



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr H Stedman**

**v**

**Leisure Employment Services Limited**

**Heard at:** Watford (by Cloud Video Platform)

**On:** 15 January 2024

**Before:** Employment Judge Bedeau

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr K Zaman, counsel

## **JUDGMENT**

1. The claimant's claims of discrimination arising in consequence of disability and failure to make reasonable adjustments, are struck out as the mental impairments of Autistic Spectrum Disorder and Attention Deficit Hyperactive Disorder, had in an earlier case, number 3303788/2023, been ruled as not disabilities under section 6, schedule 1, Equality Act 2010.
2. The claimant's application for a reconsideration of the judgment given by Employment Judge Postle, on 7 November 2023, in case number 3303788/2023, has no reasonable prospect of success as the claimant sought to argue that the Judge should have made different findings of fact on the issue of whether his claimed disabilities had a substantial and long-term adverse effect on normal day-to-day activities.
3. The claimant's claims of public interest disclosure detriment and dismissal, have no reasonable prospect of success as he cannot establish that he had made a qualifying disclosure as set out in section 43B, Employment Rights Act 1996 ("ERA"). Accordingly these claims are struck out.
4. The claim of victimisation has no reasonable prospect of success and is struck out as the claimant cannot establish a protected act.

## REASONS

1. In a claim form presented to the tribunal on 20 September 2023, the claimant made claims of automatic unfair dismissal under section 103A ERA 1996, as he had, allegedly, been dismissed for making a protected disclosure and that he had suffered detriment as a result of so doing. In addition, by reason of his claimed disabilities of Autistic Spectrum Disorder and Attention Deficit Hyperactive Disorder, he had been discriminated for a reason arising in consequence of his disability, and there had been a failure to make reasonable adjustments.
2. Earlier, on 6 April 2023, he presented claims of direct disability discrimination; indirect disability discrimination; failure to make reasonable adjustments, and discrimination arising in consequence of disability. He relied on the above claimed disabilities, case number 3303788/2023.
3. At a preliminary hearing in public before Employment Judge Postle, held on 7 November 2023, the Judge ruled that the claimant had not establish substantial and long-term adverse effects on normal day-to-day activities. Accordingly, the claimant was unable to satisfy the requirements of section 6, schedule 1, Equality Act 2010 and was ruled not a disabled person.
4. All of the claims arising out of case number 3303788/2023, which were before the Judge, were, consequently, dismissed.
5. In his second claim form, presented to the tribunal on 20 September 2023, case number 3311050/2023, the claimant claims automatic unfair dismissal for having made a protected disclosure under section 103A ERA 1996 and detriment for making a protected disclosure under section 47B ERA 1996. He also claims discrimination arising in consequence of disability, failure to make reasonable adjustments, and victimisation.
6. He applied for interim relief in respect of the unfair dismissal claim and that application came before Employment Judge K Palmer on 3 October 2023, who dismissed it as it was applied for out of time.
7. On 10 November 2023, the respondent applied for the disability claims to be struck out as Judge Postle had earlier ruled that the claimant's claimed disabilities did not satisfy section 6, schedule 1 Equality Act 2010. Accordingly, the respondent invited the tribunal to strike out those claims. Further, the claimant had not established a qualifying disclosure in respect of his automatic unfair dismissal claim, section 103A, and detriment claim, under section 47B ERA 1996. In addition, he had not shown that he made a protected act in order to pursue a valid victimisation claim. The tribunal should either strike out these claims or issue deposit orders.
8. On 5 December 2023, the claimant applied for a reconsideration of Judge Postle's judgment. No ruling had been made under Rule 72(1) Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013, namely whether the application has no reasonable prospect of the original judgment being either varied or revoked?

9. The Regional Employment Judge instructed me to determine this issue as Judge Postle was engaged in other judicial work and applying Rule 72(3), it was not practicable for him to rule on this application.
10. The claimant sent the tribunal an email in support of his application for a reconsideration of Judge Postle's judgment. It runs into several pages, and it amounts to him seeking to change Judge's findings of fact and ultimate conclusion as he, the claimant, had reviewed the evidence he gave and the medical evidence. He was aware that the Judge had taken into account the medical evidence presented; his disability impact statement; a report dated 29 October 2023 from Professor G C Cox, Consultant Psychiatrist; and the evidence given at the hearing.
11. The Judge considered the issue of whether there was evidence that the claimant's mental impairments had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities? From reading the judgment, the Judge considered the evidence up to the hearing based on the evidence given by the claimant in cross-examination and Professor Cox's report which post-dates the presentation of the claim form. The Judge ruled that the claimant had not established substantial adverse effects on normal day-to-day activities. Accordingly, he was unable to satisfy all of the relevant provisions in section 6, schedule 1 Equality Act 2010.
12. I spent some time going through with the claimant, the legal requirements in respect of each of his claims and on how he put his case against the respondent. I did not hear evidence, only submissions.

## **Conclusion**

### Reconsideration

13. Applying Rule 72(1), I considered that the claimant was seeking a second bite of the cherry in the hope of changing Judge Postle's findings of fact and ultimate conclusion. No new evidence was presented by him. The Judge considered the evidence, made proper findings of fact consistent with the evidence, and applied the law to those findings in his conclusion. I, therefore, came to the conclusion that the application stood no reasonable prospect of the judgment being either varied or revoked. Accordingly, it was refused.

### Res Judicata and issue estoppel

14. Having regard to my ruling in respect of the reconsideration application, I considered that the claimant, in pursuing claims of discrimination arising in consequence of disability and failure to make reasonable adjustments, relying on his mental impairments of Autistic Spectrum Disorder and Attention Deficit Hyperactive Disorder, was seeking to relitigate the issue before Judge Postle as to whether he was disabled at all material times. That judgment stands as it is a judicial ruling on the issue of disability. The claimant is unable to rely on his mental impairments as disabilities in this case under section 6, schedule 1 Equality Act 2010. The judgment in Henderson v Henderson 1843 3 Hare 100, ChD applies. Accordingly, the

claims are struck out as they stand no reasonable prospect of success and are an abuse of process.

Public interest disclosure (whistleblowing)

15. I took the claimant to section 43B ERA 1996 on qualifying disclosures. He told me that his disclosure was his request for a copy of the respondent's social media policy.
16. By way of background, the respondent operates a self-catering caravan and leisure park service across 41 sites in the United Kingdom. Depending on the time of the year, it employs between 8,000 to 10,000 people. These are staff on, predominantly, fixed-term contracts.
17. The claimant was employed from 17 February 2023, on a six-month fixed term contract. He stated that his job title was that of a Restaurant Team member.
18. The respondent employs some of its staff to work in the entertainment side of its business. It became apparent during the claimant's employment that he was interfering with the work of those in the entertainment team, some of whom complained about his behaviour. He was spoken to and warned informally about his conduct towards the entertainment team members. Some two hours after that meeting, he knocked a flowerpot which was in the reception area in a fit of pique. The matter was reported, and he was dismissed for gross misconduct. He stated that the incident involving the flowerpot was the result of his autistic sensory overload. He said he was told by one of the respondent's managers that he could not communicate with his work colleagues outside of work on social media but could engage with them when at work. He, therefore, requested a copy of the respondent's social media policy in order to ascertain whether what he had been told about socialising outside of work was in accordance with the policy.
19. I asked him whether he was disclosing any of the matters within section 43B and he, candidly, told me that he was not. He was simply requesting a copy of the policy. I, therefore, concluded that he was unable to demonstrate that he had first made a disclosure of information and, secondly, that it was a qualifying disclosure. The qualifying disclosure must be a disclosure of information, which is conveying facts, Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, a judgment of the Employment Appeal tribunal.
20. As he was unable to establish a qualifying disclosure his automatic unfair dismissal claim, in accordance with section 103A, and his detriment claim, in accordance with section 47B, ERA 1996, have no reasonable prospect of succeeding. Accordingly, I struck them out under Rule 37.

Victimisation

21. Having explained the legal requirements of a victimisation claim, the claimant was unable to identify for me a protected act. He read out an email dated 14 August 2023, in which he requested a copy of the respondent's

social media policy and in it he does not complain about having been discriminated based on his claimed disabilities, nor does he complain about his treatment under any of the provisions in the Equality Act 2010. To his credit, he acknowledged that that was the case. As he is unable to establish a protected act, this claim has no reasonable prospect of success and was struck out under Rule 37, applying section 27(1) Equality Act.

22. It follows from my conclusions that all of the claims against the respondent are struck out.
23. There was no application for costs.

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Employment Judge Bedeau

24 January 2024

Date: .....

Sent to the parties on: 7 February 2024..

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For the Tribunal Office