



THE EMPLOYMENT TRIBUNAL

Claimant Mrs Mj Khan Tabbasam

Respondent: Lewes District Council

Sitting At: London South **On:** 28 June 2023

Before: Employment Judge Morton

Appearances:

Claimant: No Appearance

Respondent: Mr R Wayman, Counsel

JUDGMENT

It is the judgment of the Tribunal that it has no jurisdiction to deal with the Claimant's claims of age and disability discrimination which are therefore struck out.

REASONS

Introduction

1. The Respondent is a local authority in Sussex.
2. Amongst other things the Respondent is the Licensing Authority responsible for issuing any hackney carriage and private hire licence ('a Licence') within the District. The licensing of vehicles, drivers and operators is governed by the Respondent's Hackney Carriage and Private Hire Licensing Guidance ('the Guidance'), which is written pursuant to the powers conferred by the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, as amended, which place on the Respondent the duty to carry out its licensing functions.
3. By a claim form presented on 29 July 2022 the Claimant presented claims of age and disability discrimination against the Respondent arising from her failure to pass on three occasions a knowledge test that forms part of the application process for obtaining a Licence. It was the Claimant's case that her failure to pass the test arose from the fact that she was at the time experiencing symptoms of the

menopause that affected her concentration and clarity of thought and caused her to underperform. She alleged that by failing to make allowances for this the Respondent had discriminated against her on the grounds of age and disability.

4. The parties were agreed that this was not a claim about an employment relationship within the meaning of s83 Equality Act. The Respondent conceded however that in administering Licences for hackney carriages and private hire vehicles it is acting as a qualifications body within the meaning of s53 Equality Act. The Respondent defended the claim on the basis that it is nevertheless one that falls outside the jurisdiction of the Employment Tribunal by virtue of s120(7) Equality Act 2010 ("Equality Act"). If that is correct, it means that the tribunal has no statutory power to hear the claim.

The hearing

5. The Claimant did not attend the hearing. She informed the Tribunal clerk that she had been unaware that there was a hearing today because when the notice of hearing was sent to the parties on 19 December 2022 she had been out of the country. She acknowledged that she had received the joining instructions on 27 June 2023 but she informed the clerk that would not be able to join the hearing because she was not feeling well (she did not however provide any medical evidence about this).
6. I considered whether the hearing ought to be adjourned, given the information the Claimant had provided, but I decided that it would not be in the interests of justice or in accordance with the overriding objective set out in Rule 2 of the Employment Tribunal Rules for the scheduled hearing not to go ahead. The power of the Tribunal to deal with the Claimant's claims would turn on a narrow legal question. If the claims did fall within s120(7) Equality Act there would be nothing the Claimant could say that would alter that fact. Accordingly, I decided to proceed with the hearing and hear Mr Wayman's submissions on this point.
7. Mr Wayman first took me to a document entitled "Lewes District Council Hackney Carriage and Private Hire Licensing Guidance". This sets out the processes adopted by the Respondent in respect of the licensing of drivers to drive both hackney carriages and private hire vehicles. The opening paragraph states: "This Licensing Guidance is written pursuant to the powers conferred by the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, as amended, which place on Lewes District Council ("the Council") the duty to carry out its licensing functions in respect of Hackney Carriage and Private Hire vehicles. In addition, the Council will have due regard to all other relevant legislation and guidance in its decision-making process. The Council has responsibility for the licensing of vehicles, drivers and operators within the district of Lewes and in exercising its discretion the Council will have regard to this Guidance."
8. I then asked Mr Wayman to point me to the statutory provisions that underpin the Guidance, as the Guidance itself does not itself amount to an enactment as required by s120(7) Equality Act. After a short adjournment he showed me the statutory provisions set out below.

The law

9. S 53 Equality Act provides that a qualifications body (A) must not discriminate against a person (B)—

- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as to the terms on which it is prepared to confer a relevant qualification on B;
- (c) by not conferring a relevant qualification on B.

10. S 53 Equality Act provides as follows:

- (1) This section applies for the purposes of section 53.
- (2) A qualifications body is an authority or body which can confer a relevant qualification.
- (3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

11. The relevant part of s120 Equality Act 2010 provides as follows:

- (1) An employment tribunal has ... jurisdiction to determine a complaint relating to—
 - (a) a contravention of Part 5 (work);...

(7) Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

12. The relevant parts of sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 (the “Local Government Act”) provide as follows:

S 47 Licensing of hackney carriages.

- (1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.
- (2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.
- (3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates’ court.

S 48 Licensing of private hire vehicles.

- (1) Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence;
- (2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary ...
- (7) Any person aggrieved by the refusal of a district council to grant a vehicle

licence under this section, or by any conditions specified in such a licence, may appeal to a magistrates' court.

Conclusions

13. Having considered the extracts from the Equality Act and the Local Government Act that were discussed during the hearing I was satisfied that the employment tribunal does not have jurisdiction to deal with this dispute.
14. The Claimant does have protection under the Equality Act by virtue of the fact that she was applying for a Licence and in administering the granting of Licences, the Respondent was acting as a qualifications body within the meaning of s54 Equality Act. The Respondent did not dispute this.
15. Under s120 Equality Act the vast majority of disputes falling under the broad category of "Work" to which Part V Equality Act relates can be decided by employment tribunals. However, there is one exception, namely claims about decisions made by qualifications bodies where another provision of another Act of Parliament (referred to in s 120(7) as an "enactment") provides that the aggrieved person has a right of appeal or a right to proceeding in the nature of an appeal.
16. In my judgment it is clear that this is the situation that is applicable here because sections 47 and 48 of the Local Government Act provide a person who is dissatisfied with a decision not to issue a Licence, or with any of the conditions attached to the granting of a Licence, with the right to appeal to a magistrates' court. That provision therefore falls squarely within the exception in s120(7). The consequence of that, in my judgment, is that the employment tribunal does not have the power to deal with that kind of complaint.
17. Accordingly, this claim cannot proceed any further and must be struck out.

Employment Judge Morton
Date: 28 June 2023

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