasses; (b) whether the Claimant has been treated unfavourably because of something arising in consequence of her disability, by 5 June 2023.
17. In an email of 5 June 2023 the Claimant stated “Discrimination arising from Disability: I the Claimant feel I have been treated unfavourably due to my disabilities (in relation to reasonable adjustments: mainly a specialist chair, small electric desk for the home setting and disability glasses)...”
18. As regards the application to amend in respect of failure to provide disability glasses the Claimant had stated in her Claim Form that the issue with her disability glasses “has now been resolved in full”. However, she now says that while her glasses had been specially tinted, the tinting was inadequate and the company that undertake the tinting have stated she needs further assessment by them so that a different tint can be applied to fresh lenses. She has purchased new lenses but forgot/missed the scheduled assessment so the lenses have not yet been tinted. Given that it is common ground that the Respondent will reimburse the Claimant the cost of the lenses, the assessment, and the tinting it was unclear in what way the Claimant was alleging the Respondent had failed to make a reasonable adjustment in respect of the glasses. It is for the Claimant to arrange and attend an assessment so she can obtain the glasses she needs.
19. As regards the application to amend to bring a claim for unfavourable treatment because of something arising in consequence of the Claimant’s disability, it appeared from the Claimant’s email of 5 June 2023 that she was simply seeking to make the same claims that she was already making in the context of her claim for failure to make reasonable adjustments, and at the hearing the Claimant confirmed this was the case.
20. I therefore refused the application to amend in respect of both the allegation of failure to make reasonable adjustments by failing to provide her with disability glasses and that the Claimant had been treated unfavourably because of something arising in consequence of her disability.
21. Since the only remaining claim is that for £41.40 in respect of the 2022 deductions claim, which the Respondent intends to pay, I did not set the case down for hearing or make any further Case Management Orders.
22. I record that the hearing lasted approximately 95 minutes and that a 10-minute break was taken about half way through.

Case Number: 3313529/2022 (CVP)

Employment Judge S Moore

Date:17 August 2023.....

Sent to the parties on: 30 August 2023

For the Tribunal Office