



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Robert Stewart  
**Respondent:** ADS Unique Services LLP  
**By CVP On:** 22 to 24 January 2024  
**Before:** Employment Judge Martin  
Mr Singh  
Ms Effeny

## Representation

**Claimant:** In person  
**Respondent:** Ms Hatch- Counsel

# RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant's claims for unfair dismissal and discrimination on the protected characteristic of religion or belief are not well founded and are dismissed.

# REASONS

1. Full reasons were given at the conclusion of the hearing. These written reasons are provided as requested by the Claimant at the hearing.
2. By a claim presented to the Tribunal on 2 December 2021 the claimant claims unfair dismissal and discrimination on the protected characteristics of religion or belief. The belief he relies on varied as set out in paragraph 44. The Respondent defended the claim on the basis that it fairly dismissed the Claimant when he did not obtain the COVID-19 vaccination which was mandatory for him to have to continue working in the care home. To continue to employ him would mean that the Respondent would be in breach of a statutory enactment and that dismissing the Claimant was a proportional means of achieving its legitimate aim of safeguarding resident within its care and complying with its legal obligations. The Claimant says the reason for him not obtaining one was his belief.

## **Issues as agreed and set out in the case management order dated 23 January 2023:**

3. **Unfair Dismissal –section 98 (2) (d)**

- a) Was the Claimant dismissed? The Respondent will state that the Claimant's effective date of termination was 10 November 2021.
- b) The Respondent's position is that the Claimant was fairly dismissed on the ground that he could not continue to work in the position which he held without contravention (either on his part or that of his employer) of a duty or restriction imposed by or under enactment (section 98 (2) (d) of the Act, namely the refusal to receive the COVID-19 vaccinations contrary to the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021. The Respondent's position is that the dismissal was procedurally and substantively fair. The Respondent pleads some other substantial reason in the alternative.
- c) Was a fair and reasonable consultation and procedure undertaken by the Respondent? It is the Respondent's position that this was undertaken prior to arriving at the decision to dismiss.
- d) Had the Claimant provided a medical exemption? The Respondent will state that the Claimant did not provide an official medical exemption supplied by the Government. The Claimant confirmed that he was aware of the vaccine and mandatory requirement but had decided against being vaccinated.
- e) Did the Respondent consider redeployment opportunities elsewhere within the business? The Respondent's position is that it did although no roles existed.
- f) Did the Claimant appeal the decision to dismiss? The Respondent will state that the Claimant did not appeal the decision.

#### **4. Religion or Belief discrimination**

- a) The Respondent's position is that Claimant's claim cannot be sensibly responded to as the claim(s) and allegations have not been particularised and which is an abuse of process pursuant to rule 12(1)(b) of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, and should be rejected. The claimant asserts his Belief is the duty of care to look after yourself and your body, which he says is a legal obligation.
- b) The Respondent will state that it was unaware of the Claimant's Religion or Belief.
- c) What is / are the types of claims pursued by the Claimant? It is unclear if the Claimant is pursuing a claim of indirect discrimination?
- d) If so, has the Claimant been subjected to a provision criterion or practice (PCP) which is discriminatory in relation to a protected characteristic of the Claimant?
- e) The Respondent's position will be that the requirement for staff to be vaccinated was a proportionate means of achieving a

legitimate aim and in accordance with a restriction imposed by or under any enactment and by preventing and/or reducing insofar as possible the deaths or severe illness of residents of the Home, vulnerable or otherwise, and preventing death or severe illness amongst the Respondent's staff and visitors. The Respondent's position is that it has not breached the Equality Act 2010 and was acting in compliance and pursuant to the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021.

**5. Remedy / Mitigation of loss**

- a) What remedy does the Claimant seek? If so, at what amount?
- b) If the Claimant's claims for discrimination are successful, is the Claimant entitled to compensation for injury to feelings? If so, at what amount?
- c) Has the Claimant failed to take reasonable steps to mitigate any loss?

**The relevant law**

**Employment Rights Act 1996**

- 6. The legal provisions relating to unfair dismissal are contained in Part X of the Employment Rights Act 1996.
- 7. Where an employee has been dismissed, an employer must show one of the prescribed reasons for dismissal contained in sections 98(1) and (2). It is trite law that the reason for dismissal is a set of facts known to, or beliefs held by, an employer at the time of dismissal, which causes that employer to dismiss the employee.
- 8. If there is a permissible reason for dismissal, the Employment Tribunal will consider whether or not the dismissal was fair in all the circumstances in accordance with the provisions in section 98(4):

“the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case”
- 9. The standard of fairness is achieved by applying the range of reasonable responses test. This test applies to procedural as well substantive aspects of the decision to dismiss. A Tribunal must adopt an objective standard and must not substitute its own view for that of the employer. (Iceland Frozen Foods –v- Jones [1982] IRLR 439, EAT as confirmed in Post Office –v- Foley [2000] IRLR 234, CA; and Sainsbury's Supermarkets Ltd –v- Hitt [2003] IRLR 23, CA).

10. One of the five potentially fair reasons for dismissal is where a member of staff is unable to continue working in their position without contravening a statutory restriction.

**11. Equality Act 2010**

12. Section 13 provides that:

13. *“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*

14. Section 23 provides that:

“On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case.”

15. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

**16. The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021**

Amendment of regulation 12 (Safe Care and Treatment)

5. In regulation 12, after paragraph (2), insert—

(3) For the purposes of paragraph (2)(h), a registered person (“A”) in respect of a regulated activity specified in paragraph 2 of Schedule 1 (accommodation for persons who require nursing or personal care) in a care home must secure that a person (“B”) does not enter the premises used by A unless—

(a) B is a service user residing in the premises used by A;

(b) B has provided A with evidence that satisfies A that either—

(i) B has been vaccinated with the complete course of doses of an authorised vaccine; or

- (ii) that for clinical reasons B should not be vaccinated with any authorised vaccine;
- (c) it is reasonably necessary for B to provide emergency assistance in the premises used by A;
- (d) it is reasonably necessary for B to provide urgent maintenance assistance with respect to the premises used by A;
- (e) B is attending the premises used by A in the execution of B's duties as a member of the emergency services;
- (f) B is a friend or relative of a service user and that service user is or has been residing in the premises used by A;
- (g) B is visiting a service user who is dying;
- (h) it is reasonably necessary for B to provide comfort or support to a service user in relation to a service user's bereavement following the death of a friend or relative; or
- (i) B is under the age of 18.

### **The hearing**

17. The Claimant represented himself and the Respondent was represented by Ms Hatch (Counsel). The Tribunal had before it an agreed bundle of documents comprising 455 pages and witness statements from the Claimant, and Mr Kennard for the Respondent. The hearing was conducted via video link.
18. The hearing could not start on the first day. Storm Isha had brought down power lines outside Ms Effeny's house. Whilst she had electricity first thing she had been notified it would be cut off but not told when or for how long. One non legal member, who had been booked as a non legal member for the hearing was unable to join the hearing for technology reasons. Finally, the bundle of documents had not been received by the Tribunal. The hearing therefore started with evidence on 23 January 2023.
19. During the discussion on 22 January 2023, the Tribunal was told that the Claimant had not provided a witness statement. This was despite a clear order of Employment Judge Khalil in January 2023 and despite being chased by the Respondent for his witness statement. Judge Maclaren made an order for all witness statements to be exchanged within 14 days. The Claimant did not do this. The Claimant's explanation was that he misunderstood the order and that as he was not producing any witnesses other than himself, he did not think he needed to prepare a statement.
20. To be able to progress with the hearing, and bearing in mind that the Claimant was not represented, the Tribunal allowed a limited statement to be provided by 3 pm on 22 January 2024 notwithstanding it considered the directions and order to prepare a witness statement had been very clear.

The statement was to be limited to what he says is his philosophical belief and why that should be protected under the Equality Act 2010, and what it was about the regulations he says the Respondent misinterpreted. The Tribunal acknowledged that the latter point was not pleaded however considered it necessary given what the Claimant said for this to be included. In making this decision the Tribunal balanced the prejudice to each party, and the desirability of the case being heard in its allocated time.

### **The Tribunals findings of fact and conclusions**

21. The Tribunal has found the following facts on the balance of probabilities having heard the evidence and considered the relevant documents produced during the hearing. These reasons do not set out all evidence heard and is limited to that which is relevant to the issues and necessary to explain the decision reached.
22. The Claimant was employed by the Respondent as a carer in its care home from 2 December 2018 having worked as bank staff on 29 February 2017 until his employment was terminated on 10 November 2021.
23. On 11 November 2021, the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (“the regulations”) came into force having been passed by Parliament on 22 July 2021. This required all those working in residential care homes to be vaccinated against Covid-19. There were penalties if these provisions were breached.
24. There was no requirement for care staff to be fully vaccinated until the regulations came into force on 22 July 2021 “the regulations”). The implementation date for all staff to be fully vaccinated (save for those who clinical reasons are not vaccinated) was 11 November 2021. The timeline meant the first vaccination had to be done by 16 September 2021. In summary the regulations prohibit a person from entering a residential care home without being fully vaccinated except if there is a medical reason they should not be fully vaccinated. The stated aim was to limit the spread of Covid-19 in care homes.
25. There are enforcement provision by the CQC an employer allows people to work in the environments covered by these Regulations when not fully vaccinated. It is sufficient to record that the Claimant has strong and genuine opinions about vaccination programme believing them to be experimental, and does not agree that he should need to be vaccinated to continue working. He expressed this view passionately both in writing at the time and at this hearing describing how his view was that he was being coerced into having the vaccination and punished for not having it.
26. The Respondent informed its staff on 10 August 2021 of the statutory requirement to be vaccinated. At the same time, the Respondent sought clarity on the regulations from the CQC, and local authority. A letter was written to Mr Huw Merriman the local MP querying the regulations to which the response was that Mr Merriman thought they were a good idea. In response, the Claimant sent what purported to be an affidavit on 6

September 2021 advising the Respondent that he would not be getting vaccinated and another document setting out his views on the vaccinations.

27. The Respondent wrote to all staff, including the Claimant, on 21 September 2021 to check whether they had had their first vaccination. To comply with the Regulations, the first dose of the vaccination had to be administered by 16 September 2021. On 21 September, the Claimant replied saying “No thank you”.
28. On 28 September, the Respondent wrote to the Claimant asking to meet with him to explore his reasons for not being vaccinated. Mr Kennard was sympathetic to the Claimant’s views. He was not happy about the regulations as it meant that certain staff who were not vaccinated would have to lose their job and the pool of people he could draw on for recruitment would be reduced. Two other employees who did not want to be vaccinated were also dismissed by the Respondent.
29. There is no dispute that the Respondent consulted fully with the Claimant. There is no dispute that the Claimant unequivocally said he would not be getting vaccinated. The Claimant says Mr Kennard should have taken a stand on the regulations. It is not known what Mr Kennard could have done having already queried the regulations with Mr Merriman without leaving himself open to enforcement from the CQC.
30. The Claimant says he was being coerced or forced to have the vaccination which he says was still in an experimental stage and that this was a violation of his human rights and international law. He summarised his position in his submissions as follows:

“That is my argument. It is not whether there was a procedural error or fault in how legislation was interpreted, it is in breach of international law. Phase 2 and 3 is to determine safety and efficacy of these hurried treatments, yet to be approved”.

The Tribunal notes that this is contradiction to what he said on the first day of the hearing when he said the problem was with the interpretation of the legislation which why the Tribunal directed his witness statement to cover this as it had not been mentioned before.

31. The Claimant did not have a clinical reason not to be vaccinated. He said in evidence that he did, and his objection to having what he considered an experimental vaccination was a clinical reason. The Tribunal rejects this reasoning and accepts the Respondent’s submission:

“It is submitted that this argument cannot be right. On any ordinary and natural interpretation of Regulation 12 (as amended), “clinical reasons [why they] should not be vaccinated” cannot include a mere lack of consent. This would undermine the clear intent of the 2021 Regulations which required vaccination of people entering care homes unless there was a reason weighing against it.”

32. Mr Kennard’s evidence was that to gain a clinical exemption, the individual had to have the Covid-19 Passport, and have a doctor counter sign it

confirming that for clinical reasons that individual could not have the vaccination.

33. The Tribunal concludes that there was no coercion to have the vaccination. Mr Kennard understood and sympathised with the Claimant. It was the Claimant's choice as to whether he would have the vaccination. He chose not to. That left Mr Kennard faced with a situation whereby he had no option but to dismiss the Claimant. The Claimant accepted this whilst saying that the regulations were in breach of his human rights and that he could not be forced to have a vaccination. He described losing his job as punishment.
34. Mr Kennard gave unchallenged evidence that if he had "taken a stand" and continued to employ the Claimant, he was leaving the Respondent open to prosecution, which could have the effect of closing the home or damaging the service to its residents with more staff losing their job.
35. The Claimant says his dismissal was unfair. By that he means the legislation underpinning the reason for the termination of his employment was unfair given that the vaccination programme was, in his opinion, at the time experimental. The Tribunal can not consider this. Its role is to look at the situation the Respondent found itself in and consider whether in all the circumstances it acted reasonably or unreasonably in both the process leading to termination of the Claimant's employment and the reason for dismissal.
36. Parliament sets legislation. Individuals and companies are expected to act in accordance with legislation and the courts and tribunals are to enforce legislation. It is not for this Tribunal to interfere with the will of parliament.
37. The Tribunal is satisfied that the process leading to dismissal was fair. Mr Kennard consulted adequately with the Claimant and sought to understand his views. He was very sympathetic to the Claimant having concerns himself about the effects of the regulations. He considered whether there was alternative employment outside the care home setting which the Claimant could do. There was no other employment available. The Claimant did not challenge this either at the time or before this Tribunal. The Claimant did not appeal the decision to dismiss him.
38. The Tribunal find that the reason for dismissal was also fair. It would be in breach of a statutory enactment for the Claimant to continue to be employed by the Respondent. The Claimant accepts this and accepts the enforcement provisions for the CQC. His complaint as understood during the hearing was with the regulations themselves however in submissions it was that the vaccines for Covid-19 were experimental.
39. The Claimant brought a claim for discrimination. In the case management order of January 2023, it was recorded that it was not clear if the claimant was in fact bringing a claim for indirect discrimination. The Claimant was asked about this, and the Judge explained what indirect discrimination meant in legal terms. There was an adjournment so the Claimant could consider this. On return, he said there was not a claim for indirect discrimination, but he felt that he had been discriminated against. It was



not possible to establish with any certainty the basis for his claim despite discussing this with him in some detail.

40. Although the Claimant said he was not bringing a claim for indirect discrimination, the Tribunal did consider this, bearing in mind that he is representing himself. In so doing it had to construct the claim for the Claimant which it would not normally do but in this instance felt it was just and equitable to do so.
41. The provision criterion or practice would be the requirement for staff to be vaccinated fully from 11 November 2021 when working in residential care homes. The Tribunal started its deliberations by focusing on the Respondent's defence that even if the Claimant did have a protected belief terminating his employment was a reasonable step to take to protect its legitimate aim of complying with the regulations, avoiding prosecution, and safeguarding its residents. In this way the Tribunal took the Claimant's case at its highest, without making specific findings of fact and proceeded on the basis that his belief was protected, and that the Respondent knew of it.
42. The Tribunal finds that the aim was a legitimate aim and reasonable. It is clearly a legitimate aim to remain within the law and to safeguard the Respondent's business. The decision to terminate the Claimant's employment was in all the circumstances reasonable, it being the only way that the Respondent could act lawfully.
43. Any case for direct discrimination is bound to fail. The Claimant was not dismissed because of his beliefs, he was dismissed because to keep him in employment would be in breach of a statutory enactment.
44. Regarding the question of philosophical belief. The Tribunal has considered the Respondent's submission and has considered the Grainger test. It accepts the Respondent's submission:

In *Grainger v Nicholson* [2010] IRLR 4 EAT the EAT considered a claim of less favourable treatment afforded to Mr Nicholson on the grounds of his philosophical belief which was said to be that 'mankind is heading towards catastrophic climate change and therefore we are all under a moral duty to lead our lives in a manner which mitigates or avoids this catastrophe for the benefit of future generations, and to persuade others to do the same'. Burton J held that there must be some limit placed upon the definition of philosophical belief, and set out five criteria which have become known as 'Grainger (i), Grainger (ii)' etc:

- (i) The belief must be genuinely held.
- (ii) It must be a belief and not ... an opinion or viewpoint based on the present state of information available.
- (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.
- (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others."

45. The Tribunal accept the Respondent's submission that the Claimant's stated belief or reasons for not being vaccinated, changed over time, although there was a common theme. The various explanations are:
- a. The current Covid-19 pharmaceutical treatments are experimental vaccines.
  - b. The case management order of Employment Judge Khalil states the belief was the "duty of care to look after yourself and your body, which he says is a legal obligation."
  - c. In his witness statement he said:
    - o His body is his temple.
    - o Any and all experimental medical trials have risks associated with them.
    - o The Covid injections were still in trial phase at the time.
    - o He was protected by law in many ways (Human Rights and international law); and
    - o He was unable to find out what was in the vaccination as information was withheld by pharmaceutical companies.
46. The Claimant said he obtained most of his information from social media platforms.
47. The Tribunal accepts the Respondent's submissions and finds that the Claimant had strongly held opinions about these matters, however following the tests set out in Grainger does not find that his opinions amounted in law to a belief and his belief was incompatible and conflicted with the fundamental rights of vulnerable adult service users in the care industry. In any event, even if the Tribunal had found his belief to be protected beliefs under the Equality Act 2010, it has already found that the Claimant's dismissal was a proportional means of achieving a legitimate aim.
48. In all the circumstances the Claimant's claims are dismissed.

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Employment Judge Martin  
Date: 24 January 2024