



EMPLOYMENT TRIBUNALS

Claimant: Mr A Male

Respondent: Airbus Operations Ltd

JUDGMENT

1. The claims within these proceedings relating to the selection process for the position of Customer Support Aircraft Electrician in February 2018 are struck out. These are the first claim of discrimination arising from disability (5.1.1 in the list of issues), the claim of indirect disability discrimination, and the second claim of failure to make reasonable adjustments (7.2.2 in the list of issues).
2. The claim of victimisation under issue 8.3.1 from the list of issues is not struck out and the Respondent's application for a deposit order in respect of this claim is refused.
3. The above does not affect the remaining claims which will proceed to a final hearing.

REASONS

1. The background to this decision is set out in the case management order of Employment Judge C Grubb of 10 April 2024 and the further renewal of the Respondent's application for a strike out of some of the Claimant's claims dated 26 April 2024. Both parties have consented to the decision being made on the papers (it is not permissible for a party to agree with a reservation that only if the Tribunal agrees with them), and both parties have provided written representations. I am content that it is in the interests of justice for me to make the decision on the papers.
2. The Claimant previously brought claims against the Respondent under case reference 1601482/22. On 9 August 2023, the Tribunal at a final hearing determined that the complaints of direct discrimination, indirect discrimination, discrimination arising from disability and a failure to make reasonable adjustments were outside of the Tribunal's jurisdiction due to being presented outside of the statutory time limits and it not being just and equitable to extend time. The claim of victimisation was dismissed.

3. Full written reasons were not provided. I do not know whether the Tribunal went on to give reasons in the alternative if it had been able to extend time. On a review of the amended particulars of claim for case reference 1601482/22, it is clear that the Claimant's claims centered on the selection process for the position of Customer Support Aircraft Technician in February 2018.
4. The Respondent has sought that the claims within the new proceedings should be struck out on the basis of *res judicata*. The Claimant accepts that his previous claim was about the selection process in 2018, but argues as the Tribunal did not determine the merits of the claims in 2023 (for 1601482/22), the rule does not apply. I disagree. The Claimant is estopped from bringing the same claim, and it is an abuse of process for him to attempt to relitigate by bringing claims about the same matter which could have been dealt with in the earlier proceedings, and in fact were dealt with in those proceedings. The fact that the Tribunal did not determine the merits of the claims due to lack of jurisdiction does not mean the claims were not before it; the claim resulted in a Judgment. I would also note that as the Claimant could not persuade the earlier Tribunal to extend time for these claims in August 2023, he would not be able to do so in 2024 (one Tribunal cannot depart from the Judgment of another).
5. The question is which of the Claimant's claims falls into this category. Having reviewed the statements of case and using the list of issues within the Order of Judge Grubb. The Respondent's application is confusing – it refers to paragraphs of Judge Grubb's order, but it would have been much clearer to refer to specific paragraphs of the list of issues. I find that the first claim of discrimination arising from disability (5.1.1 in the list of issues), the claim of indirect disability discrimination, and the second claim of failure to make reasonable adjustments (7.2.2 in the list of issues) was before the earlier Tribunal. I cannot see that the remaining claims in this claim were before the Tribunal in the earlier proceedings.
6. I acknowledge that the Claimant told Judge Grubb that the same complaint from 1601482/22 was within these proceedings. He repeated this position in his written response but helpfully added that using the list of issues prepared by Judge Grubb, issues 5.1.1, issue 6 and 7.2.2 are the duplicates. This is what I have found. These claims will be struck out for *res judicata* and abuse of process.
7. The Respondent also seeks a strike out of issue 8.3.1 (from EJ Grubb's list of issues), which is the alleged refusal of the Respondent to investigate the Claimant's grievance of 10 August 2023. The Respondent says that this was a grievance brought by the Claimant about the same issues dealt with in the earlier Tribunal proceedings. The Claimant says that this is an act of victimisation. The Respondent seeks a strike out on the basis that there is no reasonable prospect of success. The Claimant in his response simply says that the grievance should have been accepted and investigated and is part of ongoing discrimination.
8. I have not been provided with a copy of the grievance, but it appears that the parties agree on its contents. There is no dispute that the Claimant carried out a protected act by bringing the earlier proceedings. What is unknown is whether the refusal could reasonably be viewed as a detriment, and separately whether the refusal was because the Claimant had carried out a protected act. These are likely to be nuanced points, for which findings of fact and witness evidence will be required. I cannot

assess at all the reasonable prospects of success. For this reason, I will not strike out this claim, nor make a deposit order. I will not list this aspect for a hearing as it is not a good use of limited Tribunal resources – the Tribunal cannot carry out a mini-trial and hear from witnesses.

Employment Judge Sharp
Dated: 9 May 2024

ORDER SENT TO THE PARTIES ON 13 May 2024

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS Mr N Roche