



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Greenwood

Respondent: Calderdale and Huddersfield NHS Foundation Trust

RESERVED JUDGMENT

The claimant's claim that the respondent breached Articles 3 and 14 of the European Convention on Human Rights is dismissed on the grounds that it has no reasonable prospects of success

REASONS

1. The claimant brought claims against the respondent of
 - 1.1. Failure to make reasonable adjustments (s20/21 Equality Act 2010);
 - 1.2. Discrimination arising from disability (s15 Equality Act 2010);
 - 1.3. Indirect discrimination (s 19 Equality Act 2010);
 - 1.4. Harassment related to disability (s26 Equality Act 2010);
 - 1.5. Direct disability discrimination (s13 Equality Act 2010); and
 - 1.6. Breaches of Article 3 and Article 14 European Convention on Human Rights.
2. The claimant says, in respect of her claim that the respondent is in breach of the ECHR, that both articles 3 and 14 have been breached, with reference to the allegations set out in her claim form but particularly at paragraphs 96 – 100.
3. These allegations are allegations of harassment and direct discrimination and I set them out from the claimant's amended claim:

"96. The incidents set out at the following Paragraphs above, amounted to unwanted conduct related to C's disability:

(a) Dr. Hoye shouted at C: “I thought you were going to tell your seniors about your learning difficulty!” during the Clinical Supervision Meeting on 28th September 2020 (Paragraph 21).

(b) Dr. Hoye commented that C was “slow” in executing IT skills and handling documentation during the Clinical Supervision Meeting on 28th September 2020, and yet offered no practical support in respect of this (Paragraph 21).

(c) Other Clinical Supervisors complained about C “being slow” which initiated the first Performance Management Meeting on 30th November 2020 (Paragraph 27).

(d) Dr. Hoye said: “You would not have come if you knew what it was about” in reference to deceiving C as to the true agenda of the meeting on 30th November 2020 (Paragraph 25).

(e) Dr. Hoye shouted at C: “It’s not very nice being shouted at!” on 30th November 2020. As she did so, she thumped the desk (Paragraph 28).

[allegations (f) – (i) were not permitted to be brought as claims for harassment as they were new and permission to amend was refused. They are therefore not included as potential claims under the ECHR either]

(j) C’s colleagues on the Elderly ward at HRI issued a complaint against her in respect of ‘Teamwork’, having consistently excluded her and impeded her ability to communicate with them (Paragraphs 38-40).

97. The conduct of The Trust had the purpose or effect of violating C’s dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for C.

Direct Discrimination (EqA 2010, s. 13)

98. C is disabled within the meaning of the Equality Act 2010 (Paragraph 2).

99. C was treated less favourably by The Trust than others would have been. C was lured to a Performance Management Meeting under false pretences, where she was presented with a pre-populated PIP which made no reference to reasonable adjustments and advised that her employment may be terminated unless her performance improved (Paragraph 25).

100. The treatment was because of C’s disability, as shown by the circumstances described above, and the comments made by Dr. Hoye, particularly pertaining to her rationale for deceiving C (Paragraph 25). But for C’s disability, she would not have been summoned to the Performance Management Meeting. The Trust incorrectly addressed the problems C was facing as a performance issue, rather than a need for reasonable adjustments. A non-disabled colleague, by the very virtue of their non-disabled status, would not have been subjected to such treatment”.

4. Article 3 ECHR says

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

5. Article 14 ECHR says

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

6. The respondent made an application that the claimant’s free-standing claims under the European Convention on Human Rights (ECHR) be struck out on the grounds that the Tribunal does not have jurisdiction to hear a freestanding claim of a breach of the ECHR.

7. Rule 37 of the Employment Tribunal Rules of Procedure says:

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

8. This matter was discussed at a preliminary hearing in private. I did not have the power, at that hearing, to consider an application to strike out the claimant’s claims. However, the parties have, by agreement, both been given the opportunity to make detailed submissions in writing. I therefore have the power to consider a strike out application “at any time” under rule 37, both parties having been given the opportunity to make representations.

9. The respondent’s case is that the Tribunal has no jurisdiction to hear a free standing claim for a Breach of the European Convention on Human Rights, whether under the Human Rights Act 1998 (HRA) or otherwise.

10. Section 2 of the Employment Tribunal Act 1996 provides that the Tribunal has the jurisdiction conferred by that Act or any other Act.
11. The claimant has not referred to any statutory provision conferring jurisdiction on the Employment Tribunal to determine claims under the ECHR or the Human Rights Act 1998. Section 7 of the Human Rights Act 1998 says
 - (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
 - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
 - (b) rely on the Convention right or rights concerned in any legal proceedings,but only if he is (or would be) a victim of the unlawful act.
12. Section 6 says:
 - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
 - (2) Subsection (1) does not apply to an act if—
 - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
 - (3) In this section “public authority” includes—
 - (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
 - (4) . . .
 - (5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
13. The claimant has referred to two Employment Tribunal cases as examples of claims brought under the HRA - Ms C Allette v Scarsdale Grange Nursing Home Ltd: 1803699/2021 and T v Ministry of Defence: 2201755/2021.
14. Neither of those claims are fee-standing claims under the HRA. In one, the claimant sought to rely on a breach of Article 8 as the basis of her unfair dismissal claim, and in the other the claimant argued that the Equality Act

2010 was incompatible with Articles 8 and 14 HRA. Both of these claims were substantive claims in which the Employment Tribunal has jurisdiction conferred on it, but relying on the HRA as either an aid to interpretation or an underlying basis for unfairness.

15. In so far as the claimant might seek to rely on s 7 HRA, it is clear that claims under s7 HRA can only be brought against a public authority acting as a public authority. In this case, the respondent, while likely a public authority, was in acting as a private party in a contractual arrangement (as employer). It seems very unlikely that the claimant will be able to show that it was acting as a public authority in its dealings with the claimant.
16. In any event, however, the claimant's claims are based on Article 3 which prohibits torture. The respondent referred to Equality and Human Rights Commission guidance on Article 3. That says:

“What is torture?”

Torture occurs when someone deliberately causes very serious and cruel suffering (physical or mental) to another person. This might be to punish someone, or to intimidate or obtain information from them.

What is inhuman treatment?

Inhuman treatment or punishment is treatment which causes intense physical or mental suffering. It includes:

- *serious physical assault*
- *psychological interrogation*
- *cruel or barbaric detention conditions or restraints*
- *serious physical or psychological abuse in a health or care setting, and*
- *threatening to torture someone, if the threat is real and immediate.*

What is degrading treatment?

Degrading treatment means treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors.

These include the duration of the treatment, its physical or mental effects and the sex, age, vulnerability and health of the victim. This concept is based on the principle of dignity - the innate value of all human beings”.

17. It is clear, and well established, that Article 3 only applies to serious acts as referred to in the guidance above. None of the allegations set out in the claimant's claim come anywhere close to something amounting to torture or inhuman or degrading treatment or punishment for the purposes of the European Convention on Human Rights

18. In my view, therefore, the claimant has no reasonable prospects of showing both that the Tribunal has jurisdiction to hear a free-standing claim for a breach of the European Convention on Human Rights *and* that any treatment that she says she was subject to was sufficiently serious to engage article 3, whether by itself or in conjunction with article 14.
19. For these reasons the claimant's free standing claim that the respondent was in breach of the European Convention of Human Rights is struck out.

1801272/2022

Employment Judge **Miller**

14 November 2022