



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Leigh Turner

v

Movianto UK Limited

Before: Employment Judge de Silva KC

JUDGMENT ON COSTS

1. The Claimant's application for costs of 17 January 2025 is dismissed.

REASONS

PROCEDURAL BACKGROUND

1. By Claim Form presented on 2 November 2023, the Claimant brought a claim of disability discrimination against the Respondent under the Equality Act 2010. The unlawful treatment was alleged to have taken place in the period from 4 April to 21 July 2023. In its Grounds of Resistance of 21 January 2024, the Respondent did not admit that the Claimant was a disabled person for the purposes of the Equality Act and denied that it had acted unlawfully.
2. Therefore, a public preliminary hearing was listed to determine the issue of whether the Claimant was disabled. On 18 April 2024, the Claimant filed a disability impact statement, as directed by the Tribunal.
3. On 31 May 2024, the Claimant made a without prejudice save as to costs offer in relation to the issue of disability.
4. At the public preliminary hearing before me on 20 December 2024, the Tribunal found that the Claimant had a disability for the purposes of the Equality Act 2010.

5. On 17 January 2025, the Claimant made an application for costs. This was resisted by the Respondent by email dated 7 February 2025. The parties agreed that the application for costs should be dealt with on the papers.

THE EVIDENCE AND THE TRIBUNAL'S REASONING

6. For the reasons given orally at the Preliminary Hearing on 20 December 2024, the Tribunal found that the Claimant had mental impairments, i.e. depression and Emotionally Unstable Personality Disorder ("**EUPD**"). The was based on evidence from medical professionals which supported this, in particular:
 - a. A medical diagnosis of EUPD on 7 March 2023;
 - b. An Occupational Health referral diagnosis in June 2023 which stated that the Claimant was "*likely*" to fall within the statutory definition of disability;
 - c. A letter from The Priory of 15 June 2023 which said that an EUPD diagnosis "*makes sense*";
 - d. A letter from The Priory of 16 October 2023 which stated in the diagnosis formulation section that there were "*features of*" EUPD.
7. The Claimant gave an account in his disability impact statement of a long history of mental health issues, including issues with anger, problems with social interaction, difficulties concentrating and panic attacks. The Claimant had also tried to take his own life. This evidence was unchallenged.
8. In February 2023, the Claimant started work for the Respondent. In March 2023, he was detained under the Mental Health Act 1983. The Tribunal referred in its oral reasons to the case of **McDougall v Richmond Adult Community College** [2007] IRLR 1567 in which the EAT had held that, although being detained under the Mental Health Act was not determinative of the issue of whether a claimant was disabled, it was most unlikely that a person detained under the Mental Health Act could carry out day-to-day activities as they would not be at liberty to do so.
9. After being detained under the Mental Health Act in March 2023, the Claimant's symptoms improved. The Tribunal found that this was the result of a number of factors including giving up drinking, medical and other treatment, such as Eye Movement Desensitisation and Reprocessing therapy, and other positive steps taken by the Claimant such as practising meditation and going to the gym. It was not in dispute that the Claimant later carried out a job where he was responsible for more than 300 members of staff.
10. The Tribunal found that the Claimant had a dependency on alcohol but that this was not the underlying condition which affected his day-to-day activities and that this was something that was caused by the EUPD. Therefore, his condition was not excluded by regulation 3 of the Equality Act 2010 (Disability) Regulations 2010.

RELEVANT LAW

11. Rule 75(2) of the ET Rules states:

“The Tribunal must consider making a costs order or a preparation time order where it considers that—

(a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success...”

12. In ***Radia v Jefferies International Ltd*** UKEAT/0007/18, HHJ Auerbach held in relation to the test of “*no reasonable prospect of success*” (para 65ff.):

- a. The first stage of the test is an objective one, e.g. did the claim/response have a reasonable prospect of success at the start of the litigation;
- b. The second stage of the test (when the tribunal exercises its discretion) is subjective, e.g. did the party know (or ought he have reasonably to have known) at the time that the case had no reasonable prospect of success;
- c. When considering these questions, the Tribunal must not be influenced by the things that could not reasonably have been known at the start of the litigation. However, it may have regard to any evidence or information which casts light on what was or could reasonably have been known; and
- d. The fact that there were factual disputes which could only be resolved by hearing evidence does not mean that the Tribunal cannot properly conclude that the claim had no reasonable prospects from the outset and the paying party should have appreciated this from the outset.

THE TRIBUNAL’S CONCLUSIONS ON THE COSTS APPLICATION

13. There was documentary evidence from medical professionals supporting the Claimant’s case that he had EUPD. However, the rationale their conclusions was not addressed in any detail in these documents in any detail and not all of the medical professionals concluded with certainty that the Claimant had EUPD. For example, the letters from the Priory said only that such a diagnosis “*makes sense*” (letter of 15 March 2023) and that there were “*features of*” EUPD (letter of 16 October 2023). There was no expert medical evidence, in the form of a report, before the Tribunal (and the Tribunal notes the submission on behalf of the Respondent that it had suggested the appointment of a joint expert but the Claimant had not responded to this).

14. Although the Tribunal found that the Claimant’s day-to-day activities were affected during the period of his detainment under the Mental Health Act in March 2023, there was a real issue between the parties as to what it was that affected his day-to-day activities, in particular whether it was addiction to alcohol for the purposes

of regulation 3 of the Equality Act 2010 (Disability) Regulations 2010/2128, and whether the affect was long-term. The Respondent was able to point to the fact that his condition improved after he stopped drinking alcohol (and that he was later able to carry out role with a high degree of responsibility in his new employment), even though the Tribunal found that the Claimant's alcohol dependency was the result of his condition and that his improvement after the period of detainment was the result of a number of factors, not just stopping drinking.

15. For these reasons, the Tribunal is of the view that the Respondent's case on the issue of whether the Claimant was disabled had reasonable prospect of success and that it did not behave unreasonably in pursuing this argument, even after the Claimant's without prejudice save as to costs offer. In the circumstances, the Claimant's application for costs is dismissed.

Approved by

Employment Judge de Silva KC

30 April 2025

SENT TO THE PARTIES ON

8 May 2025

FOR THE TRIBUNAL OFFICE