



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Belfedal

**Respondent:** World of Books Limited

**Heard at:** Birmingham

**On:** 28 March 2023

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

## Appearances

For the claimant: In person

For the respondent: Mr R Wayman (Counsel)

## JUDGMENT

1. The respondent's application to strike out the claimant's claim is refused.
2. The claimant's application to strike out the Response is refused.
3. The claimant's claim for direct sex discrimination has little prospects of success and the claimant is ordered to pay a deposit in the sum of £100 as a condition of his continuing with his claim. Such deposit shall be paid by no later than **28 days from the date this Order is sent to the parties**. The Judge has had regard to any information available as to the claimant's ability to pay and to comply with the Order determining the amount of the deposit.

## REASONS

### Background

- (1) Following a period of agency work for the respondent in August 2021, the claimant was employed by the respondent as a warehouse operative from 20 December 2021 until 2 June 2022. By a claim form presented on 8 March 2022, the claimant brought a complaint of sex discrimination on the basis that only male workers were allocated the task of "cardboard/bailing", "feeding" and "support" (together "Support Work") which he alleges is more a laborious and tiring job to do compared to other roles such as scanning, which consisted of standing in front of a PC, opening boxes with books and CDs which come next to a worker's

station and scanning them (together “Scanning Work”). The respondent denied the allegations and by a letter dated 12 October 2022 provided the claimant with 7 emails which indicated that women had been asked by the respondent to undertake Support Work and invited the claimant to withdraw his claims.

**Respondent’s application to strike out the claim and for a deposit order**

- (2) By an email dated 7 March 2023 the respondent made an application to strike out the claimant’s claim on the basis that it has no reasonable prospects of success. It was asserted that the central plank of the claimant’s claim was that the claimant believed that female employees were “never” asked to do Support Work and that female employees were only asked to do Scanning Work. The respondent had sent to the claimant evidence that female employees did, in fact, undertake Support Work, yet the claimant maintained this position.
- (3) The respondent indicated that on any shift there are usually 13 people on Scanning Work and 3 people on Support Work. More people are needed for Scanning Work and that’s where everyone starts. Employees need to be trained to do Support Work and not everyone is automatically trained given that only 3 people are required per shift. The claimant asked to be trained and accordingly was given training. Volunteers are sought when more employees are required for Support Work and this offer is available to both men and women. At the relevant time, of the 24 people employed across all the shifts 6 were women of whom 3 were trained in Support Work (4 including a supervisor).
- (4) The respondent took the view that in light of the evidence provided to the claimant that women did undertake Support Work the claimant maintained his position that no women undertook Support Work. The claimant’s position was that he had witnesses who would say that they had not seen any women undertaking Support Work. The respondent referred to the fact that the claimant was not present at every shift and for his contention to be correct, all the women who had provided the statements had been lying. However, it was more likely that the claimant and his witnesses may not have seen women undertaking the Support Work as they were on other shifts. It was submitted that the respondent’s proposition was more likely and that the claimant was pursuing a claim that had no reasonable prospects of success as his contention that “no females worked in support” was evidentially incorrect.
- (5) The respondent, in its letter, also made an application for the claim to be struck out on the basis of the manner in which the proceedings have been conducted by the claimant was scandalous, unreasonable or vexatious as a result of him failing to clarify his claim for indirect discrimination, making repeated requests for disclosure and being unable to agree the bundle.
- (6) The respondent also made an application for a deposit order requiring the claimant to pay a deposit of £1,000 in order to continue with the proceedings on the basis that the claim had little prospects of success and/or in light of the manner in which the proceedings were conducted.
- (7) Mr Wayman also made oral submissions in support of the above applications.

- (8) The claimant confirmed that he was self-employed and earned £15,000 to £18,000 per annum. He also undertook part time jobs if he needed extra money. He shared a house with 4 other individuals and did not own his home or have any other savings.

### Claimant's application for strike out of the Response

- (9) By a letter dated 14 March 2023 the claimant made an application to have the Response struck out on the basis that the Response had been presented outside the 28 day time limit and the fact that the Response contained bare denials. The claimant referred to Rules 15.4 and 3.4 (2)(a) of the Civil Procedure Rules in support of his application. The claimant did not accept the reasons put forward by the respondent in its application for an extension of time to file the Response namely that there had been a mix up in the HR department and two different individuals had mistakenly thought that the other was dealing with the Response.
- (10) The claimant also supplemented his application with oral arguments at the hearing and in support of his argument that the Claim should not be struck out or subject to a deposit order, the claimant referred to the fact that he had worked both shifts that the respondent operated – 8am to 12pm and 4pm to 8pm and had worked overtime at the end of his shifts but had never seen any women undertaking Support work. He also referred to one of the respondent's statements in which a manager was quoted as saying that women preferred not to do Support work.

### The Law

- (11) Rule 37 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provides that:
- "(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds— (a) that it is scandalous or vexatious or has no reasonable prospect of success..."*
- (12) There are number of authorities, following the **House of Lords in Anyanwu v South Bank Students Union and South Bank University [2001] IRLR 305** that strike out is not normally appropriate where there are substantial disputes of fact, most notably in fact-sensitive discrimination claims.
- (13) In only the clearest cases should a discrimination claim be struck out: **Mechkaroy v Citibank NA [2016] ICR 1211**.
- (14) Rule 39 of the Rules contains the power to make a deposit order. This provides:
- "(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party")*

*to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. (2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit. (3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order. (4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21. (5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order— (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and (b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded. (6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”*

- (15) The purpose of a deposit order is to identify at an early stage, claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails: **Hemdan v Ishmail and Another [2017] ICR 486 27.**
- (16) It was noted by Underhill LJ in the case of **Ahir v British Airways Plc [2017] EWCA Civ 1392** that: “16. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be ‘little reasonable prospect of success’. ... [However,] Where there is on the face of it a straightforward and well documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that the explanation is not the true explanation for what happened without the claimant being able to advance some cogent basis for that being so.”

## Conclusions

- (17) I have considered the evidence and submission which have been made to me. In considering the respondent's application for strike out I note that I need to take the claimant's claim at its highest.
- (18) Given the factual dispute at the heart of the claimant's claim for direct sex discrimination namely whether or not women did Support work I do not think it is appropriate to strike out the claimant's claim as evidence will need to be heard on the issue. I note the strong evidence by way of statements that women did do support work but I am also conscious that the claimant states that he too has witnesses who will attest that women did not do Support work. As such, in light of this factual dispute I do not think that the claim has no prospects of success. The

evidence will need to be heard on this point by the Tribunal at a final hearing and conclusions reached.

- (19) I am also satisfied that the claim should not be to be struck out due to the manner in which the proceedings have been conducted by the claimant. I do not accept that the claimant's actions amount to scandalous, unreasonable or vexatious behaviour as a result of him failing to clarify his claim for indirect discrimination, making repeated requests for disclosure and being unable to agree the bundle. However, given my observations I would remind the parties of the overriding objective and, in particular, the need to co-operate generally with each other and with the Tribunal.
- (20) Notwithstanding the fact that I do not think it is appropriate to strike out the claim I am satisfied, on the evidence before me and given the way that the claimant has framed his claim for direct discrimination that the claim has little prospects of success. As such, having considered the claimant's means I am satisfied that it would be appropriate for the claimant to pay a deposit of £100 as a condition of continuing with his claim.

**Employment Judge Choudry**

Date 28/04/2023