



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Ramos

**Respondents:** Nottinghamshire Women's Aid Limited (1)  
Ms A J Bloomer (2)

**Heard at:** Nottingham Employment Tribunal

**On:** 1 March 2022

**Before:** Employment Judge K Welch

## Representation

Claimant: In person

Respondent: Mr P Nicholson, Solicitor

# RESERVED JUDGMENT

1. The respondents' application to strike out the claim is refused.
2. The claimant's application for a deposit order against the respondents is refused.
3. A Deposit Order is made in order for the claimant to continue with his claim for direct sex discrimination. The details for which appear in a separate Order.

# RESERVED REASONS

1. This is a claim brought by the claimant in respect of what he considers to be a discriminatory advertisement for a role within the first respondent's organisation. The second respondent is a director of the first respondent, a registered charity which runs a women's refuge and provides services to women, young people and children in the North Nottinghamshire area.

2. The respondent made an application for an order striking out the claimant's claim or, alternatively, for a deposit order to be made in order to pursue it. The application was made by letter dated 14 October 2021 on the basis that the claim was vexatious or had no reasonable prospects of success and that the claimant had failed to comply with the Employment Tribunal rules.
3. At an earlier case management preliminary hearing before Employment Judge Ahmed, he listed the case for an open preliminary hearing to determine the following issues: –  
  
“To determine whether the complaint of sex discrimination should be struck out if it is considered that it has no reasonable prospect of success within the meaning of rule 37 (1) (a) of the employment tribunal rules of procedure 2013;  
  
Alternatively, to determine whether the claimant should pay a financial deposit as a condition of continuing with any or all of the complaints if it is considered that they have little reasonable prospect of success pursuant to rule 39 of the employment tribunal rules of procedure 2013, and if so to decide the amount of the deposit.”
4. The claimant was told in the case management order that he should “bring evidence of his financial means in the event that the tribunal decides to make a deposit order”. The claimant failed to do so.
5. The claimant made an application for a deposit order against the respondent late on 28 February 2022, the evening before the hearing. The basis for the application for the deposit order was that the respondents could have no defence to his claim for sex discrimination in light of its monitoring form in the application pack for the role, confirming that only women or transsexual/transgender genders could apply.

6. The open preliminary hearing had been listed in person as an attended hearing in the Nottingham Employment Tribunal. On 27 January 2022, the claimant made an application to 'cancel' the preliminary hearing on the basis of documentary evidence that he was providing, to save costs and to avoid the transmission of Covid 19. The respondents objected to this. The claimant sent a further lengthy email to the Tribunal, copied into the respondents' representative, on 5 February 2022, purporting to provide further reasons why the preliminary hearing should not take place. An additional email was sent to the Tribunal by the claimant on 6 February 2022.
7. The Tribunal replied to the claimant's applications on 15 February 2022 confirming that the preliminary hearing remained as listed and that the points raised by the claimant could be discussed at the forthcoming hearing. The email confirmed that appropriate social distancing and cleaning measures were in place at the hearing centre to assist in preventing the spread of Covid 19. The Employment Judge considering the claimant's applications retrospectively granted an extension of time to the claimant to serve his witness statement, although confirmed that the list of items contained in the claimant's email of 7 February 2022 was not a witness statement. Presidential guidance on case management was provided to the claimant so that he could see what was required in order to stand as a witness statement.
8. On 17 February 2022, the claimant made a request that the preliminary hearing be converted to a remote hearing held by cloud video platform (CVP). The basis for this application was that he had to undertake a four hour train journey and that there would be a risk of transmission of Covid 19. The respondent objected to the claimant's application by email dated

22 February 2022. The application was refused by Employment Judge Adkinson on 23 February 2022.

9. The claimant made a further application on 24 February 2022 requesting the Tribunal reconsider its decision to allow the hearing to be held via CVP on the basis that remote hearings were still taking place and there was still a risk of Covid 19 being transmitted. I rejected this application on the basis that I saw no reason to interfere with the decision made by the Tribunal and confirmed therefore that the hearing would go ahead as in person hearing.
10. Following the hearing, having reserved my decision, on 9 March 2022, the claimant sent a further email which he asked to be taken into account when considering my decision. This alleged that the respondents' representative had prevented the claimant from making proper closing submissions, and had behaved improperly towards him during the hearing.
11. I find that there was no impropriety on the part of the respondents' representative, and I do not accept the claimant's assertion that he was mocked and his stammer was imitated during the hearing, since this did not occur.

#### The hearing

12. The hearing commenced at 10am, as listed. There was no attendance at the start of the hearing by the claimant. The claimant had sent a document said to be a witness statement to the respondent and the Tribunal late the day before the hearing, and therefore, the respondents' representative, who attended, fully expected the claimant to attend. I was informed at approximately 10:15am that the claimant was running late and would get to the Tribunal as soon as he could. He arrived at 10:30am and explained that his lateness was due to a tube strike that day.

13. The respondents had delivered a file of documents (referred to as the bundle) for use at the preliminary hearing the day before the hearing was due to take place. Unfortunately, this had been delivered to the County Court and therefore, following extensive searches, it became apparent that the Tribunal did not have the bundle. The respondents therefore arranged for further copies to be made and delivered to the Tribunal which further delayed the case from proceeding. References to page numbers within this judgement refer to pages within that bundle.
14. I was provided with witness statements from Ms Green, Director of the first respondent and a document from the claimant purporting to be a witness statement. His statement contained mainly submissions together with extracts from legislation and websites.
15. The respondents made an application that the claimant's statement should not be considered in evidence and he should not be given leave to give oral evidence, as he had not complied with the case management order for exchange of witness statements and further that his statement did not constitute a proper statement.
16. Whilst an extension of time had been granted retrospectively by the Tribunal for service of the claimant's witness statement, this did not give him freedom to exchange his statement the evening before the hearing. Having heard from both parties, I gave leave for the claimant to give evidence and accepted his document as a witness statement, as I considered it was in accordance with the overriding objective to do so.
17. Following an adjournment in order to read the statements and documents to which I was referred in the bundle, I attempted to commence the hearing at 12 noon. The claimant requested further time in order to read his own statement since he said that he had not been able to proof read it

prior to sending it the previous evening. I gave the claimant further opportunity to do so and commenced hearing his evidence at 12:30pm. The claimant made some small amendments to his statement before confirming its truth and accuracy.

18. I also heard evidence from Ms Green on behalf of the respondents.

19. Both parties addressed me orally with their submissions on the issues for the preliminary hearing. I reserved my decision since, by that time, it was 5:35pm.

### **FINDINGS OF FACT FOR THE PURPOSES OF THE PRELIMINARY HEARING**

20. The claimant lives in Hounslow, Middlesex. He has a third class degree in accounting and refused to answer questions over whether he had an additional degree in international trade.

21. The claimant saw an advertisement on the Internet for a "Female finance and admin worker". This was a part time role being 23 hours per week, paying approximately £13,000 per annum. The claimant did not apply for the role, which would have required him to either relocate from Hounslow or commute from Hounslow to Worksop. Further, he did not obtain, or request, an application pack for the role.

22. The claimant's evidence was that he did not apply because he had been deterred by virtue of the advertisement clearly stating that a female was required. However, he maintained that he was genuinely interested in applying for the role. He did not contact the Respondent to ascertain the reason why they advertised for a female finance and admin worker.

23. The claimant's name, as stated on the claim form, is Mr Lorenzo Ramos. During the hearing, he offered me his Spanish passport which showed his name as Lorenzo Garcia Ramos. The claimant explained that he sometimes uses his middle name and sometimes uses his surname.

24. The Respondent drew my attention to a number of Judgements of the Employment Tribunal in which the claimant was Mr L Garcia. At the earlier case management hearing before Employment Judge Ahmed, the claimant said that his name was not Garcia and then had subsequently refused to confirm or deny whether it was.
25. The Judgements relating to claims brought by Mr L Garcia [pages 120 – 167] relate to discrimination complaints concerning applications for a variety of disparate roles in various locations.
26. There were some marked similarities between the claimant and the claimant in those Judgements; for example in one case the claimant had the same date of birth as Mr Ramos, and, although fluent in English, had a strong French accent, as Mr Ramos accepted in evidence that he does. In two other cases, he worked as a market researcher, as Mr Ramos told me he currently does, when giving evidence at the hearing before me.
27. The claimant refused to answer any questions about the earlier proceedings brought by Mr L Garcia. The reason he gave for this was to protect him from victimisation under section 27 of the Equality Act 2010. However, the claimant's evidence was such that I believe he is the same person who brought the earlier claims using the name Mr L Garcia.

**Claimant's means**

28. Despite having been told to bring evidence of his means, the claimant provided no documentary evidence to show his financial resources. In evidence, he confirmed that he was not working, other than doing some self employed market research work for which he received approximately £800 per month. His rent was said to be £500 per month inclusive of all bills. He does not receive any State benefits. He did, however, confirm

having savings of £1,000.

## RELEVANT LAW

29. Rule 37 of the Employment Tribunal Rules of Procedure 2013 (“the Rules”) deals with striking out claims and states:

“(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”...

“(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.”

30. Rule 39(1) deals with deposit orders and, so far as is relevant, states:

“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.



(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.”

31. Lord Steyn in the in the case of Anyanwu v South Bank Students' Union [2001] IRLR 305, Court of Appeal stated,

“... For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest. ...”

32. In the same case, Lord Hope (at paragraph 37) made the following observations:

“... I would have been reluctant to strike out these claims, on the view that discrimination issues of the kind which have been raised in this case should as a general rule be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The tribunal can then base its decision on its findings of fact rather than on assumptions as to what the Claimant may be able to establish if given an opportunity to lead evidence.”

33. In Ezsias v North Glamorgan NHS Trust (2007) ICR 1126 Court of Appeal, Maurice Kay LJ (at paragraph 29) said:

“It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the Claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation.”

34. In Van Rensburg v Royal Borough of Kingston-upon-Thames & others (UKEAT/0095/07) the Employment Appeal Tribunal made it clear that whilst the threshold for making a deposit order is lower than that for striking out a claim, the Tribunal must still have a sound basis for doubting the likelihood of the party being able to establish essential facts.

### **CONCLUSION**

35. I considered, taking the claimant's case at its highest, the prospects of him succeeding in his claim for sex discrimination against the first and/or second respondents.

36. I have serious doubts over whether the claimant will succeed in his sex discrimination claim. Firstly, I consider that the claimant will have great difficulty in convincing a tribunal that he has been treated less favourably than an actual or hypothetical comparator. The claimant will struggle, in my view, to show that he was genuinely interested in applying for a part-time, relatively low-paid role which is such a distance from his home in Hounslow.

37. The claimant does have a degree in accountancy but I still consider that he is unlikely to be able to satisfy a Tribunal that he wished to work in this role, when he took no active steps to obtain the application pack, or to find out more about it, or indeed find out the reason why the first respondent had advertised for a female in the way it had.

38. Additionally, even if the claimant was able to show that he was genuinely interested in applying for the role, I consider that the claimant was highly unlikely to have been successful in any application for a role within the first respondent's organisation.

39. Finally, I have serious doubts over whether the claimant will be able to show that he suffered injury to feeling from reading the job advertisement online and being deterred from applying.

40. I, therefore, have to consider whether the claimant has no reasonable prospects of success. I noted that this was a high threshold, particularly for discrimination cases, in light of the case law as referred to above. In my view, this case almost passed the threshold for no reasonable prospects of success, however, I considered that it did not quite do so. Therefore, I do not strike out the claim for sex discrimination on the basis that it has no reasonable prospects of success.

41. I then considered whether the claim should be struck out on the basis that it was vexatious. It was clear to me that the claimant is the same person as Mr L Garcia in the claims to which I was referred by the respondents during the course of this preliminary hearing. Therefore, I have reservations that the claimant may be seeking to use the Tribunal process to obtain settlement monies for discrimination claims brought in respect of various job advertisements rather than bringing legitimate claims for discrimination. However, I do not consider that there was sufficient evidence before me at this stage to validly strike out his claim on the basis that it was vexatious.

42. In considering whether a deposit order should be made in order to allow the claimant to continue with his sex discrimination claim against the respondents, I recognise that this is a lower threshold than that for striking out claims. I have no hesitation in making a deposit order in this case against the claimant on the basis that his claim has little reasonable prospects of success.

43. I consider that the claimant has little reasonable prospects of success for the reasons referred to above in considering the strike out application. Namely, due to the difficulty he faces in showing that he has been considered less favourably because of his sex. As stated above, I consider he will have difficulty in showing that he was genuinely interested in the first respondent's role, and also feel that he will be unlikely to show that he would have been successful in the role. He is unlikely to be able to show that he suffered injury to feeling from reading the advertisement. Additionally, I consider that the respondents are likely to be able to successfully defend the claim by falling within the exception of being an occupational requirement as required by paragraph 1 of schedule 9 to the Equality Act 2010.

44. Having enquired of the claimant as to his means, despite being provided with no documentary evidence of the same, I consider that it is appropriate to make a deposit order in the sum of £1,000 in light of the claimant's savings.

45. The claimant must understand that should he pay the deposit and continue with his claims against the respondents, he will be at risk on costs should he lose at the final hearing.

46. Finally, turning to the claimant's application for a deposit order against the respondents, I considered the respondents' defence to the claim and assessed their prospects of being able to successfully defend the proceedings. The respondents assert that the first respondent relies upon an exception contained within paragraph 1 of schedule 9 of the Equality Act 2010, namely that it is an occupational requirement to have a female employee in the advertised role.

47. I do not consider that the monitoring form upon which the claimant places such reliance in his application for deposit orders against the respondents, affects the prospects of success. The respondents accept that the first respondent advertised for a female applicant and the monitoring form confirms this.

48. Whilst the final hearing will have to consider whether the first respondent is able to rely upon paragraph 1 of schedule 9 of the Equality Act 2010, I cannot say that the respondents have little prospect of succeeding in doing so. Therefore, I refuse the claimant's application for deposit orders against the respondents on the basis that I am not satisfied that they have little prospects of defending the claim.

---

Employment Judge Welch

Date 10 March 2022

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.