



EMPLOYMENT TRIBUNALS

Claimant: Mr S Catchpole

Respondent: King's College London

Heard at: London South Employment Tribunal (by CVP)
On: 24 March 2025

Before: Employment Judge T Perry

Representation

Claimant: in person with the support of his partner Ms A Mouzakiti

Respondent: Ms E Margetts (Counsel)

JUDGMENT

The Claimant's claim of harassment related to disability is struck out under rule 38(1)(a) as having no reasonable prospects of success.

REASONS

Introduction

1. The application to strike out was considered at a public preliminary hearing listed in relation to both this claim and the Claimant's first claim under case number 2305973/2024.
2. The Claimant gave brief evidence under affirmation in relation to the question of why his claim was not issued sooner and the steps he took to research or gain advice on his rights. He answered a single clarification question from Ms Margetts by way of cross examination.
3. I was provided with a preliminary hearing bundle running to 150 pages as well as a draft agenda and list of issues from the Respondent covering both claims.
4. I heard oral submissions from both parties.
5. At the start of the hearing, I clarified with the parties what adjustments were required. The Claimant said he may need additional breaks and it was made clear these could be provided as required. In the end, the Claimant did not ask for additional breaks.

The issue

6. The sole issue before me in respect of this claim was whether to strike out the Claimant's harassment related to disability claims due to having no reasonable prospects of success in relation to both a) time limits and b) the substantive merits of the claim.

The Law

7. The power to strike out is contained in rule 38 of the Employment Tribunal Rules of Procedure 2024. This includes at (1)(a) claims that have no reasonable prospects of success.
8. The power to strike out is discretionary. If a ground justifying strike out is made out, the Tribunal must then consider whether to exercise its discretion to strike out. This is a two stage process.
9. HHJ Tayler's decision in **Wangtian Xie v E'Quipe Japan Ltd** [2024] EAT 176 is a recent reminder that: striking out a claim is a draconian step only to be taken in clear cut cases; there is public interest in discrimination cases being heard on the merits albeit there is no absolute prohibition on strike out; a party's case should generally be taken at its highest when considering strike out; strike out is rarely appropriate when there are core disputed facts; and care should be taken when striking out a claim brought by a litigant in person.
10. The Claimant's case needs to be clearly understood before it can be struck out.
11. The test for time limits in discrimination claims under section 123 Equality Act 2010 has been held to be one where 'Parliament has chosen to give the employment tribunal the widest possible discretion' (per Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] IRLR 1050 at 17).
12. According to Sedley LJ in **Chief Constable of Lincolnshire Police v Caston** [2010] IRLR 327 (at [31]) 'there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised'. The burden is on the Claimant to persuade that an extension should be granted.
13. In **Adedeji v University Hospitals Birmingham NHS Foundation** [2021] ICR D5, the Court of Appeal repeated a caution against tribunals relying on the checklist of factors found in s 33 of the Limitation Act 1980 saying that 'The best approach for a tribunal in considering the exercise of the discretion under s 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"'.
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14. However, certain issues will commonly be relevant to the decision, including: (1) the length of and reasons for the delay; (2) the prejudice which each party would suffer as a result of granting, or refusing to grant, an extension; and (3) the potential

merits of the claim.

15. The test of conduct being related to the protected characteristic is a broad one. That said, the Court of Appeal in **UNITE the Union v Nailard** [2018] IRLR 730 said it was insufficient that the protected characteristic be just 'the background of harassment'. The Tribunal in that case had not made any findings as to the mental processes of the (employed) officials of the union and whether they had been motivated by sex discrimination.
16. That said there is no total requirement for a mental element in the alleged harasser. Some acts are related to protected characteristics by their very nature (eg a joke related to race). The focus should be on the conduct and to what degree it relates to the protected characteristic **Carozzi v University of Hertfordshire** 2024 EAT 169.

Conclusions

17. The Respondent sought strike out both on the merits and on time limits.
18. In relation to the merits, it was first necessary to clarify the Claimant's claims. The Claimant's claim is one of harassment related to disability. The alleged instances of unwanted treatment were clarified before me as follows:
 - a. In an email in December 2023, Dr Sanderson questioned whether the Claimant's department could share a freezer and inappropriately copied in the entire department;
 - b. In an email in December 2023, Dr Sanderson took an individual named Sarah out of the email chain about signage and instead copied in Bethan Jones;
 - c. In an email on 18 January 2024 Dr Sanderson attached the compassionate leave policy and asked to discuss it, which the Claimant took as a threat for taking the afternoon off the day before;
 - d. At a meeting on 19 January 2024 Dr Sanderson criticised the Claimant for a freezer repair failure that was not his fault and was dismissive of the Claimant's explanation that his father had just died; and
 - e. In emails on 25-26 January 2024 regarding a lift, Dr Sanderson said sarcastically "I'm not sure what you would expect [Fernanda] to do about this" and said sarcastically "I certainly wouldn't expect [Fernanda] to return from Brazil to deal with it" and copied in three heads of department (Professors Simpson, McGrath, and Ali).
19. The Claimant's case is that these matters were related to disability in that they made the Claimant's health worse.
20. That appears to me to be an argument that has no reasonable prospects of success even taking the Claimant's case at its highest. The Claimant is not alleging

a mental link to a protected characteristic. He confirmed to me that he was not suggesting these things were done because of his disability. There is also no objective link between the conduct and the protected characteristic (for example this is not a case where a comment was said to be derogatory about disability in any way). The simple fact that the effect of conduct is to exacerbate a disability due to non-discriminatory bullying cannot be said to make the conduct related to disability.

21. On that basis, I consider the Claimant has no reasonable prospects of success in relation to his claim of harassment related to disability.
22. Because the claim appears legally misconceived, I exercise my discretion to strike out the Claimant's claim.
23. It follows that the Claimant's claim for harassment related to disability is struck out.
24. In relation to time limits, limited evidence was taken from the Claimant to understand his case on why the claim was not issued sooner than it was and what steps he took to inform himself of his rights. I would not have struck out the Claimant's claim on the time point due to the broad nature of the discretion available to the Tribunal in relation to discrimination claims.

Approved by:

Employment Judge T Perry
2 April 2025

Judgment sent to the parties on
14 April 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/