



# THE EMPLOYMENT TRIBUNALS

**Claimant** Mrs Z McGill

**Respondents** (1) Mitie Limited  
(2) GlaxoSmithKline Services Unlimited  
(3) Draefern Limited t/as GI Group

**Heard at** Newcastle upon Tyne Hearing Centre (via CVP video link)

**On** 18 September 2023

**Before** Employment Judge Langridge

## Representation:

**Claimant** In person

**Respondents** (1) Mr A Rozycki, Counsel  
(2) Mr N Bidnell-Edwards, Counsel  
(3) Mr A McPhail, Counsel

## JUDGMENT

### Rule 37(1)(a) Employment Tribunal Rules of Procedure 2013

- (1) The claimant's claims are struck out in respect of the 3<sup>rd</sup> respondent only, on the grounds that they have no reasonable prospect of success.

# REASONS

## Introduction

1. The claimant brought disability discrimination claims against the three above-named respondents, which were discussed at Preliminary Hearings on 14 March and 5 June 2023. The content of the Case Summaries which form part of those case management orders, and the further such orders made today, are not repeated here.
2. The claimant relies on two medical conditions (depression and PTSD) in bringing her claims under the Equality Act 2010. Her unfair dismissal claim was dismissed on withdrawal at a previous stage. For convenience the respondents are referred to in this Judgment as R1, R2 and R3.
3. The purpose of today's Public Preliminary Hearing was to deal with whether the claim against R3 should be struck out under Rule 37(1)(a) of the Tribunal Rules of Procedure 2013 on the grounds that it had no reasonable prospect of success. Alternatively, R3 sought a deposit order under Rule 39 as a condition of the claim against it proceeding. The hearing went on to deal with general case management issues which are dealt with in a separate Order of today's date.
4. The application to strike out the claim was made largely by reference to contemporaneous written evidence in the agreed bundle. This evidence related to a decision made on 17 or 18 November 2022 whereby the claimant's proposed placement with R2 was brought to an end before her intended start date of 21 November 2022. The language used by the parties was that an offer to place the claimant on R2's site was "rescinded". That offer had been made through R3, an agency. Previously the claimant had been in a position of employment with R1, a facilities management and professional services provider. Her role was as a Sterile Cleaning Supervisor and she was based on R2's site. The claimant resigned from that position on 13 November 2022 in order to take up the new post secured through R3. The contract between the claimant and R3 was in fairly standard terms as a contract for services as an agency worker. That contract was not terminated by either party at the time of these events.

## Application to strike out

5. As part of his submission today, Mr McPhail referred to paragraph 4.8 of R2's Response to the claims in support of his argument that R2 was responsible for the decision to rescind the assignment on its site. This followed an incident on 17 November when the claimant was alleged to have behaved inappropriately towards colleagues. R2's pleading expressed it in this way:

"The second respondent was confident that the incident of 17 November 2022 had been reasonably proven to have occurred and that the claimant had not displayed the values and behaviours expected by the second respondent. Ms Boon [R2's HR business partner employed by R2] clarified that, in light of the claimant's behaviour, GSK were not willing to allow the third respondent to engage the claimant on the second respondent's site. Ms

Everett [R2's account manager, engaged on behalf of R3] confirmed that she would contact the claimant and inform her that the third respondent's offer of engagement had been rescinded."

6. R3's contention was that the decision to rescind the offer was made by R2, as evidenced by its own pleading and the contemporaneous records.
7. The claimant's pleaded case against R3 was far from clear from her application to the Tribunal (form ET1). This referred to R3 in the following terms:

"Two days before I was due to start the offer was rescinded as Mitie had made malicious and false communications with the agency who provided my new role then also GSK directly."

8. Further information about her claims was provided by the claimant on 6 August 2023, in response to the Tribunal's orders (the 'Additional Information'). So far as R3 was mentioned in this document, the claimant made a broad allegation that R3 had directly discriminated against her along with R1 and R2, and that all three respondents had "colluded with one another". She went on to describe her application for the new job through R3 by reference to two individuals: Nicola Bainbridge and Rebecca Everett. She told them she wished to change jobs because of the way she alleged she had been treated within R1's office. The claimant described Ms Bainbridge and Ms Everett in very positive terms, saying that "both women showed empathy and support after I told them what had happened to me and why I wanted this role." She was told that R3 would accept previous job references due to the conflict which the claimant described. R3 was aware that the claimant had a disability. After describing an interaction with colleagues in R1's office on 17 November, the claimant stated she had received a phone call from Ms Everett stating that R3 was rescinding the job offer. She said she was told by Ms Everett and Ms Bainbridge that R1 "had made false accusations" to R2 so that they "would not allow [her] on site to take up the new position".
9. No other allegations about R3 were made in the claimant's Additional Information. Mr McPhail submitted that neither an act of detrimental treatment nor any act relating to disability had been identified by the claimant in her pleaded case. At its best, the claimant's case was that "false and malicious" acts were perpetrated by R1 which led R2 to rescind the offer of work. He said that the emails between R2 and R3 on 17-18 November 2022 showed that R3 – acting through Ms Everett and Ms Bainbridge – had pushed back against R2's proposed decision. They did so more than once, including at a meeting between the two of them and Ms Boon on 18 November, when R2's decision was confirmed and then implemented by R3. In her communications with the claimant about this, Ms Everett expressed her regret and made several offers of support. Their email correspondence established that when the claimant felt well enough in the future, R3 would take steps to help her find alternative employment. The contract for services between the claimant and R3 was not terminated.
10. Relying on this evidence, Mr McPhail submitted that it was R2 and not R3 which had rescinded the claimant's assignment, despite R3's best efforts to prevent this. He went on to address the question of causation, in the event that R3 might be

considered to have carried out such an act. If it did so, the question was: why? The effective cause of the decision was that R2 would not allow the claimant to work on its site. The effective cause was to do with the “false” allegations, not disability, and the latter did not operate on the minds of R3’s managers. There are no primary facts such as to shift the burden of proof.

#### Claimant's reply

11. The above summarises the key points in R3's submissions. The claimant was given an opportunity to reply. She said she understood R3's position but remained of the view that it had directly discriminated against her because she was the only one of five people who had the job offer rescinded. The claimant then sought to introduce events which took place after the subject-matter of the present claims, and I explained that these were not relevant to the issues being dealt with today.
12. To assist the claimant in presenting her arguments I took her through the Additional Information dated 6 August to establish the extent to which this further detail identified any potentially discriminatory acts by R3. I encouraged the claimant through discussion with me to explain why she believes that R3's involvement in the events of 17-18 November amounted to direct discrimination of her as a disabled person, contrary to section 13 of the Act. The claimant said that R2 “made” R3 rescind the position, but she felt it could have been taken up higher in R3’s company. When asked what the claimant believed was in the mind of the managers at R3 who were involved in the events, namely Ms Bainbridge and Ms Everett, she replied that they “did everything they could”. She alleged (apparently for the first time) that it was someone higher up in R3’s company who had an involvement, but was unable to explain this any further. The claimant returned to the theme of collusion between all the respondents which she said was “an effort to get rid” of her. When asked whether she was saying that the collusion involved R3, the claimant said “No”. She clarified that Ms Bainbridge and Ms Everett as individuals were sympathetic and tried to help her. The claimant clarified that she had never had anything to do with any other members of R3’s management.
13. The claimant provided some information about her financial position so that this could be taken into account if a deposit order was to be made.

#### Relevant law

14. Rule 37(1)(a) of the Tribunal Rules of Procedure 2013 permits a Tribunal to strike out a claim which has no reasonable prospect of success.
15. In reaching today's decision I was mindful of the importance of not conducting a mini trial on issues of fact, and considered the guidance in some key authorities on striking out, especially in the case of discrimination claims. I considered N Glamorgan NHS Trust v Ezsias [2007] IRLR 603 and Mechkarov v Citibank 2016 ICR 1121, as well as some more general principles on striking out set out in Cox v Adecco UKEAT/0339/19/AT. I also took into account the overriding objective, which requires fairness between the parties and a proportionate approach to the claims. Another relevant consideration is whether defects in the pleaded case might be

rectified by making further orders, such as the provision of further information to help clarify the legal or factual basis upon which the claims are put.

16. Following Ezsias, I accept that a Tribunal should not be quick to strike out discrimination claims which generally need to be decided on their merits based on evidence at a final hearing. I accept also that a strike out order can be draconian in discrimination cases (Citibank), and only in the clearest circumstances should one be made. Without conducting a mini trial, I had to consider whether there were any issues of fact apparent today which warrant the case going forward to a full hearing to be resolved on oral or documentary evidence.
17. Balanced against the above words of caution, in Cox it was made clear that if a case has no reasonable prospects of success it should be struck out. The Tribunal's time and resources should not be spent dealing with hopeless cases, nor should a respondent be put to that trouble and expense. The EAT said that a Tribunal should consider in reasonable detail what the claims and issues are, and I believe I carried out this exercise today, by reference to the pleadings, the other documents provided to me and the discussions with the parties.

#### The decision

18. Following an adjournment I gave judgment orally with reasons which are set out below.
19. The power to strike out claims which have no reasonable prospect of success is not one to be exercised lightly, particularly in discrimination claims. However, there are circumstances in which a potentially complex claim such as this does not warrant the time and expense that would be incurred by the parties and the Tribunal if it were allowed to proceed in spite of its serious weaknesses. The overriding objective requires the Tribunal to take a proportionate view which strikes a fair balance between the interests and the position of the parties. In this case the claimant has been representing herself without legal advice or representation, which she has found difficult to obtain. She cannot be criticised for not understanding the complexities of the Equality Act 2010 but nevertheless the respondents are entitled to have it dealt with fairly and proportionately.
20. I began by considering what exactly the claimant has alleged that R3 has done. As noted above, it is not apparent from the ET1 that R3 is alleged to have committed any unlawful act, only that R3 was the agency which provided the claimant with the opportunity for a new role working with R2. The fact that the claimant's pleading identifies the reason for the offer being rescinded as R1 making "malicious and false communications" with R3 does not in itself disclose any breach of the Act on the part of R3.
21. The Additional Information provided by the claimant on 6 August in an effort to explain her claims has little to say about the involvement of R3. Despite the broad allegation of "collusion" in support of her claim of direct discrimination under section 13, the claimant was herself unable to support this allegation when asked. In fact, she explicitly said that R3 did not collude.

22. I accept Mr McPhail's interpretation of the factual basis upon which R3 was involved in the events of 17-18 November 2022. In summary, R3, through the agency of Ms Bainbridge and Ms Everett, showed that they were supportive of the claimant, sympathetic to her circumstances, and opposed in strong terms to R2's decision to rescind the offer. Once that decision was confirmed at the meeting of 18 November, R3 offered support to the claimant in various other ways, including a willingness to help her find an alternative position in the future.
23. There are no facts at all in this case suggesting that there was collusion involving R3, and until today there has been no previous mention of more senior managers in that company playing a part. Mr McPhail submitted that the summary notes of the meeting of 18 November show no sign of their having been involved, and I agree. The fact that R3 had knowledge of the claimant's disability is not enough on its own, as the claimant would need to identify an unlawful act of discrimination falling within the scope of the Equality Act 2010. She has identified no act of less favourable treatment attributable to R3 and indeed even the claimant accepts it was R2 that was behind the decision to rescind the job offer.
24. Having taken some care to explore the elements of her discrimination claim with the claimant during our discussion today, she was unable to identify any primary facts whatsoever about R3's involvement, which at a final hearing of these claims could lead a Tribunal to infer that there was unlawful discrimination.
25. Not only can it be said that the claimant's status as a disabled person was not a factor in the minds of R3's managers, but on the contrary they did everything they could to support the continuation of her placement with R2. It was not less favourable treatment of a disabled person but rather the opposite, namely an attempt by two sympathetic individuals to protect the claimant's work.
26. It therefore seems clear that there is no prospect of the claimant establishing any primary facts at a final hearing of this claim which would permit a Tribunal to draw the inference of discrimination. I agree with Mr McPhail that causation would also be an issue, because the claimant is not presenting any facts at all suggesting that the effective cause of the contract being rescinded was related to her disability. I take into account that R3 did not terminate its contract with the claimant and at today's hearing the claimant herself said that Ms Bainbridge and Ms Everett "did everything they could" to help her. I therefore consider there is no reasonable prospect of the claimant producing evidence supporting any causal connection between the rescinding of her job offer and her disability, so far as R3 is concerned. The claimant's own pleaded case offers a non-discriminatory explanation for the treatment, which is the way that colleagues of hers at R1 are alleged to have behaved towards her. Whether there is any link between that alleged treatment and disability remains to be explored at the final hearing, but it is a factor which weighs against the claim not having any reasonable prospect of succeeding against R3.
27. Having taken into account the factual information available and the claimant's own presentation of her case today, I am satisfied that this is one of those exceptional cases which should not be allowed to proceed against R3. It would be wholly disproportionate to include R3 in the final hearing having regard to the matters set out in this judgment and the overriding objective.

28. In reaching this decision I did consider whether there was any lesser step than striking out which might have helped repair the difficulties with the claimant's case. However, I am satisfied that this is not the case. Two case management hearings have already taken place and orders made. There is no further information to be elicited from the claimant to help understand her claim against R3. There are no disputes of fact to be aired or resolved at a final hearing with the benefit of witnesses and further documents. In other words, there is nothing further that can be done to improve the claimant's arguments against R3.
29. I have also taken into account that the effect of this judgment is not to deprive the claimant of the right to pursue her claims so far as they survive against R1 and R2. It is in my judgment proportionate to limit the arguments to those parties.

SE Langridge  
**Employment Judge SE Langridge**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 2 October 2023**