



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Boyd

Respondent: Charity Commission

Heard at: Manchester (by CVP)

On: 6 August 2024

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: In person

Respondent: Mr A Jones, Counsel

JUDGMENT having been sent to the parties on 8 August 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the respondent as a contact centre officer until 31 May 2023. She has brought a number of claims against the respondent, the vast majority of which were unaffected by the issue being addressed. I was considering an application to strike out which applied only to the claim brought by her for breach of the duty to make reasonable adjustments, relying upon Mr Boyd's disability. The claimant also has a claim for breach of the duty to make reasonable adjustments relying upon her own disability, and that claim was not one I was considering.

Claims and Issues

2. As part of her claim, the claimant had included a claim for breach of the duty to make reasonable adjustments relying upon her husband's disability.

3. In her claim, the claimant said that one of the complaints that she raised was that her husband's vulnerability as a result of his disabilities were such that the respondent should have made reasonable adjustments in relation to the claimant's work. The provision, criterion or practice (PCP) was said to have been requiring the claimant to work from the respondent's offices for some of her working time. The

reasonable adjustment which she said should have been made, was allowing the claimant to work from home on a permanent basis.

4. The respondent conceded that Mr Boyd had a disability at the relevant time. However, what the respondent disputed was that the claimant was able to pursue a claim for breach of the duty to make reasonable adjustments relying upon somebody else's disability. That is something commonly known as associative discrimination. I was considering an application to strike out the claimant's complaint of breach of the duty to make reasonable adjustments as an associative discrimination claim, as the respondent contended the complaint had no reasonable prospect of success.

Procedure

5. The claimant represented herself. Mr Jones, counsel, represented the respondent.

6. The hearing was conducted by CVP remote video technology, with both parties attending remotely by video.

7. A bundle of documents was provided in advance of the hearing. Mr Jones had also prepared a skeleton argument which had been provided in advance. I did not hear any evidence. Each party was given the opportunity to make submissions. Mr Jones made brief verbal submissions, primarily relying upon his written skeleton argument. The claimant also made verbal submissions.

8. I adjourned to consider my decision. I informed the parties of my decision and the reasons for it. The claimant has subsequently requested written reasons for my decision, so these written reasons have been provided.

Facts

9. The only facts relevant to this decision, were that the claimant, who was employed by the respondent, wished to rely as part of her claim for breach of the duty to make reasonable adjustments, on her husband's disability. It is not in dispute that Mr Boyd had a disability at the relevant time.

The Law

10. Rule 37(1) and the relevant part of rule 37(1)(a) of the Employment Tribunal rules of procedure says:

"... a Tribunal may strike out all or part of a claim ... on any of the following grounds –

(a) that it ... has no reasonable prospect of success"

11. In **Cox v Adecco** UKEAT/0339/19 the Employment Appeal Tribunal said the following:

"(1) No-one gains by truly hopeless cases being pursued to a hearing;

(2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;

(3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;

(4) The Claimant's case must ordinarily be taken at its highest;"

12. In his skeleton argument, the respondent's counsel referred to **Anyanwu v South Bank Students' Union** [2001] IRLR 305 and **North Glamorgan NHS Trust v Ezias** [2007] IRLR 603 and said that what is required is that a claim has a realistic prospect of success, being one which is more than merely arguable (he said fanciful, false and imaginary prospects should be discounted).

13. Section 20 of the Equality Act 2010 says:

"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

14. The respondent's primary argument was based upon the decision of the Court of Appeal in **Hainsworth v Ministry of Defence** [2014] EWCA Civ 763. I reminded myself of what exactly the Court of Appeal had said in that decision. It had been conceded on behalf of the appellant in that case that a purely literal approach to what is said in the Equality Act 2010 meant that an employer only owed a duty to make reasonable adjustments in respect of a person with a disability who was the employee or applicant. The Court of Appeal did not find that the appellant's other arguments (based upon Article 5 and/or **Coleman v Attridge Law** [2008] IRLR 722) meant that the Equality Act should be read more widely. In his skeleton argument, the respondent's counsel set out what was considered and determined in that case in considerably more detail, and he also explained what had been proposed in the Employment (Reasonable Adjustments for Carers) Bill which had not become law.

15. In her response to the application, the claimant had raised two cases which she said supported what she had to say. Those were both Employment Tribunal decisions which involved the dismissal of carers. They were **Gibson v Lothian Leisure** 4105009/2020 and **N Quelch v Courtiers Support Services Ltd** 3313138/2020. The respondent's counsel addressed those cases in his skeleton argument. As they were decisions with which I was not familiar, I also ensured that I looked at them prior to the hearing. In summary, those cases considered unfair dismissal claims and not claims for breach of the duty to make reasonable adjustments.

Applying the law to the Facts

16. What I was considering was an application under rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013. I have the power under that rule to strike out a claim. The questions for me were whether the complaint had no reasonable prospect of success, and, even if that was established, then I still needed to be persuaded to exercise a discretion to strike out the complaint.

17. I based what I considered on the case called **Cox v Adecco**, and that was a case where the Employment Appeal Tribunal made some general points. Some of the points they made were:

- No-one gains by truly hopeless cases being pursued to a hearing;
- Strike out is not prohibited in a discrimination case, but special care must be taken in such cases as it is what is called "*rarely appropriate*";
- If the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, then it is unlikely for strike out to be appropriate; and
- I must take the claimant's case at its highest. What that meant was that for the decision I made I assumed that the claimant would prove everything that she said in the final hearing.

18. The way that the law is written on reasonable adjustments is what is said in section 20 of the Equality Act 2010, and the way it is written is very specific to a claimant. The duty only applies if it is the claimant personally who is placed at the disadvantage and the disability must be the claimant's disability. That differs from other parts of the Equality Act 2010 where the same is not true. That meant that the claimant could not rely on Mr Boyd's disability for a claim for breach of the duty to make reasonable adjustments. That was right looking at how the law is written – what is described as taking a purely literal approach to what is written in the Act.

19. The Court of Appeal in the case of **Hainsworth v The Ministry of Defence** also said that was right and I must (and any Tribunal must) apply the law in the way that higher courts like the Court of Appeal tell us we should apply the law.

20. There is in my view no genuine doubt that that is the correct legal position. What that meant is that the claimant had no prospects of success whatsoever in a claim for breach of the duty to make reasonable adjustments relying upon Mr Boyd's disability.

21. I considered the two Tribunal cases that the claimant referred to. Those were claims that were primarily about unfair dismissal, they were not about disability discrimination. The claimant will be able to refer to her husband, his disability, and the reasons why she felt unable to attend work or had difficulties in attending work, as part of the other claims that are going forward, including her unfair dismissal claim. I was not stopping the claimant from referring to her husband or those reasons when her case goes forward.

22. What I decided was that this complaint for breach of the duty to make reasonable adjustments relying upon what is called “associative discrimination”, in practice here Mr Boyd’s disability, was struck out because it had no prospect of success. That was because the particular part of the law (section 20 of the Equality Act 2010) does not provide for a claim in these circumstances, relying upon Mr Boyd’s disability.

23. I did understand the claimant's concerns that she voiced about the law and being able to pursue a claim herself, representing herself. Employment Tribunals are used to hearing claims brought by people representing themselves. The claimant is able to pursue all her other claims apart from the one complaint that I struck out, and I am pretty sure that the claimant will be able to put her case forward effectively at the final hearing. It was, to an extent, my job to apply the law and to understand the law and it will be for the Tribunal at the final hearing to understand the law and apply the law in the claimant's case. Unfortunately for the claimant, on this particular issue, this specific type of claim is not one that the law allows.

24. As I struck out the complaint, I did not need to go on and consider the question of a deposit (and have nor reproduced in these reasons what was submitted about making an order for a deposit).

Employment Judge Phil Allen

Date: 13 August 2024

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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