



EMPLOYMENT TRIBUNALS

Claimant: Ms L Dethling

Respondent: Police Federation of England and Wales

Heard at: Watford (by CVP)

On: 5 February 2025

Before: Employment Judge Emery

REPRESENTATION:

Claimant: In person

Respondent: Ms K Gardiner (counsel)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

1. The following complaints are struck out under Employment Tribunal Rule 37(1)(a) because they have no reasonable prospect of success.
 - a. discrimination arising from disability (s.15 Equality Act 2010)
 - b. victimisation having raised a protected act to the respondent (s.56A EqA 2010)
 - c. that the respondent aided a contravention of the Equality Act by the instructions it gave to its solicitors to withhold legal advice from her (s.111A EqA 2010).
2. The complaint of breach of contract is struck out because the Employment Tribunal has no jurisdiction to hear this complaint.

REASONS

1. Reasons were given at the hearing; written reasons were requested.
2. The applications being considered are:
 - a. The claimant's application to amend her claim to include a claim of s.27 Equality Act victimisation
 - b. The respondent's application to strike-out all claims including the victimisation claim on the basis they stand no reasonable prospects of success, alternatively that the claimant pay a deposit as the claims stand little reasonable prospects of success.
3. The respondent prepared a bundle, the claimant provided additional documents which she contends are relevant. Ms Gardiner provided an opening argument. I heard submissions first from Ms Gardner, then from the claimant, and I allowed both an opportunity to respond to each other's arguments. We had breaks throughout the hearing. I asked lots of questions of both parties and at several points I outlined the legal issues which were relevant to determining the arguments. I set out the principle legal arguments within each section, set out below.

Victimisation amendment – time

4. But for the issue on prospects, I would have allowed this amendment on a just and equitable extension of time, considering the principles in *Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore* [1996] IRLR 661.
5. The claimant referenced s.57(5) Equality Act in her claim – which she believes is the jurisdiction for a victimisation claim against the Police Federation. The facts relevant to the victimisation claim are set out in her claim form. It is therefore questionable that an amendment application is required. But if it is required, it was made prior to the Case Management discussion, and prior to the withdrawal and strike-out of her whistleblowing claims. I see little prejudice to the respondent by allowing this application.
6. I did not accept the respondent's argument that the claimant is estopped from bringing a victimisation claim as the same facts had been addressed on the withdrawal of the whistleblowing claim, as I accept that the s.57(5) claim had already been alleged in her claim form; this allegation was not withdrawn.

Prospects of success – principles

7. I considered the following legal principles:
 - a. Rule 38 of the Employment Tribunal Rules of Procedure 2024:

"(1) The 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
 - b. The claimant's case must be taken at its highest when considering this application
 - c. Strike-out is so draconian, that it should only be used in the rarest of cases
 - d. But tribunals may strike out where it is satisfied there is no reasonable prospects of success, in particular if it is "satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment..."

Victimisation – prospects

8. The respondent argues the protected acts post-date the principal acts of alleged detriment. The claimant disagrees saying that her protected acts were made prior to her appeal against the refusal of legal cover, and the principal detriment flows from her appeal - the failure to give her the legal advice the respondent obtained in considering her appeal. The precise dates of acts and detriments are a disputed issue of fact, and this contested issue did not form part of my decision.
9. Instead, my judgment that this claim stands no reasonable prospects is based on the nature of the detriment alleged: the withholding of legal advice. The claimant accepts that the respondent has a policy of withholding the legal advice it gains when it seeks a lawyer's assessment of the prospects and value of employment tribunal claims. The respondent says it has this policy because of the risk that the legal advice will be used against it in a complaint or in legal proceedings, and I accept that this is the reason for its policy.
10. I also accept the respondent's second argument, that it genuinely believes that the advice is subject to legal professional privilege, as the advice is sought by the Union, who is the 'client' for the purposes of this advice. I accept that the respondent is highly likely to succeed at a full merits hearing in its argument that it does not consider itself obliged to provide legal advice to its members is because it genuinely believes it is covered by legal professional privilege.

11. It follows that I do not accept the claimant will be able to show that the reason why the advice was withheld was because she made a protected act. The claimant must show that had she not made a protected act, the respondent would more likely than not have exercised a discretion in her favour. But it is not alleged, and there is no evidence, that the respondent has exercised discretion on an individual basis in other cases.
12. The respondent is highly likely to be able to show that it was not prepared to release this legal advice to the claimant because it had a policy not to release legal advice.
13. There is another issue of evidence which supports this view. The claimant was initially not given the original legal advice, prepared by the respondent's panel solicitor and which was used to deny her legal support. She sought and gained this legal advice from the panel solicitor who prepared it.
14. The claimant then sought counsel's opinion on this advice, counsel's opinion was highly critical of it, and the claimant and her lawyers sought to use these criticisms in the appeal, to persuade the respondent to provide legal assistance to her. But, rightly or wrongly, this is exactly what the respondent's policy was designed to avoid.
15. Given this history, I conclude that it is highly likely that the respondent will be able to show that its decision to withhold the legal advice it gained on appeal was made under its policy, to avoid further challenges which is what the policy was designed to prevent, and that the claimant will not be able to show that it was because of any protected act she may have made.
16. I do not consider this claim stands any reasonable prospects of success.

S.15 claim

17. In her further information, the claimant clarified the 'something arising' as follows:

"The Respondent argues that I failed to establish a causal nexus between my disability and the unfavourable treatment. However, my need for legal advice arose as a direct result of my job loss due to discrimination, which is clearly linked to my disability. This satisfies the "something arising" requirement under Section 15".
18. In other words, the claimant lost her job due to disability discrimination, her job loss therefore arises from disability, and she was denied legal assistance for a reason linked to disability. I considered and discussed the following cases with the parties:

- a. iForce Ltd v Wood UKEAT/0167/18 - it is clear that the s.15 test can arise from a series of links. Nevertheless, it is important that there still has to be some connection between the 'something' and the claimant's disability.
 - b. Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, EAT: disability must be 'a significant influence ... or a cause which is not the main or sole cause, but is nonetheless an effective cause of the unfavourable treatment'.
 - c. Risby v London Borough of Waltham Forest UKEAT/0318/15 - using offensive and racist language: while a 'shortness of temper' did not arise from disability, factors associated with his disability was a cause of his loss of temper and this is a sufficient causal link between the disability and something arising from it.
 - d. Pnaiser v NHS England [2016] IRLR 170, EAT: What is "something arising in consequence of disability"? "the statutory purpose which appears from the wording of s.15, *namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment...*" (my italics).
19. I could not accept that the claimant has an arguable s.15 case, for the following reason: the something arising from disability must be connected to the disability itself – it must be a "consequence of a disability" or the "effects of a disability".
 20. The claimant argues she was dismissed because she was disabled, and that this is in consequence of disability. But dismissal is not a consequence of the claimant's disability, or an effect of the disability, it is a separate event.
 21. The claimant may have a valid argument that she was constructively unfairly dismissed for a reason arising in consequence of disability, for example her employer's response to her sickness absence; these are claims still to be adjudicated against her former employer.
 22. But it is a step beyond that causal requirement to say that the dismissal itself is a consequence of her disability or an effect of her disability. This allegation therefore stands no reasonable prospects of success.

s.111A Equality Act claim. (Instructing, Causing, or Inducing Contraventions of the EqA)

23. In her further particulars, the claimant articulates this claim as follows;

The Respondent's policy of not sharing legal advice with their members, as evidenced by their terms of business with Haighs Law, caused Haighs Law to contravene the EqA by withholding my legal advice. Additionally, the

Respondent expressly instructed various individuals not to share the advice with me, further demonstrating their role in causing the contravention.

24. The difficulty with this claim is similar to the victimisation claim above. Another significant issue is the fact the claimant must prove that a 3rd party solicitor victimised by not giving her the legal advice it had prepared for the respondent. In other words, it took this decision on instructions from the respondent because the claimant had raised a protected act. But, as above, the respondent's policy is to withhold its legal advice from members, and the same issues on prospects of success apply.

Breach of contract

25. Employment Tribunals Act 1996 s.3 - Power to confer further jurisdiction on employment tribunals
- (1) The appropriate Minister may by order provide that proceedings in respect of—
 - (a) any claim to which this section applies, or may, subject to such exceptions (if any) as may be so specified, be brought before an employment tribunal
 - (2) Subject to subsection (3), this section applies to—
 - (a) a claim for damages for breach of a contract of employment or other contract connected with employment...

Harvey on Employment Law – Practice And Procedure PI paragraph 52: “It is to be noted that, in respect of s 3(2), the 'other contract' referred to must be one that the claimant has with his or her employer, and does not include a contract with a non-employer respondent even if it is connected with employment (Oni v UNISON Trade Union UKEAT/0092/17, [2018] ICR 1111)”.

26. I accept the respondent's arguments, which addressed the case of Oni and the above passage from Harvey. In summary, the argument is that the respondent has no sufficient connection with the employer to enable the tribunal to have jurisdiction to consider a breach of contract claim. I accept that the law is clear: contract claims in the employment tribunal solely relate to claims against the employer existing at termination of employment.
27. I do not accept the claimant's case that the unique position of the Police Federation, the only organisation which is open to Metropolitan Police Officers to join, is a relevant factor: this does not make the respondent sufficiently connected to be seen as 'the employer'. This claim is dismissed as the tribunal does not have jurisdiction to hear this claim.

Employment Judge Emery

Case number: 3300531/2024

5 February 2025

Judgment sent to the parties on:
22 February 2025

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For the Tribunal:

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