



EMPLOYMENT TRIBUNALS

Claimant: Miss J Beresford

Respondent: Citizens Advice Derbyshire Districts

JUDGMENT

The entire claim is struck out because it has no reasonable prospects of success.

REASONS

1. By way of background, please see the written record of the telephone preliminary hearing that took place on 19 March 2020.
2. The claimant did not dial into that hearing and was required to explain why she did not do so by 30 March 2020. She did so in an email of 31 March 2020. Her explanation is satisfactory and is accepted.
3. The claimant was also given a warning that I [Employment Judge Camp] was proposing to strike out her claim on the basis that it appeared to have no reasonable prospects of success. The reasons I set out for this proposal were:
 - 3.1 as a volunteer, the claimant had no right to bring her claim in the employment tribunals. See X v Mid Sussex Citizens Advice Bureau [2012] UKSC 59;
 - 3.2 the claimant's claim was unclear and cannot be understood;
 - 3.3 in so far as the claimant is alleging that the termination of the volunteer agreement was direct discrimination, there was no discernible basis for any allegation that the termination had anything to do with age, race, disability, marriage and civil partnership, sex, or religion or belief (those being the boxes she ticked in section 8.1 of the claim form).
4. The claimant was ordered, if she objected to the proposal, to write to the Tribunal setting out what her objections were in detail and providing the following information:
 - 4.1 what did the respondent do that she is making her claim about? Is it just the termination of the volunteer agreement, or other things as well, in which case: precisely what other things and when did they happen?
 - 4.2 can the claimant confirm that (as suggested in her email of 19 March 2020) she is not making a disability discrimination or marriage or civil partnership discrimination claim? If she is making either or both of those types of claim, she must provide full details of it, including: what is her

disability and what facts does she rely on to prove that the reason the respondent acted as it did was something to do with her disability?; what facts does she rely on to prove that the reason the respondent acted as it did was something to do with her being married or a civil partner?

- 4.3 what is the basis for her claim for travel expenses and “*refreshments (other)*” expenses?
- 4.4 what does she mean by “victimisation”? Victimisation is defined in section 27 of the Equality Act 2010 as follows:

27 Victimisation

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*

- (a) *B does a protected act, or*
- (b) *A believes that B has done, or may do, a protected act.*

(2) *Each of the following is a protected act—*

- (a) *bringing proceedings under this Act;*
- (b) *giving evidence or information in connection with proceedings under this Act;*
- (c) *doing any other thing for the purposes of or in connection with this Act;*
- (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*

(3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

If that is what she means by victimisation, what was the “*detriment*”, what was the “*protected act*”, and what facts does she rely on to prove that the reason the respondent acted as it did was something to do with a protected act?

- 4.5 what is the relevant age group for the purposes of her age discrimination claim?
- 4.6 what is the relevant religion or belief for the purposes of her religion or belief discrimination claim?
- 4.7 what is the relevant race for the purposes of her race discrimination claim?
- 4.8 what facts does she rely on to prove that the reason the respondent acted as it did was something to do with:
 - 4.8.1 age?
 - 4.8.2 religion or belief?
 - 4.8.3 race?

5. The claimant responded by email on 29 and 31 March 2020 and in part of a letter of 17 April 2020.¹ In her responses, she confirmed that:
 - 5.1 she was not bringing discrimination claims based on the protected characteristics of disability and marriage and civil partnership;
 - 5.2 she wants to pursue an unfair dismissal claim. However, she has put forward nothing that could support any of the kinds of unfair dismissal claim for which a claimant does not need at least 2 years' qualifying service in accordance with section 108 of the Employment Rights Act 1996. This is one of the reasons the unfair dismissal claim cannot succeed;
 - 5.3 she does want to bring some kind of discrimination claim based on the protected characteristics of age, race, and religion and belief. As best I can tell, all the claims concern allegedly being told not to return to training on or around 16 September 2019 and are direct discrimination claims. The relevant age group has not been identified, although the claimant has referred to some "younger" people. She does not identify the relevant race or religion or belief either, except to state that, someone ate, "*hot food with a naan bread in front of us, she should have eaten that in a separate allocated room. It splashed on the paperwork and the table and it smelled very bad. The day was an extremely hot day, the windows were all closed. Considering that the younger trainees hadn't eaten or drunk anything, what [she] did was very bad mannered [in] front of them and discriminatory in front [of] me myself*" and "*I do not eat pork, and I especially do not eat meaty dishes in a hot enclosed room that is being used for training. I found it very bad mannered and offensive of the Respondent.*";
 - 5.4 in addition, she wishes to make a victimisation claim, based on an allegation that the respondent knew of a previous tribunal claim the claimant had brought and that, "*The Respondent have taken sides against me, the Respondent is biased and not neutral or fair as they profess to be - I had previously approached the Respondent Nottingham Office for assistance with an Oral Preliminary Hearing which was approaching in March 2017. ... The Nottingham Office Citizen's Advice Bureau said they could not give any advice. I asked them to write it down for me, which they did on a compliment slip saying. "We cannot help you with [y]our Employment Tribunal Hearing".*" She does not explain either how the respondent could possibly have learned of any of this from the Nottingham CAB (which I am almost sure is a separate legal entity and would have no discernible motive for passing this information on), nor why the fact that the Nottingham and District CAB would not help with a particular Tribunal hearing is said to support a victimisation claim against the respondent;
 - 5.5 the alleged victimisation detriments are:
 - 5.5.1 someone eating curry and a large naan bread in front of the claimant, on a very hot day in a training room;

¹ Over 30 emails / letters have been sent to the Tribunal since the preliminary hearing, but the overwhelming majority of them are about settlement negotiations (and therefore should not have been sent in) and/or about costs. Anything about settlement negotiations or costs has been disregarded for the purposes of this decision.

- 5.5.2 asking her not to return to the training;
 - 5.5.3 initially not giving her an explanation, but later stating in an email, "*It is because of your comments and behaviour*", and then providing no further details when asked for them;
 - 5.5.4 not responding to a request for reimbursement of travel expenses.
6. I have to decide whether to put my proposal to strike the claim out into effect, or whether to hold a further hearing first, to give the claimant the opportunity to make further representations, or whether simply to leave things as they are and make case management orders for the final hearing which has been listed. As the claimant has not requested a further hearing, as I think the point is a straightforward one of law on which a relatively recent Supreme Court decision is decisive, and as any hearing on the point would have to be in public and holding hearings in public at the moment is very difficult indeed, I think it is best for me to deal with it on paper and without a further hearing.
 7. The issues I have to decide are: whether the claim or any part of it has no reasonable prospects of success, in accordance with rule 37; if so, whether it would be in accordance with the overriding objective and rule 2 to strike out the claim, or the relevant part or parts of it.
 8. As to the relevant law, I take into account, in particular, paragraph 24, part of Lord Steyn's speech, of the House of Lords' decision in Anyanwu v Southbank Student Union [2001] ICR 391 and paragraphs 29 to 32 of the Court of Appeal's decision in North Glamorgan NHS Trust v Ezcias [2007] EWCA Civ 330.
 9. When assessing whether a claim has "*no reasonable prospects of success*", the test to be applied is whether there is no significant chance of a Tribunal at a trial, properly directing itself in law, deciding the claim in the claimant's favour. I have to take the claimant's case at its reasonable highest and bear in mind that striking out a Tribunal claim is an exceptional thing to do.
 10. I also bear in mind that a claim may have no reasonable prospects because it is so unclear as to be incomprehensible. Particularly where, as here, the claimant has been ordered to provide and has provided further information to clarify her claim, the claimant can't avoid a strike out simply by being unclear.
 11. The main basis for the proposal to strike out the claim was the fact that the claimant was a volunteer and that as a matter of law, volunteers cannot bring claims in Employment Tribunals. This is not something that has been substantially addressed by the claimant, who accepts she was a volunteer. Under the potentially relevant parts of the Equality Act 2010, a claim in the Employment Tribunal has to be for discrimination or victimisation in employment or towards applicants for employment. The claimant was not an applicant for employment and was not in employment. Her claim will necessarily fail – and has no reasonable prospects of success – for this reason alone, in accordance with X v Mid Sussex Citizens Advice Bureau [2012] UKSC 59. (The unfair dismissal claim, similarly, will fail because she was never the respondent's employee). Given this, there is no good reason not to strike it out. Allowing it to continue would serve no useful purpose, would be unfair to the respondent, and would be a waste of Tribunal time and resources.

12. Even if the claimant had the necessary employment status to be entitled to bring a claim in principle, I would in all likelihood be striking out, at least, the race and religion and belief discrimination claims on the basis that they have no reasonable prospects of success. The claimant has not even identified what the relevant race and religion or belief is for the purposes of these claims, let alone any basis for thinking that race or religion or belief was any part of the reason why she was (allegedly) told not to return to training. Her own race and religion or belief is not given, nor is that of “*the other two younger trainees*” who she suggests, in an email of 31 March 2020, were more favourably treated than her.
13. The victimisation claim also appears hopelessly weak, if it is based purely, as it seems to be, on the refusal of a different CAB to provide the claimant with assistance in relation to a Tribunal claim in 2017.
14. Of all of the claims, the age discrimination claim is the most coherent, although even in relation to that claim, the claimant has not identified any reason to think that her age had anything to do with her treatment other than the fact that two other people, who happened to be younger than her, were treated differently. Based on the material I have, if that claim did not face any problems to do with the claimant’s employment status, I would probably list a preliminary hearing to decide whether or not it should be struck out or a deposit order made, but in any event it seems to have no better than little reasonable prospects of success and so, potentially, a deposit order would be appropriate at the very least.
15. However, I am striking out all of the claims, on the basis that the claimant being a volunteer and not being in any kind of employment in accordance with the Equality Act 2010 or an employee under the Employment Rights Act 1996 is fatal to them.
16. Finally, I should mention that in so far as the claimant is wanting to claim for expenses using the parts of the Employment Rights Act 1996 that deal with unauthorised deductions from wages, or using the Tribunal’s power to deal with breach of contract claims: only employees can bring breach of contract claims and only employees or workers – a group which does not include volunteers – can bring claims for unauthorised deductions from wages; expenses cannot be claimed as unauthorised deductions from wages as they are not, in law, wages: section 27(2)(b) of the Employment Rights Act 1996.

EMPLOYMENT JUDGE CAMP

23/04/2020

Sent to the parties on:

23/04/2020.....

For the Tribunal Office:

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