



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr R J Musoni

v

**Respondent:**  
Shaw Trust Ltd

**Heard at:** Reading (by CVP)      **On:** 13 October 2023

**Before:** Employment Judge Anstis (sitting alone)

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr I Lovejoy

## JUDGMENT

The claimant's claims of sex and race discrimination identified at paras 2.2.2.2, 2.2.2.5, 2.2.3 and 2.2.5 of the case management order of EJ Cotton are struck out on the basis that they have no reasonable prospects of success.

## REASONS

1. These are the written reasons for my judgment, which were requested by the claimant during the hearing. Since my decision on striking out builds on my decision in respect of deposit orders these reasons also incorporate my decision in respect of deposit orders.
2. Today I am considering an application by the respondent to strike out or for a deposit order in respect of all of the claimant's claims of race and sex discrimination, on the basis that they have no or little reasonable prospects of success.
3. The scope of the claimant's claim was identified and set out by EJ Cotton at 2.2 of her case management order, and I will use her numbering in this decision.
4. The respondent's broad position was that the claimant's claims were fundamentally flawed. Either the things he complained about did not happen, could not logically be considered complaints of discrimination and/or there was no evidence from which the tribunal could conclude that, if they did happen in the way the claimant described, they were matters of race or sex discrimination.

5. The claimant's position was clear. The events he described did happen in the way he said they did. So far as showing something from which the tribunal could conclude that they were race or sex discrimination, the claimant's position was that he was the only black person (or the only black man) employed by the respondent where he worked, and that it was clear from the documentation that he had been particularly badly treated in comparison to others about whom complaints had been made (who were white and/or women).
6. The claimant may not have previously been aware of this, but the most substantial problem with this is that even if he can show a difference of treatment and a difference of protected characteristic, it is established law that such differential treatment is not something from which the tribunal could conclude that there has been discrimination. "Something more" is required, and the claimant does not have that "something more". As things stand at present, I cannot see how his claims can succeed.
7. But we are at an early stage of proceedings. Formal disclosure has not yet been complete. The claimant's case may develop, particularly if he is able to get some legal help. I do not like the idea of continuing a case on the basis that "something might turn up", but equally I am loathe to strike out a discrimination claim without it being the subject of full consideration by a tribunal. It might be that something is identified by the tribunal at a final hearing to suggest that there was unlawful discrimination. On that basis it seems to me that the correct approach must be to regard the claimant's claims as having little, but not no, reasonable prospects of success, and to impose a deposit order. That will give the claimant the opportunity to reflect on what has happened today, and perhaps see if he can get legal advice. The claimant said that he was now on benefits and could not afford a substantial deposit. Mr Lovejoy accepted that on that basis for the respondent it was the principle of the deposit rather than the amount that was most significant, and in those circumstances I will make a deposit order of £5 for each continuing allegation.
8. There are some allegations that seem to have greater problems than simply the claimant showing matters from which the tribunal could conclude that there had been discrimination. The first of these is the idea that the person who chaired the probationary review was too junior to chair the probationary review. The claimant said that this should have been a "clear the air meeting" and so required someone more senior. But that is really a repeat of 2.2.1. If there was to be a probationary review, the correct level to chair it is a team leader, and the person who chaired it was a team leader. Whether he was a friend of one of the complainants is another story, but it cannot properly be said that that individual was too junior to chair a probationary review meeting. That aspect of the claimant's claim has no reasonable prospect of success.

9. 2.2.2.5 and 2.2.5 are essentially the same point, and required some explanation by the claimant. I understand these to relate to a DSAR that he made after his dismissal. He has identified the response to that DSAR as being incomplete, since there are documents that he already had relating to his disciplinary process that he says should have been but were not disclosed in the DSAR. He has gone from this to a position that because some documents he knew about have not been disclosed, there must be other documents, favourable to his case, that were not disclosed in the DSAR.
10. That seems to me to be speculative at best, but beyond that the claimant must show that (i) favourable documents exist and were suppressed, and (ii) the suppression of favourable documents was something that the respondent did because of his race or sex – not because of some other reason. The compound difficulties in this are so great that I consider that 2.2.2.5 and 2.2.5 must be struck out as having no reasonable prospect of success.
11. I note that Mr Lovejoy properly accepted that if the correspondence referred to at para 2.2.2.5 existed it ought to be disclosed as relevant in this case even though allegation 2.2.2.5 has now been struck out. It was, however, the respondent's case that the correspondence simply did not exist.
12. 2.2.3 must also be struck out because it now appears (although the claimant may not have known this earlier) that the grievance or counter-grievances were investigated. The claimant moved on to say that he should have been involved in that investigation, but that is not the complaint in 2.2.3 and no application to amend his claim to vary that allegation has been made.

**Employment Judge Anstis  
13 October 2023**

Sent to the parties on: 13 December 2023

For the Tribunal Office

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