



EMPLOYMENT TRIBUNALS

Claimants: Mr G Baines

Respondents: Leep Holdings (Utilities) Limited

Heard at: Liverpool

On: 26 June 2024

Before: Employment Judge Aspinall

Representation

Claimant: no appearance

Respondent: Ms Peckham

JUDGMENT

The judgment of the Tribunal is:

1. The complaint of unfair dismissal is dismissed. The claimant did not have two years service.
2. The discrimination complaints are struck out in their entirety for the reasons set out below.
3. That brings all complaints in this claim to an end.

REASONS

Strike out applicaiton

1. By a letter dated 29 January 2024, copied to the claimant, the respondent made an application to strike out the claim. By a letter dated 28 May 2024 the Tribunal gave notice of today's hearing to determine the strike out application and gave the claimant an opportunity to make representations as to why the claim should not be struck out.

2. The claimant has failed to respond with representations. The claimant has failed to attend today and after efforts were made to contact him by telephone and a voicemail left and further time allowed, he has not joined the hearing.

Today's hearing

3. I had a bundle of documents in two parts. I heard no oral evidence and have made no findings of fact. I heard oral submission from the respondent. I had regard to the Claim Form and all correspondences on file from the claimant and Mr Roberts on his behalf.

History of proceedings

4. The claim was brought on 23 March 2023 following a period of early conciliation and a certificate dated 23 March 2023. The claimant said he had been unfairly dismissed and discriminated against because of his disability. He said he had a brain tumour and the respondent failed to make reasonable adjustments for him and failed to rescind a resignation he had given in error, under the misunderstanding that there was differential treatment of him and others in relation to car allowances, because of his cognitive impairment as a result of his tumour. The respondent defended the complaint and requested medical evidence in the form of GP notes and an impact statement.
5. The matter came to a case management hearing before Employment Judge Cline on 23 June 2023. It was explained to the claimant that as he did not have two years' service and none of the exemptions to that eligibility requirement applied, the Tribunal would not have jurisdiction to hear his unfair dismissal complaint. The matter was listed for a final hearing for three days from 28 May 2024 and orders made to prepare the case for that hearing. Employment Judge Cline made case management orders for the claimant to provide his impact statement and medical records by 4 August 2023.
6. The claimant failed to comply. On 4 September 2023 a Mr Roberts wrote on the claimant's behalf saying that he was in an induced coma. The Tribunal, by Employment Judge Ross, stayed proceedings for three months. On 14 November 2023, in response to objection to the stay from the respondent, Employment Judge Dunlop required that the claimant or someone on his behalf provide details of an appropriate contact and evidence of the claimant's medical condition and incapacity. In the absence of a response that order was re-iterated to Mr Roberts on 31 December 2023 by Employment Judge Horne with a date for compliance of 4pm on 11 January 2024.

The respondent's submissions

7. The respondent submitted that the following information supports its contentions for strike out. On 12 January 2024 Mr Roberts provided to the Tribunal a letter dated 5 January purporting to be from a Professor Ley in Germany. The content of that letter, taken with content from previous letters shared with the respondent, caused the respondent to suspect that the letters had been falsified. The grounds for suspicion were:
 - a) The content of 5 January 2024 letter in which the Professor expressed a view about the employer *This tumor growth perfectly correlated with his treatment by Leep. I am therefore satisfied beyond all doubt that the rapid deterioration of his condition because of the rapid growth in tumor size is because of the stress caused to him by Leep Utility when they refused to rescind his resignation and the resulting fall out.*

- b) The content of a letter dated 17 April 2023 which refers to MRI testing taken in April 16 (it is not clear if that is a reference to 16 April 2023 or April 2016) *My professional opinion is the stress you have been subjected to in your work environment regarding your resignation is having significant detrimental impact on your recovery this has been advised previously but I understand no action has been taken by your employers to have adjusted to your needs*
- c) The fact of a letter dated 16 April 2023 referring to MRI testing in March 14 (again it is not clear is that March 2014 or 14 March 2023) and a suspicion that MRI testing would not have been undertaken on both 14 and 16 April 2023 a doctor would not write in strikingly similar terms referring to MRI tests on two consecutive dates.
- d) The fact that the letters were sent only as blurry screenshots.
- e) The failure to provide GP medical records despite the letters above purporting to have been copied to the GP
8. The respondent undertook an investigation. It contacted the Professor at his correct email address and not the address given by the claimant for him, and having sent the letters dated 16 April 2023, 17 April 2023 and 5 January 2024 to him Professor Ley replied on 25 January 2024 to say
- I can confirm that the signature does not belong to me. Whoever send you these letters it wasn't me and the last letter is dated Jan 2024 when I did not work at the Artemed Klinikum any more. And yes the RPTC is the Proton Radiation Center which is closed.*
9. The respondent also undertook social media searches and found content that suggested it had been posted by the claimant's account in a public group called the Dull Men's Club showing activity by his account, and his maps showing his phone active online in Blackpool, during the period in which Mr Roberts had said he was in an induced coma.

Determining the application

10. Today, first, I clarified the complaints, interpreting the claim form to comprise

Unfair dismissal

An unfair dismissal complaint in relation to a refusal to rescind a resignation in the context of an employment that lasted from March 2022 to February 2023.

Complaints under Section 20/21 Equality Act 2010

Failure to reasonably adjust in

- (i) failure to obtain an occupational health referral and report in March 2022
- (ii) failure to provide a return to work interview in November 2022
- (iii) failure to provide an occupational health referral report in November 2022
- (iv) failure to reasonably adjust by disregarding the claimant's resignation / allowing precision because it was based on impaired cognitive function arising out of the claimant's disability.

Complaints under section 15 Equality Act 2010

- (i) treating the claimant unfavourably in refusing to disregard the claimant's

resignation / allow its rescission and thereby effectively dismissing the claimant

(ii) the something arising out of the claimant's disability was his impaired cognitive function and consequent erroneous decision to resign.

11. The respondent agreed that interpretation.
12. I dismissed the claimant's unfair dismissal complaint as he did not have two years service.

Relevant law

13. In considering the strikeout application I had regard to rule 37 and rule 2 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 I had regard to relevant case law including Anyanwu so that I took the claimant's complaints of discrimination at their highest. In the event, I did not strike out based on prospects of success.
14. I considered that the claimant may well be someone who has or had a brain tumour and who is or was unable to engage in proceedings.
15. I heard submission under Rules 37 (1) (a) (b) (c) (d) and (e) and respond to each of them as follows.
 - a. In relation to the submissions under rule 37(1)(a) that the claim is scandalous or vexatious or has no reasonable prospect of success, I make no finding. I have heard no oral evidence from the claimant. I declined a strike out on that ground.
 - b. In relation to the submissions under rule 37 (1)(b) that the manner in which proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious I find that the conduct has been unreasonable in the following regards:
 - (i) It is unreasonable of the claimant or Mr Roberts conducting the proceedings on his behalf not to have provided medical evidence of his condition when ordered to do so by 4 August 2023.
 - (ii) It is both scandalous and unreasonable for someone either the claimant or Mr Roberts conducting the proceedings on his behalf to have provided a letter from a Professor Ley dated 5 January 2024 and provided it to Employment Tribunal and the respondent when Professor Ley did not write that letter.
 - (iii) It is unreasonable of Mr Roberts conducting the proceedings on the claimant's behalf to have said that the claimant was in a coma and not to have produced evidence of that incapacity in November 2023 when ordered to do so and again by 12 January 2024 when ordered to do so.
 - c. In relation to the application under rule 37 (1)(c) the claim may be struck out for non-compliance with any of these rules or the order of the tribunal, I find
 - (i) the claimant failed to comply with the Orders of Employment Judge Cline to produce a disability Impact statement and his GP medical records by 4 August 2023 and
 - (ii) The claimant and Mr Roberts conducting litigation on his behalf failed to comply

with the Order Employment Judge Dunlop and the order of Employment Judge Horne to produce evidence of his medical condition and incapacity by 11 January 2024.

(iii) That there was failure to comply with the case management orders of Employment Judge Cline to prepare the case for final hearing.

d. In relation to the application to strike out under rule 37 (1)(d) that it has not been actively pursued, I tracked all communications from the claimant and/or Mr Roberts throughout the litigation. The last communication from the claimant himself was on 21 June 2023. The last communication from Mr Roberts was on 12 January 2023. I had a submission from the respondent that after it had sent its application for strike out to the claimant in late January 2023, all social media activity for the claimant was taken down and it has had no communication from the claimant or Mr Roberts in relation to the preparation for final hearing which was to take place on 28 May 2023 and no communication in relation to this hearing today. I find that the failure to actively pursue these complaints caused the final hearing to be vacated.

e. In relation to the application to strike out under rule 37(1)(e) that the tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, I reject the respondent's submission that because the claimant or Mr Roberts on his behalf may have falsified a report from doctor, that would necessarily mean that his credibility overall was so impugned that it would be impossible to have a fair hearing. It is just possible in this case that the claimant himself may not have been involved in any falsification, or that even if he was involved the tribunal may find that his credibility in relation to his medical position was called into question, but not his credibility in relation to other matters. I declined to strike out under rule 37(1)(e).

16. Accordingly, the claimant's claim was struck out under rule 37(1)(b)(c) and (d).

17. I find that the unreasonable (and scandalous in relation to the falsified medical letter) conduct caused the respondent to incur cost and to undertake investigation into suspicious circumstances around the medical evidence and coma which it would not otherwise have had to incur. I have not determined the impact of non-compliance and failure to actively pursue on the respondent today.

18. The respondent wishes to make a costs application. I have not listed that application today. I will send these full reasons for my decision on strike out to the parties. The respondent may then make its costs application in writing, accompanied by a costs schedule dealing chronologically with the expense to which it was put in the ordinary conduct of proceedings and in the extraordinary requirements of the investigation into the suspicious circumstances relating to the medical evidence in this case, and will copy its application and schedule to the claimant.

19. I understand it is the intention of the respondent to refer the falsification of the medical letters to the police for criminal investigation. I have made no factual finding in relation to the alleged falsification and defer in that regard to any determination by a higher court.

Case Number: 2403640-23

JUDGMENT SENT TO THE PARTIES ON

4 July 2024

FOR THE TRIBUNAL OFFICE