



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal

8 – 12 April 2024 (video)

**Claimant:** Nkechi Leeks

**Respondent:** University Hospitals Sussex NHS Foundation Trust

## Full merits hearing

**Before:** Judge M Aspinall (sitting as an Employment Judge)  
Mr R Singh  
Ms H Bharadia

**Appearances:** Mrs N Leeks, in person  
Mr C Edwards, Counsel for the Respondent

## JUDGMENT WITH REASONS

UPON having heard oral testimony from the Claimant and two witnesses for the Respondent;  
AND UPON having considered the submissions, pleadings, documents and evidence to which were referred, and taking account of the relevant law and precedent;

IT IS ADJUDGED that:

1. The Claimant did not present any credible evidence to establish discrimination based on age, disability, religion or belief or – for the avoidance of doubt – on the basis of any other protected characteristic.
2. The Respondent provided consistent and reliable evidence that the conditional job offer of 31 August 2017 was legitimately withdrawn due to unsatisfactory pre-employment checks:
  - a. that references from former employers, received by the Respondent, were unsatisfactory.
  - b. that the Claimant had been subject to at least two misconduct dismissals by previous NHS employers in the previous six years – including by her most recent employer (King's College Hospital, London) on 20 July 2017 which she had not set out in her application to the Respondent.
  - c. that the Claimant was only two years into a minimum 5-year HCPC register strike off, ordered by the HCPTS, because of her misconduct in illegitimately accessing confidential HR records for other colleagues, which led to one of those dismissals.
  - d. that the Claimant had failed, on two separate occasions, to attend appointments arranged with the Respondent's Occupational Health department for assessment in

light of her declared disability. Thus, the required occupational health pre-employment check was not completed at all.

3. The Claimant sought to improperly undermine and re-litigate past decisions of other courts or tribunals of competent jurisdiction to which she was a party. This amounted to an abuse of process.
4. Pursuing historic grievances unrelated to the merits of the present claim resulted in the proceedings being vexatious and a waste of the Tribunal's time and resources and those of the Respondent which is a publicly funded health service organisation.
5. The Claimant's claim of victimisation based on having made protected disclosures is dismissed. She had no properly legal right to bring such a claim against the Respondent in the circumstances.
6. The Claimant did little more than cursorily refer to the issues between her and the Respondent, for which this claim was lodged. Instead, she repeatedly sought to go behind and to undermine lawful decisions of both the Employment Tribunal, the HCP Tribunal and her former employers – despite being repeatedly asked and then instructed to stop doing so.
7. The Claimant's intention, expressed vigorously to the Tribunal, was to challenge previous legal decisions, which had been adverse to her, dating back to 2011 and 2015.
8. The whole claim brought by the Claimant was **totally without merit** and amounted to an **abuse of process**.
9. Accordingly, **the claim is dismissed** in its entirety.

## Reasons

### Background

10. The Claimant was employed by King's College Hospital NHS Foundation Trust from January 2016 until 20 July 2017 when she was dismissed following disciplinary proceedings.
11. On 29 July 2017, the Claimant applied for a Housekeeping Assistant role with the Respondent, University Hospitals Sussex NHS Foundation Trust (previously known as Brighton and Sussex University Hospitals NHS Trust). She was shortlisted and on 31 August 2017 attended a recruitment day where she was interviewed and conditionally offered the role, subject to satisfactory pre-employment checks.
12. On the same recruitment day, 31 August 2017, the Claimant completed a pre-employment declaration form for the Respondent. On this form she disclosed her dismissal from King's College Hospital on 20 July 2017 and that she had been struck off by the HCPC in 2015. However, on her original application form dated 29 July 2017, she had referred to King's College Hospital as her current employer and did not mention her dismissal. She also recorded having been dismissed by St George's Hospital in 2011 and 2015 and having been struck off the HCPC register in 2015 because of what she described as untrue allegations.
13. As part of their standard pre-employment checks, the Respondent sought references from the Claimant's previous employers. A reference was received from King's College Hospital which confirmed her dismissal on 20 July 2017. The Respondent also checked with the Health and Care Professions Council (HCPC) and found the Claimant had been struck off their register in 2015 for a minimum of 5 years. This was due to accessing confidential staff files in 2011 while working at St George's Hospital, leading to her dismissal from that employment. The Claimant's subsequent employment tribunal claim against St George's Hospital was unsuccessful.
14. She had recorded her dismissal from St George's in 2011 and her subsequent strike off from the HCPC register on her 29 July 2017 application for employment with the

Respondent.

15. In September and October 2017, the Respondent attempted to arrange occupational health assessments for the Claimant, but she did not attend the appointments.
16. On 29 November 2017, the Respondent wrote to the Claimant withdrawing the conditional job offer, stating this was due to unsatisfactory references and pre-employment checks.
17. Between November 2017 and June 2018, the Claimant made four more unsuccessful applications for roles with the Respondent, without being shortlisted or interviewed.
18. In July 2018, the Claimant brought an employment tribunal claim against the Respondent alleging discrimination relating to the withdrawn job offer on grounds of age, disability, and religion/belief. The Respondent maintained the withdrawal was due to issues revealed by the pre-employment checks and references regarding the Claimant's employment history and professional status.

### **The claims**

19. In her ET1 claim form, the Claimant alleged that the Respondent had discriminated against her by withdrawing their offer of employment. She asserted that this withdrawal was an act of direct discrimination on the grounds of age, disability, and religion/belief.
20. The Claimant contended that the Respondent was aware of her age as her date of birth was provided on her application form. She stated that at the age of 59, she belonged to a protected age group under the Equality Act 2010. She argued the withdrawal of the job offer was because of her age.
21. Regarding disability, the Claimant said she had informed the Respondent of several disabilities she experiences including cancer, fibromyalgia, chronic fatigue syndrome, spondyloarthritis, irritable bowel syndrome, and bladder/bowel issues. She claimed the Respondent withdrew their offer because of these disabilities.
22. For religion/belief, the Claimant stated that she is of Nigerian nationality and that she follows Ibo traditional customs and beliefs. The Claimant alleged that the Respondent withdrew their offer upon discovering she was not of British nationality or Christian religious background.
23. The Claimant also asserted that the withdrawal of the job offers amounted to victimisation as she had previously raised protected disclosures regarding discrimination during her employment with King's College Hospital. She claimed the Respondent withdrew their offer in retaliation for these previous whistleblowing activities.
24. The Respondent denied the allegations. They maintained that they withdrew the conditional offer for legitimate reasons based on what was revealed through the Claimant's references and pre-employment checks regarding her employment history and professional status. The Respondent stated they had followed standard recruitment policies and procedures that were applied consistently to all candidates.

### **Issues before the Tribunal**

25. This case was most recently case managed by Employment Judge Dyal in June 2023. However, there were three previous case management hearings before other judges that had progressively refined the issues.
26. The first case management hearing was held by Employment Judge Martin on 25 July 2018. There were subsequent case management hearings before Employment Judge Baron on 10 January 2019 and Employment Judge Spencer on 17 January 2019.
27. At the final case management hearing before Employment Judge Dyal on 9 June 2023, the key issues to be determined were set out in a Case Management Order. The parties

confirmed prior to this hearing commencing on 8 April 2024 that they agreed these issues from EJ Dyal's Order remained the questions to be decided.

28. Those issues were:
- a. Why did the Respondent withdraw the conditional offer of employment made to the Claimant?
  - b. Specifically, was the withdrawal of the offer related to the Claimant's:
    - i. Age, she being 59 years old at the time;
    - ii. Disability, with her conditions including cancer, fibromyalgia, chronic fatigue syndrome, spondyloarthritis, irritable bowel syndrome, and bladder/bowel issues;
      - The question of whether the Claimant was disabled, within the meaning of Section 6 of the Equality Act 2010, at the material time was conceded by the Respondent at the hearing before EJ Dyal.
    - iii. Religion or belief, she follows Ibo traditional customs and beliefs.
  - c. Or did the Respondent have some other legitimate, non-discriminatory reason for withdrawing the offer?
29. Therefore, the core disputed issue was whether the withdrawal of the conditional job offer was because of any, some, or all the Claimant's protected characteristics, indicating unlawful discrimination; or whether the Respondent had a valid rationale unrelated to those protected characteristics.

### **The law**

30. The relevant legislation in this case is the Equality Act 2010.
- a. Section 13 provides:

"(1) 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."
  - b. Section 15 states:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A subjects B to a detriment."
  - c. Section 26 provides:

"A person (A) harasses another (B) if—

    - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
    - (b) the conduct has the purpose or effect of—
      - (i) violating B's dignity, or
      - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."
  - d. Section 39 provides:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act."

31. The protected characteristics relevant to this case are age, disability, and religion or belief as defined in the Equality Act 2010.
32. This legislation is applicable to the issues in this case which concern allegations of direct discrimination, harassment and victimisation related to protected characteristics in the context of employment, as prohibited by the Equality Act 2010.

#### Citations by the Claimant

33. The Claimant has referred in her submissions to the case of *West v Yorkshire Ambulance Service ET/1801740/2015*. Despite this citation, we have been unable to locate any record of an actual case with this name.
34. The Tribunal went to great efforts to research and find this cited authority, but our extensive searches revealed no sign of any such Employment Tribunal decision. It appears the Claimant has cited a non-existent case.
35. In attempting to find this case, which the Claimant failed to provide a copy of, we did discover a previous Employment Tribunal judgment involving a claim brought by the Claimant against a different Respondent NHS Trust - Cambridge University Hospitals NHS Foundation Trust in 2018 (ET/3305516/2018).
36. There are notable similarities between the Claimant's past claim against Cambridge University Hospitals and her current claim against this Respondent. In both, she alleged disability discrimination regarding withdrawal of a conditional job offer.
37. While not binding precedent, the judgment provides a useful illustration of the Claimant's litigation history and tendency to cite cases which either do not assist her arguments or simply do not seem to exist.
38. We discovered this previous case only because the Claimant did not furnish copies of authorities she cited.
39. Ultimately, our decision rests on the particular facts and legal principles relevant to the case which we have heard. However, the similarity of the Claimant's past unsuccessful ET claim against another NHS Trust provides useful context regarding her litigation approach.
40. The Claimant referred in her submissions to the case of *Pnaiser v NHS England & Anor [2015] UKEAT 0137\_15\_0311*. This was an appeal heard by the EAT (Simler J as she then was) concerning a doctor employed by an NHS Trust who was suspended and referred to the GMC due to misconduct allegations, including secretly filming patients.
41. The GMC found the doctor's fitness to practise was impaired and suspended him for 12 months. During the GMC investigation, the doctor brought an employment tribunal claim arguing his suspension by the NHS Trust was unlawful.
42. The tribunal and EAT held the suspension was justified despite the allegations being unproven at that stage. The case establishes employers can lawfully suspend pending investigation into potential serious misconduct.
43. The Claimant sought to argue *Pnaiser* supports her contention that allegations cannot be relied upon unless first proven or reported to police.

44. However, Pnaiser does not assist the Claimant. It establishes the opposite proposition - that suspension pending investigation of serious allegations is legitimate, even if those allegations remain unproven.
45. The key point is that in Pnaiser, the employer's action was deemed lawful despite the allegations not being reported to police or proven at that stage. This contradicts the Claimant's argument that allegations must first be reported or proven before an employer can act.
46. Ultimately, Pnaiser does not relate to the issues in the Claimant's claim against this Respondent regarding the withdrawn job offer.
47. By persistently trying to impose fabricated duties to report allegations to police, the Claimant showed she aimed to dispute her prior employment proceedings, not address the actual matters in dispute here regarding the Respondent's recruitment actions. Her motives were focused on discrediting her past dismissal and striking off, not vindicating any lawful rights against this Respondent.
48. We should note that while the Claimant referred to legal authorities, she did not provide copies of the full decisions or judgments for the Tribunal. We have had to attempt to discern her precise basis for citing each case filtered through her extensive and often tangential written submissions. The absence of properly produced legal authorities outlining her reasoning demonstrates the overall unstructured and misconceived approach she took in conducting her claim. Despite citing cases ostensibly to support legal propositions, she did not assist the Tribunal by setting out clearly what principles she sought to rely on from each authority.
49. The Claimant referred to The Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018, contained in Statutory Instrument (SI) 2018 No. 579.
50. She specifically cited "Regulation 20" of these Regulations. However, upon reviewing the SI, it does not actually contain any such Regulation 20.
51. Further, SI 2018 No. 579 was enacted in 2018. Even if it did include a Regulation 20, the SI would have no retrospective effect. It could not apply to the events between the parties in late 2017 when the conditional job offer was withdrawn.
52. The SI prohibits NHS employers discriminating against applicants who have made protected disclosures and gives applicants the right to bring tribunal complaints. But these limited regulations bear no resemblance to the extensive protections the Claimant suggests existing under her cited "Regulation 20".
53. Whilst the Claimant referred to a piece of secondary legislation (the SI), she cited a non-existent regulation within it. And in any event, the SI has no retrospective effect on the circumstances of this case in late 2017. The Claimant's submissions about Regulation 20 granting wide-ranging rights are unsubstantiated and irrelevant to her claim regarding the Respondent's recruitment decision.
54. The Claimant's repeated strained attempts to use various legal authorities to support unsubstantiated assertions revealed her intentions behind bringing this claim. It became evident that her purpose was not to legitimately resolve legal issues arising from the Respondent's withdrawal of a conditional job offer. Rather, she sought to improperly manipulate legal principles to re-litigate and undermine past decisions relating to her 2011 dismissal and 2015 striking off by the HCPC.

#### Citations by the Respondent

55. The Respondent argues the claim should be considered under section 13 of the Equality Act 2010, which prohibits less favourable treatment because of a protected characteristic, or alternatively under section 26, which prohibits unwanted conduct related to a protected

characteristic that violates dignity or creates a hostile environment.

56. On whistleblowing, the Respondent contends the claimant cannot bring a claim under the Employment Rights Act 1996. The Respondent cites sections 47B and 103A ERA, which give workers and employees protection from detriment or dismissal for making a protected disclosure. However, it argues the claimant was not a 'worker' or 'employee' as defined.
57. The Respondent refers to the definitions of 'worker' and 'employee' in section 230(3) ERA, as well as the extended definitions in section 43K ERA. It submits the claimant does not fall under the extended definitions covering certain contractors, NHS practitioners, trainees etc.
58. The Respondent highlights the Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018, made under section 49B ERA. These prohibit NHS employers discriminating against applicants who have made protected disclosures. However, the Regulations only came into force on 23 May 2018 and are not retrospective.
59. On the applicable legal tests, the Respondent cites *Nagarajan v LRT [1999] IRLR 572*, which held the Tribunal must focus on the reason why the alleged discriminator acted as they did. It also cites *Chief Constable of West Yorkshire v Khan [2001] ICR 1065* to similar effect.
60. Regarding the burden of proof, the Respondent refers to *Madarassy v Nomura [2007] IRLR 246*, which held the Tribunal should consider all evidence from both parties at the first stage in deciding if there is a prima facie case of discrimination.
61. On the definition of 'worker', the Respondent cites *Day v Health Education England [2017] EWCA Civ 329*, *McTigue v University Hospital Bristol NHS Foundation Trust [2016] IRLR 742*, and *Sharp v Bishop of Worcester [2015] EWCA Civ 399*. It contends there must be some contractual relationship to fall under the extended definitions in whistleblowing claims.

#### Abuse of process

62. Abuse of process involves an improper and excessive use of legal proceedings. It involves using court processes for purposes significantly different from the proper and ordinary use. A key case on abuse of process is *Attorney General v Barker [2000]*.
63. In *Attorney General v Barker*, the Court considered an application under section 42 of the Supreme Court Act 1981 for a civil proceedings order against a litigant who had issued numerous claims against parties involved in family law proceedings concerning his children.
64. The Court set out the test for a civil proceedings order, which requires the person has habitually and persistently instituted vexatious proceedings without reasonable grounds. The Court found while the proceedings were vexatious as they had no proper basis and caused disproportionate inconvenience, the element of persistence was not met as the flurry of litigation was confined to a short 3-month period.
65. The Court provided guidance that the hallmark of abuse through persistent litigation is continually suing on the same matters after adverse rulings, excessively suing different parties who could be joined in one action, and automatically challenging every unfavourable decision.
66. Crucially, the Court held the "essential vice" of abuse of process is persisting with litigation when earlier cases have failed and when rationally the time has come to stop.
67. The principles outlined in *Attorney General v Barker* are directly relevant to the present case. Here, the Claimant engaged in litigation conduct exhibiting the hallmarks of persistently abusive behaviour the Court warned of.
68. Despite the Claimant's previous dismissal and professional striking off having been finally determined by tribunals years earlier, her actions in the current proceedings showed she impermissibly sought to re-litigate those matters. Her focus was on disputing past adverse

decisions, not pursuing lawful rights against the Respondent regarding the withdrawn job offer. She refused to move on from historic grievances unrelated to the merits of her claim. As Attorney General v Barker makes clear, persisting with litigation in this manner when the time has come to stop amounts to an abuse of process and the improper use of judicial resources. The Claimant's sustained conduct provided grounds for the Tribunal to exercise its discretion to curtail her participation to prevent further abuse of its process.

### **Adjustments made to assist the Claimant**

69. In preparation for the final hearing, the Claimant was afforded an extended period of over 3 months to prepare her schedule of loss and witness statement. This accommodated her need for additional time due to her disabilities.
70. The hearing itself was listed to commence each day at 2pm and conclude by 5pm. This shorter 3-hour daily duration accounted for the Claimant's fatigue caused by her health conditions.
71. Further, the entire 5-day hearing was arranged to take place via CVP video conference rather than in person. This removed the need for potentially tiring travel to the hearing venue.
72. During the hearings, even though significantly shortened, the Tribunal remained conscious of permitting regular breaks as required to allow the Claimant time to rest and compose her thoughts.
73. Additionally, to further minimise strain on the Claimant, the Tribunal directed that closing submissions would be in writing only. The decision was also reserved and handed down in writing, meaning the parties were not required to attend beyond the close of the third hearing day.
74. Substantial adjustments were made both in preparation and during the final hearing itself to accommodate the Claimant's disabilities. Additional time, regular breaks, a shortened daily schedule, remote participation, and written-only elements alleviated demands on the Claimant and supported her to fully prepare and participate in the hearing.

### **The hearing before us**

75. The hearing took place over 5 days between 8-12 April 2024. It was conducted via CVP video conference with the Claimant and Respondent's representatives attending remotely.
76. The Tribunal panel consisted of Judge M Aspinall, Ms Bharadia, and Mr Singh. The Claimant, Mrs N Leeks, represented herself. Mr C Edwards of counsel represented the Respondent, University Hospitals Sussex NHS Foundation Trust.
77. The Tribunal considered the pleadings and documents contained in the hearing bundle. This included the Claim Form, Response Form, schedules of loss, medical evidence, and employment records. We considered the evidence, from the lengthy hearing bundle, to which we were directed.
78. Oral evidence was heard from the Claimant. The Respondent called two witnesses - Ms Kelly-Marie Sims, Recruitment Manager, and Mrs Beverly Thorpe, retired Associate HR Director. Both were cross-examined by the Claimant and Mr Edwards was permitted time to re-examine them as necessary.
79. Written closing submissions were provided by the parties as directed by the Tribunal.
80. The Tribunal panel reserved its judgment.

### **Behaviour of the Claimant in the hearing**

81. The Claimant engaged in a pattern of inappropriate and uncontrolled behaviour throughout the proceedings, requiring constant intervention by the Tribunal.



82. She frequently made irrational assertions that the Respondent and its witnesses were "lynching" her. She accused them of making her unemployable and leaving her destitute and unable to feed herself. She claimed their actions amounted to attempted murder.
83. The Claimant persistently argued she was a dangerous criminal who should be reported to police for allegations from 2011 when she worked at St George's Hospital. She had accessed confidential staff data without authorization, leading to dismissal and being struck off by the Health and Care Professions Council (HCPC). Despite no relevance, she maintained her dismissal and striking off were invalid because she had not been criminally prosecuted.
84. She repeatedly demanded the Judge and witnesses report her as a criminal for the 2011 allegations. She refused to accept the Judge's instructions that this had no bearing on her current case against the Respondent.
85. The Claimant aggressively asserted it was her intention to overturn her 2011 dismissal by St George's, the subsequent Employment Tribunal decision, and the 2015 HCPC striking off ruling. The Judge ruled this was impermissible and amounted to an abuse of process. However, she continued trying to dispute these matters instead of addressing the issues in her own claim.
86. She insisted the Rehabilitation of Offenders Act 1974 should apply regarding her professional sanctions. The Judge reiterated she had no criminal convictions. However, she continued arguing the Act should prohibit relying on her dismissal or HCPC history.
87. The Claimant regularly arrived late and left early, requiring adjusted start times. She constantly interrupted witnesses and talked over the Judge. She frequently shouted at the Judge and witnesses.
88. Despite repeated warnings, she made inappropriate statements rather than asking legitimate questions. She accused witnesses of participating in a "lynch mob" and imputed sinister motivations without substantiation.
89. The Claimant failed to properly address the factual issues in her own claim. Her focus was on making allegations and seeking to overturn historic decisions. The Judge showed considerable patience as she was self-represented. However, after extensive failed efforts to control her conduct, he was forced to terminate her cross-examination of both Respondent witnesses due to her sustained impropriety.
90. The Claimant's egregious behaviour throughout reinforced the view that her improper purpose was to overturn final decisions of other courts or tribunals, not pursue lawful rights against the Respondent regarding the recruitment issues. Her actions disrupted and undermined the proceedings, leaving no alternative but to curtail her participation.

## **Evidence**

### *Written Evidence*

91. The Tribunal was provided with a bundle of documents containing pleadings and evidence relied upon by the parties. Key documents included:
  - a. The Claimant's ET1 claim form outlining her allegations of discrimination in relation to the withdrawn job offer.
  - b. The Respondent's ET3 response form denying the claims and stating their reasons for withdrawing the offer.
  - c. The Claimant's schedule of loss detailing her financial losses resulting from the withdrawal.
  - d. Medical evidence from the Claimant's doctors regarding her conditions and disabilities.

- e. The Claimant's original job application form for the role she was offered.
  - f. Interview records, pre-employment checks, and recruitment records from the Respondent.
  - g. Correspondence between the parties regarding arrangements for the Claimant's start date, occupational health assessments, and the eventual withdrawal of the offer.
92. The evidence enabled the Tribunal to assess the circumstances surrounding the Claimant's application, the recruitment process undertaken by the Respondent, and the rationale for eventually withdrawing the conditional offer made.

#### *Oral Evidence*

93. The Claimant provided oral testimony detailing her account of events. She was cross-examined by the Respondent's counsel.
94. The Respondent called two witnesses. Ms Kelly-Marie Sims, the Recruitment Manager, gave evidence about the Trust's recruitment policies and procedures. She was cross-examined by the Claimant and asked questions by the Tribunal.
95. Mrs Beverly Thorp, a retired Associate HR Director, also testified for the Respondent about the decision to withdraw the offer. The Tribunal considered her oral evidence together with her written witness statement. She faced cross-examination from the Claimant and questions from the Tribunal.
96. The Tribunal had the benefit of observing the demeanour and assessing the credibility of the Claimant and both witnesses for the Respondent over the course of their oral testimony at the hearing. Their evidence provided additional context and information beyond the documents already before the Tribunal.
97. The Tribunal found the oral evidence provided by the Respondent's witnesses, Ms Sims and Mrs Thorpe, to be credible and reliable. Both gave clear, consistent accounts regarding the recruitment policies and procedures followed. They were responsive to questions asked and provided thoughtful explanations when challenged during cross-examination.
98. In contrast, the Tribunal had concerns over the reliability of the Claimant's testimony. She was prone to tangential and exaggerated statements making serious unsubstantiated allegations against the Respondent and witnesses. Her focus strayed from directly addressing questions asked and providing pertinent information related to the specific issues in her claim.
99. While afforded leeway as a litigant in person, the Tribunal observed the Claimant's tendency to make irrelevant assertions and engage in disruptive behaviour which frequently required intervention to keep her focused on the factual matters at hand. This called into question the overall credibility of her oral evidence in assisting the Tribunal to reach informed findings on the merits of her allegations against the Respondent.

### **Deliberation and our findings**

#### *Age Discrimination*

100. The Claimant argued the withdrawal of the job offer was an act of direct age discrimination, as she was 59 years old at the time which is a protected characteristic under the Equality Act 2010.
101. However, the Tribunal finds no evidence to substantiate this claim. The Respondent made the offer fully aware of the Claimant's age, which was provided on her application form. Her age never became an issue, even after pre-employment checks revealed concerns leading to the offer being revoked.
102. The Tribunal concludes the Claimant's age played no part in the decision to withdraw the

offer. The real reason related to issues arising from her employment history and references and her failure to complete the occupational health processes which were required as part of the pre-employment checks. Her age discrimination claim is dismissed.

#### *Disability Discrimination*

103. The Claimant claimed she disclosed several disabilities to the Respondent, including fibromyalgia, spinal stenosis, and bowel/bladder issues. She alleged the job offer was withdrawn because of these disabilities.
104. The Tribunal finds the offer was made conditionally despite the Respondent being aware of the Claimant's general disabilities. It was only later withdrawn after references revealed fuller details of her previous misconduct dismissals and striking off, raising serious suitability concerns, and her repeated failure to complete the occupational health processes which were required as part of the pre-employment checks.
105. The Claimant did not establish a prima facie case of disability discrimination. The Tribunal accepts the Respondent's credible explanation that the offer was withdrawn solely due to issues arising from the pre-employment process and checks, not her disabilities. Her disability discrimination claim is dismissed.

#### *Religion/Belief Discrimination*

106. The Claimant asserted she is Nigerian and follows Ibo traditional customs and beliefs. She argued the job offer was withdrawn upon the Respondent discovering she was not British or Christian.
107. However, the Tribunal finds no evidence suggesting the Claimant's nationality or religious background influenced the Respondent's decision. These characteristics were not mentioned in the recruitment records or references.
108. The Tribunal concludes there is no basis for finding the offer was withdrawn because of the Claimant's religion or beliefs. This claim is also dismissed.
109. Overall, the Tribunal finds the Respondent had legitimate, non-discriminatory reasons for withdrawing the job offer related to the Claimant's employment history and suitability.

#### *Victimisation for protected disclosures*

110. The Claimant also asserted that withdrawing the job offer amounted to victimisation, as she had previously made protected disclosures about discrimination during her employment with King's College Hospital.
111. However, the Tribunal finds the Claimant cannot bring a claim for victimisation or detriment for making a protected disclosure against the Respondent in these circumstances.
112. The Claimant was not an 'employee' or 'worker' of the Respondent at the relevant time. She therefore has no right to bring a claim under the Employment Rights Act 1996 for suffering a detriment for making a protected disclosure.
113. Further, the Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018, which the Claimant sought to rely upon, only came into force on 23 May 2018. As such, they cannot retrospectively apply to the events between the parties in late 2017 when the conditional job offer was withdrawn.
114. The Tribunal was also entirely unsatisfied that there was proper evidentiary support for the Claimant's protected disclosure allegation. She adduced no evidence that the Respondent so much as knew about any purported disclosure she may have made to, or whilst in the employ of, her former employer (King's). Much less did she produce or elicit any evidence that, if they did know, it had any material bearing on their decision.
115. The Claimant's assertion that the job offer was revoked in retaliation for her previous alleged

whistleblowing activities is entirely without merit. It forms part of her wider improper purpose in bringing this claim to unlawfully undermine earlier tribunal decisions, rather than addressing the Respondent's recruitment actions.

116. There is no basis for the Claimant's protected disclosure claim against this Respondent. It is dismissed as misconceived and an abuse of the Tribunal's process.

### **Conclusion**

117. The Tribunal unanimously concludes that the Claimant's entire claim was totally without merit and amounted to an abuse of process.
118. Through her actions in bringing and conducting these proceedings, the Claimant improperly sought to re-litigate matters that were res judicata, having been finally determined by previous tribunals. Her focus was on disputing her past dismissal and professional sanctioning rather than pursuing lawful rights regarding the Respondent's recruitment decision.
119. The Claimant's repeated attempts to challenge long-settled decisions of other tribunals and employers were impermissible and rendered her claim against this Respondent misconceived and vexatious.
120. Her conduct during the hearing was similarly improper, with unfounded allegations and abuse directed at witnesses. She scant interest in discharging her burden to substantiate her claims against the Respondent based on the factual issues arising from their specific circumstances. She was contemptuous of both the Respondent's witnesses and the Tribunal.
121. Considering the Claimant's sustained misconduct constituting an abuse of process, and the wholly unmeritorious nature of her claims, the Tribunal had no hesitation dismissing the proceedings in their entirety.

**Employment Judge M Aspinall**  
**Dated: 13 April 2024**

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