EMPLOYMENT TRIBUNALS

Claimant: J P Flint

Respondents: Wilson James Ltd (1)
Jones Lang Lasalle Ltd (2)

Heard at: Reading (by video) **On:** 23 September 2024

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: David Mitchell, of Counsel, instructed by Piers Chadwick of KLC Employment Law Consultants (1)

Sarah Harty, of Counsel, instructed by Laura Binnie of BDB Pitmans LLP (2)

JUDGMENT

1. The claim against the 2nd Respondent is dismissed.
2. That part of the claim against the 1st Respondent which relates to actions of the 2nd Respondent, or any of its personnel is dismissed.

REASONS

1. The history of this claim is:

   1.1. It was filed on 13 February 2022. It claimed disability discrimination, with an Acas early conciliation certificate number R113130/22/30.
   1.2. The 2nd Respondent entered an appearance on 05 February 2022.
   1.3. The 1st Respondent entered an appearance on 06 February 2022.
   1.4. The Tribunal file was mislaid.
   1.5. In February 2024 the 1st Respondent asked about the case.
   1.6. On 23 April 2024 the Tribunal wrote to the parties to explain.

1.7. On 28 May 2024 a Case Management Hearing was listed.
1.8. This took place on 08 July 2024, and this hearing was listed.

2. The Case Management Order set out the purpose of this hearing:
   2.1. To consider any application the Claimant might wish to make to amend his claim, as the ET1 indicated that he thought he would soon be dismissed on capability grounds, and he was so dismissed, on 14 February 2022, after being away from work since 03 November 2021 from work related stress.
   2.2. To consider whether the Claimant had a claim against the 2nd Respondent under S41 of the Equality Act 2010 (contract workers).
   2.3. Whether to strike out any of the claims as having no reasonable prospect of success.
   2.4. To make case management orders for any claims not struck out.
   2.5. To list a final hearing.

3. The following documents were then filed.

   3.1. On The Claimant then filed a new ET1, on 22 July 2024. He cited the same case number and gave the same Acas early conciliation certificate numbers as were on the claim form filed on 13 February 2022. In box 8.1 he ticked the box for unfair dismissal as well as the box for disability discrimination. He added the same additional claim contained in the original ET1 of *"Bullying and Harassment by Caroline Jones and Peter Griffin"* (both of the 2nd Respondent), and also a second additional claim of *"Unfair dismissal"*, and the remedy sought part of the form set out a claim for a compensatory award of £31,503.96.

   3.2. Also on 22 July 2024 the 2nd Respondent made application to strike out the claim against them, on the basis that the Claimant could have no claim against them as they had not been his employer, and as they were a customer of the 1st Respondent the Claimant could not have been a contract worker for them, and so S41 of the Employment Rights Act 1996 could not apply to the Claimant. They attached a judgment from another case, made of the Tribunal's own volition, striking out a similar claim made by another individual.

   3.3. The 1st Respondent then filed an amended Grounds of Resistance, on 14 August 2024, and the 2nd Respondent did likewise on 15 August 2024.

4. The 1st and 2nd Respondents both accept that the Claimant's back problems amount to a disability affecting the Claimant at all material times, and that they knew of that disability at all material times.

5. The 1st and 2nd Respondents each seek the striking out of the claims against them under Rule 37 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

   *"**Striking out***

   ***37.**— (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*

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

6. As a general principle, discrimination cases should not be struck out, save in the clearest circumstances. The Claimant's case is to be taken at its highest. There are sound public interest reasons for the test being a high threshold. Ahir v British Airways Plc [2017] EWCA Civ 1392 provides clear guidance to be applied in applications such as this. I have read and considered that guidance in coming to my conclusions. I note that this is only to be done in the clearest of cases and is an exceptional course[1]. Nevertheless, it would be to shirk judicial responsibility not to do so in an appropriate case[2].

7. The claim against the 2nd Respondent relies on S 41 of the Equality Act 2010 states:

> *"Contract workers*
>
> *(1) A principal must not discriminate against a contract worker—*
> *(a) as to the terms on which the principal allows the worker to do the work;*
> *(b) by not allowing the worker to do, or to continue to do, the work;*
> *(c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;*
> *(d) by subjecting the worker to any other detriment.*
>
> *(2) A principal must not, in relation to contract work, harass a contract worker."*

8. It is this section of the Equality Act 2010 which the Claimant relies on to bring a claim against the 2nd Respondent, as his claim of 13 February 2022 was that two employees of the 2nd Respondent had bullied and harassed him.

9. The Claimant was not a contract worker for the 2nd Respondent. His Particulars of Claim states *"I have worked for Wilson James since July 2018",* and *"In March/April 2022 I applied for a new role at a client site"* (the 2nd Respondent's premises). He described his job as *"Deputy Site Security Manager"*. The *2nd* Respondent was a client or customer of the 1st Respondent. The Claimant was no more a contract worker for the 2nd Respondent than is any employee of any business who works at the customers premises.

10. As the Claimant was not a contract worker for the 2nd Respondent, I strike out the claim against them as having no reasonable prospect of success.

11. The claim against the 1st Respondent seeks to make them liable for actions of employees of the 2nd Respondent for alleged bullying and harassment connected with his disability of back problems. The matters complained of relate to the 2nd Respondent insisting to the 1st Respondent that the Claimant work at their premises, and not from his home, a two hour journey each way.

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[1] §11 of *Ahir*, and I note that §14 does not render a judgment unsound because it does not cite all the cases, as long as the relevant principles are applied.
[2] §16 of *Ahir*

12. The Claimant does not suggest any way that the 1st Respondent could refuse the 2nd Respondent's requirement that he work from their premises. That was what the role entailed, and it was only the issues arising from Covid-19 that had led to a period when he worked remotely: there was little going on at their premises during lockdowns.

13. Even if the way the 2nd Respondent's managers went about this (and I make no finding that this was so but take the Claimant's case at its highest) amounted to bullying and harassment that could not give rise to a claim of disability discrimination harassment by the 1st Respondent.

14. This is not a sustainable claim and has no reasonable prospect of success. I strike out the claim of disability related harassment (by employees of the 2nd Respondent) against the 1st Respondent as having no reasonable prospect of success.

15. I did not permit the amendment to include a claim of unfair dismissal and so did not decide the 1st Respondent's application to strike out a claim of unfair dismissal. In case Mr Flint thinks this an unfair technicality (as he said in his claim form on 13 February 2022 that he expected to be dismissed soon, as was, a week later, had I permitted the amendment I would have struck out that unfair dismissal claim. This is because Mr Flint was not able to say that Wilson James could have found him another role once Jones LaSalle decided that he must work at the client's premises, and because when he was dismissed he had been off work for over 3 months with no prospect of imminent return (and unfortunately Mr Flint remains unable to work for the same reason) and so the capability dismissal (though illness) was inevitable and was not unfair.

Employment Judge Housego

Date 23 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

3 December 2024

FOR THE TRIBUNAL OFFICE