



EMPLOYMENT TRIBUNALS

Claimant: Mr S Superville
Respondent: Royal Mail Group Limited
Heard at: London South, by video
On: 1 and 2 February 2024
Before: Employment Judge G Cawthray

Representation

Claimant: In person, not legally qualified
Respondent: Ms. Z Tahir, Solicitor

RESERVED JUDGMENT

(Strike out and deposit order)

1. The Respondent's application for strike out made on 26 September 2023 is dismissed.
2. The Claimant is ordered to pay a deposit order in accordance with the separate deposit order of the same date.

REASONS

Procedure/Background/Discussions

1. The Respondent had applied to strike out parts of the claimant's victimisation complaint on the ground that there is no reasonable prospect of success. In the alternative, it submitted that a deposit order should be made. No submissions were made by the Respondent on the sum of any deposit to be awarded.
2. The Respondent had provided a witness statement for Mr. Chris Adams, but he was not called as a witness.
3. The Respondent had provided written submissions, and made oral submissions at the Preliminary Hearing.

4. The Respondent says the application relates to allegations involving the deletion of data, and specifically clarified that the allegations subject to the application are those set out below following:

“4.1 (b) (f) Did Anna Walsh (respondent grievance investigator) fail to properly investigate the Claimant’s grievance regarding application 15 recruitment treatment and the manual deletion of its data?”

4.2(b) (f) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 16 recruitment treatment and the manual deletion of its data?

4.4 (b) (j) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 18 recruitment treatment and the manual deletion of its data?

4.5 (b) (j) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 19 recruitment treatment and the manual deletion of its data?

4.6 (b) (d) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 20 recruitment treatment and the manual deletion of its data?

4.7 (b) (d) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 21 recruitment treatment and the manual deletion of its data?

4.8(b) (f) Did Anna Walsh) fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 22 recruitment treatment and the manual deletion of its data?

4.9 (b) (h) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 23 recruitment treatment and the manual deletion of its data?

4.10 (b) (f) Did Anna Walsh fail to properly investigate the Claimant’s 29 July 2020 grievance regarding application 24 recruitment treatment and the manual deletion of its data?

4.11 (b) (h) Did, from 29 October 2019 onward, the status of the Claimant’s applications 25 and 26 not actioned by Respondent until their manual deletion on/around 14 April 2021 to 16 April 2021?

4.14 (a) (b) *Did those responsible, completely delete claimant application records 16, 18, 19, 20, 21, 22, 23, 24 from the SuccessFactors system to the schedule identified under each application allegation above.*

4.14 (a) (c) *Did Phil Northage (of respondent CEO office), on receipt of the Claimant's 02 January 2020 confidential letter of complaint on the noticed manual deletions to Keith Williams (respondent Chairman), between 03 January 2020 and 30 January 2020, "tip-off" those conducting the deletions by his inappropriate direct queries to "HR"?*

4.14 (a) (d) *Did Phil Northage, in a letter to the Claimant dated 15 January 2020, state that the noted deletions were all "automatic" due a SuccessFactors purging function of expired application records to a closed vacancy in a specific application status after 18 months (whereas the facts did not support this)?*

4.14 (a) (f) *Did Phil Northage, in a 02 April 2020 response email to the Claimant complaint on records deletions), state that he would not investigate the deletions further because he had already explained them and "any evidence you have to support your claims should not relate to the matter I have already covered"?*

4.14 (a) (g) *Did Anna Walsh, the respondent investigator of the Claimant's 29 July 2020 formal grievance complaint detail and evidence on the staged, complete deletion of records for his applications 15, 16, 18, 19, 20, 21, 22, 23 and 24, fail to ask him any questions on it?*

4.16 (a) (q) *Did Anna Walsh, during her investigation, share confidential information with others to allow the Claimant to be identified to them – along with his complaint relating to the "manual deletion of his application records"?*

Respondent manual deletion of claimant application 25 and 26 records 11 October 2019 – 16 April 2021 (entirety of the allegations under 4.18 (a))".

5. The Claimant provided written submissions and made oral submissions at the Preliminary Hearing. The Claimant provided information about his means to pay at the Preliminary Hearing, and I asked him some clarification questions in this respect.

The Issues

6. The issues for determination were as set out below:
 - a. Should the allegations of victimisation as identified above be struck out because it has no reasonable prospect of success?
 - b. Do the allegations of have little reasonable prospect of success?
 - c. If so, should the Claimant be ordered to pay a deposit of between £1 and £1,000 as a condition of continuing with the allegations?

The legal principles – strike out orders and deposit orders Deposit Orders

Strike Out

7. Under Rule 37 a claim or part of a claim can be struck out on grounds that include it has no reasonable prospect of success. A claim cannot be struck out unless the party has been given a reasonable opportunity to make representations either in writing or, if requested by the party, at a hearing.

Rule 37 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 states:

Striking out

37.

(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) or 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. Operation of rule 37(1)(a) requires a two stage test.
9. Firstly, has the strike out ground (here “no reasonable prospect of success”) been established on the facts.
10. If so, secondly is it just to proceed to a strike out in all the circumstances (which will include considering whether other lesser, measures might suffice).
11. When assessing whether a claim has no reasonable prospect of success the Tribunal must be satisfied that the claim or allegation has no such prospect, not just that success is thought to be unlikely (*Balls v Downham Market High School and College [2011] IRLR 217*). The Tribunal must take the allegations in the claimant’s case at their highest. If there remain disputed facts there should not be a strike out unless the allegations can be conclusively disproved as demonstrably untrue or the claim is fanciful or inherently implausible (*Ukegheson v Haringey London Borough Council [2015] ICR 1285; Merchkarov v Citibank NA [2016] ICR 1121*). In other words a strike out application has to be approached assuming, for the purposes of the application, that the facts are as pleaded by the claimant. The determination of a strike out application does not require evidence or actual findings of fact.
12. In *Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330* the Court of Appeal held, as a general principle, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute. On a striking-out application (as opposed to a hearing on the merits), the Tribunal is in no position to conduct a mini-trial, with the result that it is only in an exceptional case that it will be appropriate to strike out a claim on this ground where the issue to be decided is dependent on conflicting evidence. Such an exception might be where there is no real substance in the factual assertions made, particularly if contradicted by contemporary documents or, as it was put in *Ezsias*, where the facts sought to be established by the claimant were ‘*totally and*

inexplicably inconsistent with the undisputed contemporaneous documentation' (para 29, per Maurice Kay LJ).

13. A strike out application succeeds where it is found that, even if all the facts were as pleaded by the claimant, the complaint would have no reasonable prospect of success. It was said by Underhill LJ in *Ahir v British Airways [2017] EWCA Civ 1392* that “Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment... Nevertheless it remains the case that the hurdle is high, and specifically that it is higher than the test for making a deposit order, which is that there should be “little reasonable prospect of success.”
14. There is a special need for caution in strike out discrimination cases because they are generally fact sensitive, because of the public interest in examining the merits at a final hearing, and because of the shifting burden of proof.
15. Where a litigant in person is involved the tribunal should not simply ask the question orally to be taken to the relevant material in support of the claim but should also carefully consider the claim as pleaded and as set out in relevant supporting documentation before concluding there is nothing of substance behind it; *Cox v Adecco Group UK [2021] 1CR 1307*.
16. If a strike out application fails the argument about the overall merit of the claim is not decided in the claimant’s favour. Both the claimant and the respondent argue their positions on the merits in full and afresh at the full hearing.
17. The EAT, in the case of *Mechkarov v Citibank NA [2016] ICR 1121*, summarised the approach to be followed by a Tribunal when faced with an application to strike out a discrimination claim as follows:
 - a) Only in the clearest case should a discrimination claim be struck out.
 - b) Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence.
 - c) The Claimant’s case must ordinarily be taken at its highest.

- d) If the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out.
- e) A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.

18. In *Yorke v Glaxosmithkline Serviced Limited*, at paragraph 51, HHJ Tayler states: *"Where the parties are represented it is the representatives that bear the principle responsibility for ensuring that the list of issues is up to the job"*.

19. Although a poorly pleaded case presents difficulties for the tribunal, striking out the claim is rarely the answer. In case where there is a litigant in person, as established in *Mbuisa v Cygnet Healthcare Ltd EAT 0119/18* the proper course of action would be to record how the case was being put, ensure that the original pleading was formally amended so as to pin that case down, and make a deposit order if appropriate.

Deposit Order

20. The power to make a deposit order is provided by rule 39 of the ET Rules, as follows:

"(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.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”

21. The test for the ordering of a deposit is therefore that the party has little reasonable prospect success. It was said by the Employment Appeal Tribunal in *Hemdan v Ishmail* [2017] IRLR 228 that the purpose of a deposit order is “ To identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs, ultimately, if the claim fails” and it is “ emphatically not...to make it difficult to access justice or effect a strike out through the back door.” A deposit order should be capable of being complied with and a party should not be ordered to pay a sum which he or she is unlikely to be able to raise.
22. As for the approach the Tribunal should take, in *Wright v Nipponkoa Insurance* [2014] UKEAT/0113/14 and *Van Rensburg v Royal Borough of Kingston-UponThames and others* [2007] UKEAT/0095/07 it was said, a Tribunal is not restricted to a consideration of purely legal issues; it is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward. That said there is a balance to be struck as to how far such an analysis can go. It was also made clear in *Hemdan* that a mini-trial of the facts is to be avoided. If there is a core factual conflict it should properly be resolved at a full merits hearing where evidence is heard and tested.
23. The Respondent pursues the application as an alternative to their strike out application. The test is therefore one of “little reasonable prospect of success” as opposed to “no reasonable prospect of success” for a strike out application.
24. Rule 39 allows a tribunal to use a deposit order as a less draconian alternative to strike-out where a claim or response (or part) is perceived to be weak but could not necessarily be described as having no reasonable prospect of success.

25. In *Jansen van Rensberg v Royal London Borough of Kingston-upon-Thames* UKEAT/0096/07, the EAT observed: “27. ... the test of little prospect of success ... is plainly not as rigorous as the test that the claim has no reasonable prospect of success ... It follows that a tribunal has a greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response.”
26. A deposit order application has a broader scope compared to a strike out application and gives the Tribunal a wide discretion not restricted to considering purely legal questions. The Tribunal can have regard to the likelihood of the party establishing the facts essential to their claim, not just the legal argument that would need to underpin it.
27. In a case where a Tribunal concludes that a claim or allegation has little reasonable prospect of success, it does not mean that a deposit order must be made. The Tribunal retains a discretion in the matter and the power to make such a deposit order has to be exercised in accordance with the overriding objective and with having regard to all of the circumstances of the particular case.

Victimisation

28. Section 27 of the Equality Act 2010 states:

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.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

Submissions

29. The Respondent says the Claimant alleges that there was a manual deletion of data on April 2021 by the Respondent and that this has no reasonable prospect of success. It submits there is no prima facie case that data has been deleted manually.
30. It says the Claimant must prove that he was subjected to detriment because of the protected act/s and/or the belief the Claimant may do a protected act.
31. The Respondent cited *Laing v Manchester City Council 2006 EAT* and says this case supports strike out when the reason is genuine and does not require disclosure.
32. The Respondent says that there was no manual deletion, but further even if there was, there was no causal link between deletion and the protected act/s and/or the belief the Claimant may do a protected act.
33. The Respondent provides a table within the written submission which sets out when data was purged from the system.
34. The Respondent say there is no reasonable link between data being deleted in 2019, some five years after the first protected act and comments that the second protected act was after some of the data was purged from the system.
35. It submits the Tribunal should not be restricted to considering purely legal matters but also the likelihood of establishing facts and can form a provisional view on credibility.
36. It cited *Van Rensburg v Royal Borough of Kingston on Thames* and says there is no plausible reason why the Respondent would delete the Claimant's application records.
37. The Claimant written submission was lengthy, and not repeated here but was considered in full. In oral submissions the Claimant's emphasis was there was nothing in law that limited the time between a protected act and detriment.

Conclusions

38. In this case, the Respondent accepts the first protected two acts relied on, being the Claimant's Employment Tribunal claim in 2014 under case number 2201468/2014 and his grievance dated 29 July 2020 as protected acts.
39. The Claimant also relies on the Respondent believing the Claimant had done, or may do, a further protected act (i.e. raise a future Employment Tribunal Claim). The Respondent does not accept this alleged protected act.
40. As summarised in the legal principles above, when considering whether the complaint has little reasonable prospect of success I have to take the claimant's case at its highest. In relation to deletion of data, the Claimant's primary case, as I understand it is, that there was a deliberate and manual deletion of his job applications.
41. I have set out my conclusions in relation to each allegation below.
42. I have dealt with 4.1(b)(f) to 4.10(b)(f) together. My reading of these allegations, when taken together, is that the alleged detriment is that Anna Walsh failed to investigate the Claimant's grievance, submitted on 29 July 2020, and that she is alleged to have failed to properly investigate the treatment of applications 15, 16, 18, 19, 20, 21, 22, 23 and 24 and the manual deletion of the data relating to each application.

“4.1 (b) (f) Did Anna Walsh (respondent grievance investigator) fail to properly investigate the Claimant's grievance regarding application 15 recruitment treatment and the manual deletion of its data?”

4.2(b) (f) Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 16 recruitment treatment and the manual deletion of its data?

4.4 (b) (j) Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 18 recruitment treatment and the manual deletion of its data?

4.5 (b) (j) Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 19 recruitment treatment and the manual deletion of its data?

4.6 (b) (d) Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 20 recruitment treatment and the manual deletion of its data?

4.7 (b) (d) *Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 21 recruitment treatment and the manual deletion of its data?*

4.8(b) (f) *Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 22 recruitment treatment and the manual deletion of its data?*

4.9 (b) (h) *Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 23 recruitment treatment and the manual deletion of its data?*

4.10 (b) (f) *Did Anna Walsh fail to properly investigate the Claimant's 29 July 2020 grievance regarding application 24 recruitment treatment and the manual deletion of its data?*

43. I do not consider the likely prospects of these allegations of detriment succeeding hinge alone on whether or not there was any manual deletion of data as they appear to relate more widely to Anna Walsh's failure to investigate the Claimant's grievance. This will involve consideration of witness and documentary evidence regarding Anna Walsh's investigation and findings of fact on whether there was proper investigation or not, and if not, the reason why.

44. On the information before me, I cannot say at this stage there is no or little reasonable prospects of success. The application is refused.

4.11 (b) (h) *Did, from 29 October 2019 onward, the status of the Claimant's applications 25 and 26 not actioned by Respondent until their manual deletion on/around 14 April 2021 to 16 April 2021?*

45. I understand this allegation as being that in relation to applications 25 and 26 the status of his application was shown as "not actioned" until deletion. This appears to be the alleged detriment, which given the start date of 29 October 2019 can only be flowing from the first protected act.

46. Again, this allegation doesn't seem to directly relate to the deletion of data, but rather the status of the application. This will require determination of what the status was, whether such status constituted detriment and if so the reason why.

47. There is no requirement for detriment to be done within a particular time frame from a protected act, but I must consider plausibility, taking account of the Claimant's case at the highest. On the information before me, I

cannot say that the status of the application being “not actioned” is inherently implausible, but I do see some difficulty with the link between the status of two job applications made in September and October 2019 and the Claimant submitting an Employment Tribunal complaint in 2014.

48. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.14 (a) (b) *Did those responsible, completely delete claimant application records 16, 18, 19, 20, 21, 22, 23, 24 from the SuccessFactors system to the schedule identified under each application allegation above.*

49. The Claimant’s case is that staff of the Respondent manually deleted the application records cited above. The Respondent says the SuccessFactor system does automatic data purges.

50. I have reminded myself that I am not to undertake a mini-trial and must take the Claimant’s case at its highest.

51. I have noted that in this allegation the alleged persons involved are not named, and are referenced as “those responsible”. As can be seen from the case management orders in this claim, significant efforts have been made to ensure the Claimant puts his allegations in a way that is understood, and the need for specificity has been explained. On considering this allegation, it remains unclear on precisely who the Claimant says deleted his records, and indeed I note there has been discussion throughout the Preliminary Hearings regarding that the Claimant does not necessarily know the individual, but that it is a person/s within the HR team.

52. I cannot say that there are no reasonable prospects of success. Whether or not there was a manual deletion or not, even noting the Respondent’s comments, this is a matter I consider requires determination after considering evidence.

53. However, as set out in my conclusion above, I do see difficulty with the Claimant establishing the link between the removal of data from a HR system with the Claimant’s protected acts/alleged protected acts and further the fact that alleged persons responsible are not clear.

54. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.14 (a) (c) *Did Phil Northage (of respondent CEO office), on receipt of the Claimant's 02 January 2020 confidential letter of complaint on the noticed manual deletions to Keith Williams (respondent Chairman), between 03 January 2020 and 30 January 2020, "tip-off" those conducting the deletions by his inappropriate direct queries to "HR"?*

55. On the reading of this allegation, it appears that the Claimant is arguing that it was his letter dated 2 January 2020 caused Phil Northage to "tip-off" those conducting deletions. I interpret the alleged detriment to be the "tip-off". The alleged deletions form part of the background.

56. This alleged detriment is after protected act 1, before protected act 2, but I note alleged protect act 3 relates to a belief.

57. I consider this allegation will require an examination of the evidence to ascertain whether or not Phil Northage tipped off any persons allegedly conducting deletions. However, again, there is a lack of clarity on who is allegedly tipped off and what about. The fact that this remains unclear, and the passage of time from the 2014 protected act and the lack of clarity regarding the third protected act leads me to conclude that there is little prospect of success in relation to this allegation.

58. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.14 (a) (d) *Did Phil Northage, in a letter to the Claimant dated 15 January 2020, state that the noted deletions were all "automatic" due a SuccessFactors purging function of expired application records to a closed vacancy in a specific application status after 18 months (whereas the facts did not support this)?*

59. I understand the alleged detriment in this allegation is that Phil Northage sent the Claimant a letter stating that deletions were automatic.

60. Whether or not this took place or not will need determination. Further, there will need to be consideration of the evidence and the reason why Mr. Northage sent the Claimant a letter on 15 January 2020 with the contents it contained, and whether this amounts to a detriment.

60. Considering this allegation in the specific way it is put and in view of the fact that, it appears, on the basis of the Claimant's other allegations that he raised concerns about deletions on 2 January 2020, and in this allegation it is asserted that Mr. Northage wrote a letter to the Claimant about deletions. I am finding it difficult to see any link with Mr. Northage writing to the Claimant on 15 January 2020 and protected act 1 or 3, but cannot say that there is no reasonable prospect of success.

61. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.14 (a) (f) *Did Phil Northage, in a 02 April 2020 response email to the Claimant complaint on records deletions), state that he would not investigate the deletions further because he had already explained them and "any evidence you have to support your claims should not relate to the matter I have already covered"?*

62. I understand the alleged detriment in this allegation is that Phil Northage told the Claimant he would not investigate the deletions because he had already explained the matter.

63. Whether or not this took place or not will need determination. Further, there will need to be consideration of the evidence and the reason why Mr. Northage sent the Claimant an email on 2 April 2020 with the contents it contained, and whether this amounts to a detriment.

64. However, considering this allegation in view of the two above allegations, it appears, on the basis of the Claimant's own allegation that Mr. Northage's email dated 2 April 2020 was in response to an email sent by the Claimant. Again, I am finding it difficult to see any link with Mr. Northage writing to the Claimant on 2 April 2020 in response to an email from the Claimant and protected act 1 or 3, but cannot say that there is no reasonable prospect of success.

65. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to

me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.14 (a) (g) *Did Anna Walsh, the respondent investigator of the Claimant's 29 July 2020 formal grievance complaint detail and evidence on the staged, complete deletion of records for his applications 15, 16, 18, 19, 20, 21, 22, 23 and 24, fail to ask him any questions on it?*

66. I understand the allegation here is that Anna Walsh failed to ask the Claimant questions in the investigation process regarding the deletion of records.

67. I do not consider the likely prospects of this allegation succeeding hinges alone on whether or not there was any manual deletion of data as they appear to relate more widely to Anna Walsh's failure to investigate. This will involve consideration of witness and documentary evidence regarding Anna Walsh's investigation process and whether or not she asked the Claimant question regarding the deletion issue, and if not, the reason why.

68. On the information before me, I cannot say at this stage there is no or little reasonable prospects of success. The application is refused.

4.16 (a) (q) *Did Anna Walsh, during her investigation, share confidential information with others to allow the Claimant to be identified to them – along with his complaint relating to the “manual deletion of his application records”?*

69. I understand the allegation here is that Anna Walsh shared confidential information allowing the Claimant and his complaint to be identified.

70. I do not consider the likely prospects of this allegation succeeding hinges alone on whether or not there was any manual deletion of data as they appear to relate more widely to Anna Walsh's alleged sharing of confidential information. This will involve consideration of witness and documentary evidence regarding Anna Walsh's actions and whether or not she shared confidential information, and if not, the reason why.

71. On the information before me, I cannot say at this stage there is no or little reasonable prospects of success. The application is refused.

4.18 Respondent manual deletion of claimant application 25 and 26 records 11 October 2019 – 16 April 2021 (entirety of the allegations under 4.18 (a))”.

72. I note in the email provided by Ms. Tahir this allegation started with 4.19 but this cannot be the case as there is 4.19 and this must be typing error and have meant 4.18.

I have considered it necessary and appropriate to set out each of allegations under 4.18 and deal with each.

4.18a Did Bernard O'Halloran, Nicola Hancock, Alison Westwood, and Anna Walsh fail to act in response to the Claimant's concern that Helen Pettifer (recruitment manager) on 11 October 2019 deliberately set the Claimant's applications 25 and 26 to a "No State" status to avoid them being formally rejected?

73. My reading of this allegation is that the alleged detriment is that the persons names did not act in response to concerns raised by him on 11 October 2019.

74. Whether or not this took place or not will need determination. Further, there will need to be consideration of the evidence and what the named persons did or did not do, and whether this amounts to a detriment.

75. However, I am finding it difficult to see any link with protected act 3, noting but cannot say that there is no reasonable prospect of success.

76. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.18b Rather than address the Claimant's concerns on how he had been treated in these application recruitment arrangements, , did the Respondent simply diarise 18 months from 11 October 2019 to completely delete claimant application 25 and 26 records from SuccessFactors to feign automatic purging?

77. I understand the alleged detriment in this allegation to be the Respondent diarising from 11 October 2019 to delete the Claimant's records, and also feign automatic purging.

78. The Claimant has not specified who at the Respondent he alleges to be responsible or involved in this.

79. Whether or not this took place or not will need determination.

80. However, I am finding it difficult to see any link with protected act 3, but cannot say that there is no reasonable prospect of success.

81. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.18c *Did the Respondent, wholly aware that complete deletion of auditable corporate records was not business policy and ignore this?*

82. I understand the allegation of detriment to be that that Respondent ignored business policy regarding deletion of corporate records. It is not clear who at the Respondent was allegedly involved or which policy is referred to. Further, the date of this alleged detriment is not entirely clear.

83. Whether or not this took place or not will need determination.

84. However, I am finding it difficult to see any link with protected act 3, but cannot say that there is no reasonable prospect of success.

85. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

4.18d *Did the Respondent initiate complete deletion of these records manually but claimed it was an automatic function simply to detriment the Claimant?*

86. I understand that the alleged detriment is the initiation of the deletion of application records 25 and 26.

87. The Claimant's case is that staff of the Respondent manually deleted the application records. The Respondent says the SuccessFactor system does automatic data purges.

88. As set out above, I have reminded myself that I am not to undertake a mini-trial and must take the Claimant's case at its highest.

89. I have noted that in this allegation the alleged persons involved are not named, and reference is made only to the "Respondent". As can be seen from the case management orders in this claim, significant efforts have been made to ensure the Claimant puts his allegations in a way that is understood, and the need for specificity has been explained. On considering this allegation, it remains unclear on precisely who the Claimant says initiated the deletion of his records, and indeed I note there has been discussion throughout the Preliminary Hearings regarding that the Claimant does not necessarily know the individual, but that it is a person/s within the HR team.
90. I cannot say that there are no reasonable prospects of success. Whether or not there was an initiation of complete deletion, is a matter I consider requires determination after considering evidence.
91. However, as set out in my conclusions in relation to other allegations above, I do see difficulty with the Claimant establishing the link between the removal of data from a HR system with the Claimant's protected act 3 and further the fact that alleged persons responsible are not clear.
92. In relation to this allegation, I therefore consider that there is little prospect of success of this allegation. I have considered the information available to me in regards to means to pay, and note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.

Employment Judge Cawthray
Date: 5 February 2024

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