EMPLOYMENT TRIBUNALS

Claimant: Mr C A Ambrosino

Respondent: HMG

Heard at: London Central Employment Tribunal
On: 25 March 2025

Before: Employment Judge Keogh

Appearances
For the claimant: Did not attend and was not represented
For the respondent: Ms L Hitchman (Counsel)

JUDGMENT

1. The claimant's application to amend the claim to substitute Sir Keir Starmer, the Prime Minister, as a respondent is refused.

2. The claim is struck out.

3. The claimant's application to strike out the response is refused.

REASONS

Procedural background

1. The claim form in this matter was presented on 10 August 2024. The nature of the claim is discussed below. The claim was brought against 'HMG', which it appears from correspondence is intended to stand for His Majesty's Government.

2. A response was presented by the Cabinet Office on 9 September 2024, on the basis that 'HMG' was not a valid respondent because it is not an authorised government department against which a claim can be presented for the purposes of section 17 of the Crown Proceedings Act 1947. Various other preliminary points were raised, including that there were insufficient particulars for the respondent to provide a detailed

response, and further information was sought in particular about who the claimant said his employer was and whether he was employed by a government department.

3. An initial consideration of the claim under what is now Rule 27 of the Employment Tribunal Procedure Rules 2024 took place on 14 October 2024 by Employment Judge Forde. This noted that the claim and response could not proceed, because the claim did not provide any details of a place of work, a period of work or the nature of the discrimination alleged, and it appeared to be a misguided claim in relation to government policy directed at the Prime Minister. It also noted that the claimant had responded to the respondent's request for further information inadequately. However, no further instruction was given at that time as to how to deal with the matter.

4. By an application dated 29 November 2024 the Cabinet Office, on behalf of His Majesty's Government, applied to strike out the claim.

5. On 4 December 2024, by coincidence two Judges considered the file.

6. Employment Judge Webster considered the respondent's application to convert the case management hearing due to take place on 17 December 2024 to a public hearing for the strike out application to be considered, and refused this. She determined that whether a further hearing was needed would be discussed at the case management hearing.

7. I pause here to note that it appears from subsequent correspondence that the claimant believes that Employment Judge Webster's Order was refusing the strike out application itself, and finding in his favour on the points raised. That is plainly not the case. Employment Judge Webster was merely saying that it would be decided at the listed case management hearing whether there should be a further hearing to consider the strike out application. She made no determination of the application whatsoever, nor gave any indication as to her views on the merits or otherwise of the application.

8. On the same day Employment Judge Burns progressed the initial consideration, sending out a notice to the claimant pursuant to what is now Rules 27 and 28 stating that she was of the view that the Tribunal had no jurisdiction to consider the claim and that the claim had no reasonable prospect of success, because it did not detail a place of work, period of work, nature of discrimination alleged or any details. It was ordered that the claim would stand dismissed on 14 December 2024 without further order, unless before that date the claimant explained in writing why the claim should not be dismissed.

9. Both decisions were sent to the parties, starting with that of Employment Judge Webster.

10. The claimant wrote to the Tribunal on 5 December 2024, asserting that the replacement of Employment Judge Webster's Order with that of Employment Judge Burns was variously "irregular activity favouring [Sir Keir Starmer]", "an illegal series of events" and "corruption", and indicating that if this was not rectified he would be approaching the national press.

11. Employment Judge Burns responded the same day, noting that when she gave her instructions, she was not aware that the respondent had requested that the case management hearing should be converted into a preliminary hearing in public or that the application had been refused, and since that decision had been communicated to the parties before her Order under Rule 27, it was sensible to withdraw her order and allow the case management hearing to proceed. She therefore stated that the parties should disregard the Rule 27 notice.

12. On 6 December 2024 the hearing of 17 December 2024 was postponed and a fresh notice of hearing sent out for a preliminary hearing in public on 25 March 2025 to consider:

    (i) Rule 27(3)
    (ii) If necessary, the respondent's application that the claim be struck out because it is scandalous or vexatious or has no reasonable prospects of success.

13. On 7 December 2024 the claimant applied to strike out the response, stating that the government was a non-legal entity and therefore the individual members of the unincorporated association were to be held personally liable, namely Sir Keir Starmer. On the same day he requested that any hearing be in person, as he had unreliable internet coverage.

14. Despite Employment Judge Burns' explanation as to the timing of the Rule 27 notice and her instruction that the parties should disregard it, the claimant continued to correspond on that point.

15. On 20 December 2024 the claimant formally applied to amend his claim, namely to substitute Sir Keir Starmer as the respondent on the basis that he was ultimately responsible for the alleged discrimination against the claimant. The respondent objected on the basis that the claimant was not employed by the Prime Minister, and the application was without merit and an abuse of process.

16. On 5 January 2025 the claimant applied to postpone the hearing stating that he thought he was suffering from Covid. The respondent objected to this in the absence of medical evidence. It was also noted that the claimant had still not provided any contract of employment.

17. Employment Judge Goodman considered the application and a letter was sent to the parties on 10 January 2025 stating that the hearing was for a case management discussion which would normally be held remotely but for the claimant's unreliable internet connection, and ordering the claimant

to provide medical evidence confirming that he was too ill to travel and when he expected to be fit, so that consideration could be given to his application to postpone the hearing. He was also ordered by 3 February 2025 to provide the name and address of the person he cared for, the name and address of any person or body (such as an agency) through which he worked to provide care, and to send any copies of any documents which set out the terms on which he was to provide care and what the payment arrangements were.

18. The claimant responded on 13 January 2025 asserting that he had already provided sufficient information to clarify his application.

19. Considerable further correspondence followed, however the claimant did not provide any medical evidence at any point.

20. On 27 January 2025 Regional Employment Judge Freer determined that the hearing on 25 March 2025 would be an in-person hearing, and would remain as listed because the claimant had not provided any independent medical evidence that he was too unwell to attend on that date. He stated that the first part of the preliminary hearing would be case management as previously suggested by Employment Judge Webster, at which the claims and issues could be clarified, and this may be followed, at the hearing judge's absolute discretion, by a public preliminary hearing to consider the matters listed by Employment Judge Burns (i.e. the points contained in her Rule 27 notice in respect of jurisdiction and prospects of success, which are the same points as were raised in the respondent's application to strike out the claim).

21. The respondent emailed the claimant the day before the hearing to ask the claimant to confirm whether he would be attending. The response received did not answer this question (but suggests the claimant was still receiving email correspondence).

22. The claimant did not attend the hearing. The start of the hearing was put back so that the clerk could attempt to contact him by telephone and email. The claimant did not answer his telephone and did not respond to the email sent. As the claimant had not provided any indication why he was not present or any medical evidence to renew his application to postpone, I determined the hearing should continue in his absence. As the claims could not be further clarified by him, I converted the matter to a public preliminary hearing as Regional Judge Freer had invited to consider the matters raised in the respondent's strike out application, it being otiose to consider a fresh notice under Rule 27 given the notice the claimant had been given that such matters may be considered at the hearing.

The claim and issues

23. According to the claim form at box 8.1, the claimant brings a claim of age discrimination. The claimant confirms at box 4.1 of the claim form that he

does not work for the respondent he is making a claim against. No employment details are provided at boxes 5 to 7. The particulars at box 8.2 state:

"I am employed as a full time carer for HMG duty of care & I receive below the National Minimum Wage for a person in my age group, being 61 on 26.11.24. I am legally entitled to receive the current level of pay amounting to £11.44 per hour & unfortunately & regrettably I only receive app £130 per week instead."

24. In the compensation section at box 9.2 the claimant seeks compensation and the following recommendation:

"Recognise carers are public sector workers & HMG has a duty of care to all concerned & to stop this discrimination from continuing immediately."

25. The claim on its face is difficult to understand. There is an inconsistency between the claimant stating on the one hand at box 4.1 that he does not work for the respondent and on the other stating at box 8.2 that 'HMG' is his employer.

26. As the claimant did not attend the hearing it was not possible to confirm the basis of his claim, and in particular why he suggests he is employed by the government as a carer and what he says amounts to age discrimination and on what basis. I therefore took time to read voluminous correspondence sent by the claimant to see if I could discern the nature of his claim.

27. In an application dated 25 January 2025 the claimant states, *"I thoughtfully made a proposition to settle the matter. The offer involved increasing Carer's Allowance by £55 per week…"*

28. In an application to the Tribunal on 27 January 2025, which starts somewhat unusually as a poem, the claimant wrote:

"I travelled near & far & behold a bevy of beautiful maidens standing in a corridor. They had been summonsed to appear, an employment rights judge did despair.

All the lady's had been victimised by the authorities to work underpaid, it was clear as daylight to each & every maid.

The fact we work 35 hours per week for a fraction of the statutory wage, cleaning washing emotionally supporting, had unfortunately been disregarded.

We do so very much hope the judiciary can listen to our cause, they told me in a very saddened voice.

Explain the meaning of a contract dear ladies all, you signed, the employer signed off on the agreement & you were accordingly paid in accordance with the bare essential facts explained within the contract involving a care service provided & subsequently requiring the number of hours to be worked being 35 hours per week, the 123 question questionnaire was completed, now explain your grievances that you should embark on this very day, set out your stall.

We all signed a 123 question questionnaire & returned it to be considered and accepted by our employee, unfortunately after the contract agreement was undertaken, our payments did at no time reflect the statutory amount & considered a discrimination under the EA2010 section 149 you have a copy in front of you on your polished oak desk right there.

How wrong you are, just because the unincorporated association makes a payment to you of £133 per week covering a 35 hour full time described work arrangement, you are unemployed & should you not deliver on those set number of hours, the contract enables the return of all the money, including if you are paid 1p over the allowed income threshold amount, the individual members are not able to be held vicariously liable because a mystery piece of legislation forbids this interpretation, we the amazing judiciary rely on mystical interpretation & that is going to be as far as you are allowed to interfere in government controlled affairs."

29. In email correspondence with the respondent dated 11 February 2025 the claimant indicates: *"I have read the government information about what constitutes a contract & I cannot identify how you pontificate I don't have a contract with the organisation & in particular the individual. My understanding is A I have terms & conditions after B explaining my acceptance to an employment opportunity, it was accepted, 35 hours per week with paid holidays & a withdrawal of terms & conditions if I failed to satisfactorily complete the required standard of work C the work consists of 35 hours per week – the 123 question questionnaire care work was completed & a date to start work agreed – payments consist of carers allowance topped up with carers element a part of UC – this equates to £133 NI paid, … I am of the opinion I have a care prover work agreement with the defendant…"*

30. It appears from this and other correspondence in the bundle that the claimant is a carer in receipt of Universal Credit and Carer's Allowance, totalling around £130 per week. It appears to be the claimant's argument that the 35 hours of care he provides each week should be considered 'work', that the questionnaire completed on application for the Carer's Allowance should be treated as a contract of employment, and the government his 'employer' for the purposes of the Equality Act 2010 (as to which he contends in his application to amend that the correct person to be the respondent is the Prime Minister).

The respondent's application

31. The basis of the application to strike out is, in summary:

    (i) 'HMG' is not a valid respondent (as set out in the response);

    (ii) The claimant was not an employed by the Cabinet Office for the purpose of section 83(2) of the Equality Act 2010, not was he a job applicant such as to bring his claim within section 39 of the Equality Act 2010. The Tribunal therefore has no jurisdiction to hear the claim under section 121 Equality Act 2010;

    (iii) Nor does the claimant's application dated 20 December 2024 to substitute Sir Keir Starmer, the Prime Minister, as a respondent assist him. The claimant was not employed by the Prime Minister nor was he a job applicant, and it is contended that application is an abuse of process;

    (iv) The claimant has not provided any information as to his alleged employer or any employment contract.

    (v) In the circumstances the Tribunal lacks jurisdiction to hear the claim, alternatively it is scandalous and vexatious and has no reasonable prospect of success.

    (vi) It is also scandalous and vexatious and has no reasonable prospect of success because it is inadequately particularised and contains no discernible cause of action.

32. The respondent provided detailed written submissions in support of the application, which I considered. I did not require the respondent to make oral submissions.

33. No submissions were received from the claimant.

The law

34. Rule 38(1)(a) provides:

    "(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—
    (a) that it is scandalous or vexatious or has no reasonable prospect of success"

35. The jurisdiction for Employment Tribunals to hear claims under the Equality Act 2010 derives from section 120 of that Act:

"(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—
(a) a contravention of Part 5 (work);
(b) a contravention of section 108, 111 or 112 that relates to Part 5."

36. Sections 108, 111 and 112 relate to relationships that have ended, instructing, causing or inducing contraventions and aiding contraventions, and section 121 deals with Armed Forces cases, none of which are relevant in this case.

37. Section 39 of the Act is the first section in Part 5, which provides:

"(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment…"

38. The interpretation of this section is dealt with in section 83 of the Act, which provides:

"(2) "Employment" means—
(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
(b) Crown employment;
(c) employment as a relevant member of the House of Commons staff;
(d) employment as a relevant member of the House of Lords staff."

39. For the avoidance of doubt, 'Crown employment' is defined for this purpose in section 191(3) of the Employment Rights Act 1996 as follows:

"In this Act "Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision."

40. Section 149 of the Equality Act 2010, which is mentioned in the claimant's correspondence, is the public sector equality duty, which sets out what a public authority must do in the exercise of its functions as regards eliminating discrimination and advancing equality of opportunity. It falls

under Part 11, Chapter 1 of the Act. Section 156 confirms that a failure in respect of a performance of a duty imposed by or under that chapter does not confer a cause of action at private law.

41. The Carer's Allowance is enshrined in section 70 of the Social Security Contributions and Benefits Act 1992:

"(1) A person shall be entitled to a carer's allowance for any day on which he is engaged in caring for a severely disabled person if–

(a) he is regularly and substantially engaged in caring for that person;
(b) he is not gainfully employed; and
(c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.
…
(8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education."

42. The requirement for a person to be engaged for at least 35 hours in a week to be entitled to Carer's Allowance is derived from Regulation 4(1) of the Social Security (Invalid Care Allowance) Regulations 1976, which provides that a person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours per week in caring for that severely disabled person.

43. There is no definition of 'gainfully employed' within the Act, however Regulation 8 of the Regulations prescribes that for the purposes of section 70(1)(b) of the Act a person shall not be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded £151 (at the current rate) and shall be treated as gainfully employed on every day in a week if his earnings in the immediately preceding week have exceeded £151.

44. Those eligible for Carer's Allowance may also be entitled to the carer element of Universal Credit.

Conclusions

45. It could not be clearer that the Tribunal does not have jurisdiction to hear the claimant's claim. The Tribunal only has jurisdiction to hear matters set out in section 120, which, so far as is relevant, are limited to claims falling under Part 5, relating to work.

46. That in turn requires consideration of section 39, which suggests that a claim for discrimination under that part can only be brought against an employer, as defined in section 83.

47. There is no basis upon which it could be suggested that receipt of a Carer's Allowance and the associated carer element of Universal Credit somehow renders the recipient an employee of the government (or any governmental body which is a legal entity), or the government their employer, in the terms required under section 83(2) of the Equality Act 2010. It is government policy, and has been since the 1970s, that those engaged in the care of others such that they are limited in their ability to undertake paid work ought to be paid an allowance in lieu of the income they might otherwise be receiving. That allowance is not in itself a 'wage', nor do the statutory provisions under which the Carer's Allowance is provided for give rise to any contractual arrangement between a carer and the government or any governmental body. The Carer's Allowance and corresponding carer element of Universal Credit are statutory benefits under a statutory arrangement. Moreover the language used in the statutory provisions that an allowance will be paid for any day where the carer is not gainfully employed can only reasonably be interpreted as excluding care itself from 'gainful employment'.

48. It is unsurprising therefore that the claimant has been unable to produce any contract of employment or other contract personally to do work in this case.

49. For the avoidance of doubt, nor would such a statutory arrangement fall within the definition of Crown employment under section 191 of the Employment Rights Act 1996.

50. In so far as the claimant mentions a breach of section 149 of the Equality Act 2010 in his correspondence, this does not fall within the provisions of Part 5 for which the Tribunal has jurisdiction, and in any event section 156 of the Act makes it clear that any breach of it does not give rise to a private action.

51. In the circumstances the claim must be struck out because the Tribunal plainly does not have jurisdiction to hear it, alternatively because there are no reasonable prospects of the claimant successfully showing that His Majesty's Government is his employer.

52. The claimant's application to amend the claim does not assist him, because by the same token Sir Keir Starmer could not be his employer for the purpose of section 83 of the Equality Act 2010 either. That application must be refused as being wholly unmeritorious. Although that is a case management decision rather than a judgment it is included in ths judgment for convenience.

53. Further an in any event, the claim is liable to be struck out as it does not disclose any discernible cause of action, and therefore has no reasonable

prospect of success. Even if the claimant's claim could, with the benefit of correspondence, be understood as suggesting that the government is the claimant's employer by virtue of the fact that the claimant undertakes 35 hours of care each week, and that for this he ought to be paid at the National Minimum Wage, nowhere has the claimant indicated why this would in any way amount to age discrimination such that a respondent could properly answer the claim and a Tribunal could understand it.

54. In the circumstances the claimant's application to strike out the response, which application was not comprehensible in any event, must also be refused as once the claim is struck out it is academic.

Other claims

55. The respondent invited me to consider whether the claimant ought to be referred to the High Court to be placed on the list of vexatious litigants. He has been involved in at least one other case in the Employment Tribunal, claim number 6002491/2025, and I was referred to a letter dated 27 February 2025 from the Bristol Employment Tribunal rejecting that claim form on the basis that it was one which the Tribunal had no jurisdiction to consider. That letter states:

"The Judge is also stating that if the claimant continues to present claims which are entirely lacking in merit a referral will be made to the High Court to have his name added to the vexatious litigants list."

56. It should be noted that claim, which was presented on 23 January 2025 against Ms Liz Kendal (the Secretary of State for Work and Pension), also relies on age discrimination related to a failure to pay the National Minimum Wage in respect of domiciliary care provided by the claimant.

57. A search of the Tribunal's records reveals that the claimant brought an earlier claim on 1 May 2024 in the Bristol Employment Tribunal against 'HM Government' on materially the same basis. That claim was also rejected for want of jurisdiction.

58. In the London Central Employment Tribunal, a claim was presented on 21 February 2024 against 'HM Government' but was rejected because no ACAS early conciliation certificate number was provided (Claim number 6000591/2024, which was renamed 2202008/2024).

59. The claimant has therefore presented three very similar claims, leaving aside the claim rejected for lack of conciliation. Two of those have already been rejected based on substantially the same conclusions as I have reached today in respect of jurisdiction. I do not consider at this stage this is sufficient to suggest the claimant might be considered a vexatious litigant, however I make it clear that if a further similar claim is made, not only is it likely to be rejected for the same reasons again, but the Tribunal

may also consider whether bringing such a claim is vexatious and an abuse of process.

Employment Judge Keogh

25 March 2025

JUDGMENT SENT TO THE PARTIES ON

9 April 2025

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FOR THE TRIBUNAL OFFICE