



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ibeziako

Respondents: (1) Oakwood 24 Limited
(2) City Health Care Partnership CIC
(3) Ms S Rostron

Heard: in public in Hull **On:** 24 November 2023

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: In person
First Respondent: Mr L Murdin, counsel
Second Respondent: Mr L Whiting, solicitor
Third Respondent: In person

JUDGMENT AT PRELIMINARY HEARING

The claim against the Third Respondent is struck out.

REASONS

1. The background to this claim is set out in the Record of the Preliminary Hearing on 24 November 2023 and I do not propose to repeat it here.
2. I heard evidence under oath from the Third Respondent and submissions from all parties. I also considered the documents submitted by all parties, including the Third

Respondent.

3. Before considering whether to strike out the claim against the Third Respondent we spent some time discussing the allegations that the claimant is making against the Third Respondent to ensure that the Tribunal understood the claim brought by the claimant, who is a litigant in person.
4. The claimant confirmed that the allegations he is making against the Third Respondent are of victimisation and direct race discrimination. In summary, he alleges that the Third Respondent victimised him for making a complaint of discrimination on 6 July 2022 by:
 1. Blocking the claimant and preventing him from being used as a worker at East Riding Community Hospital because of the complaint he made;
 2. Refusing to provide documents in response to a Subject Access Request made by the claimant;
 3. Refusing to hear the claimant's complaint of victimisation; and
 4. Terminating the use of the First Respondent to supply staff on 22 August 2022 so as to prevent the claimant being sent to work at East Riding Community Hospital.
5. He also alleges that the Third Respondent directly discriminated against him because of race by not handing the complaint that he made transparently.

Findings of fact

6. The Third Respondent is employed by Hull University Teaching Hospitals NHS Trust as Director of Quality Governance. In that role she is the nominated individual for the Care Quality Commission in respect of certain services provided by the Trust. Those services include radiology and some outpatient services at East Ridings Community Hospital.
7. The Third Respondent is not involved in and has no responsibility whatsoever for the service that the claimant worked in at East Ridings Community Hospital.
8. The Third Respondent is not employed by either the First Respondent or the Second Respondent.
9. The Third Respondent had no knowledge of the claimant or of this claim until late in September 2023 when she received, through internal post, a communication about this claim. The Third Respondent was not aware in July 2022 that the claimant had made a complaint of discrimination. She has no involvement in the service where the claimant worked.
10. The Third Respondent had no involvement in responding to the subject access

request made by the claimant. She was not involved in any decisions about whether or how to hear the claimant's complaint as she did not even know he had made a complaint of discrimination.

11. The Third Respondent was not involved in the decision to stop using the First Respondent, she is not involved in appointing agency staff for services that she is not responsible for.
12. The Third Respondent was not involved at all in the handling of the claimant's complaint. She did not even know that she had made a complaint and did not receive any emails from the claimant until September 2023.

The Law

13. Rule 37 of the Rules provides that:

“(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 respondent (as the case may be) has been scandalous, unreasonable or vexatious; ...*
- (e) That the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response...”*

14. Strike out is a draconian sanction and not one that should be applied lightly. Tribunals should be particularly cautious about exercising their power to strike out badly pleaded claims brought by litigants in person who are not familiar with articulating complex arguments in written form on the ground that they have no reasonable prospect of success (***Mbuisa v Cygnet Healthcare Ltd EAT 0119/18***).
15. The Employment Appeal Tribunal, in ***Abertawe Bro Morgannwg University Health Board v Ferguson [2013] ICR 1108*** commented that whilst in some cases strike out may save time, expense and anxiety, in cases that are fact sensitive the circumstances in which a claim is likely to be struck out are rare.
16. In ***Cox v Adecco and ors [2021] ICR 1307*** the Employment Appeal Tribunal gave guidance to Tribunals dealing with strike-out applications against litigants in person. It held that when considering strike out of claims brought against litigants in person, the claimant's case should be taken at its highest and the Tribunal must consider, in reasonable detail, what the claims and issues are. A Tribunal should not strike out a claim where it does not know what the claim is. There should, therefore, be a reasonable attempt at identifying the claim and the issues before considering strike out. The EAT also said that, if the claim would have reasonable

prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual tests that apply to amendments.

17. In ***Anyanwu and anor v South Bank Student Union and anor [2001] ICR 391*** the House of Lords stressed the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact-sensitive and can only be determined after evidence has been heard.
18. This approach was adopted also in ***Kwele-Siakam v Co-Operative Group Ltd EAT 0039/17*** in which the EAT found that an Employment Judge was wrong to strike out claims for race discrimination and victimisation when the central issue in the case was the reason for the respondent's behaviour towards the claimant, which would require a Tribunal to make findings of fact after a full hearing.

Conclusions

19. I have reached the following conclusions having considered carefully the evidence before me, including the evidence of the Third Respondent under oath, the submissions of all parties and the relevant legal principles.
20. There are in my view no reasonable prospects of the claim against the Third Respondent succeeding. I have heard the evidence of the Third Respondent who I found to be a credible and honest witness. Contrary to the submissions made by the claimant, there were no inconsistencies in her evidence, and her oral testimony was consistent with the documentary evidence before me. I accept her evidence in its entirety.
21. The Third Respondent did not even know that the claimant existed until September 2023, more than a year after the claimant stopped working at East Riding Community Hospital. She had no involvement whatsoever in the decisions made in relation to the claimant.
22. Four of the allegations against the Third Respondent are of victimisation. They are bound to fail because the Third Respondent had no knowledge of the protected act relied upon by the claimant. The fifth and final allegation against the Third Respondent relates to an investigation into complaints raised by the claimant. The Third Respondent had no knowledge of the complaint or the investigation or any involvement in the investigation. That allegation is therefore also bound to fail.
23. In reaching my decision on the question of whether to strike out the claim against the Third Respondent I have taken account of the fact that discrimination claims are fact specific and that I should be wary of striking out such claims. I have also taken the claimant's case at its highest, as I am required to do. Taken at its highest, the claimant's allegations against the Third Respondent are a bare assertion, not supported by any evidence. The evidence before me today

suggests that the discrimination claims against the Third Respondent are entirely without merit.

24. The claims against the Third Respondent are therefore struck out under Rule 37 of the Employment Tribunal Rules of Procedure because they have no reasonable prospects of success.

Employment Judge Ayre

Date: 23 November 2023

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>