



EMPLOYMENT TRIBUNALS

Claimant: Dr M Anadani

Respondents: The Sheffield College

At A PUBLIC PRELIMINARY HEARING

Heard at: Leeds by CVP

On: 22 January 2024

Before: Employment Judge Maidment

Appearances

For the claimant: In person

For the respondents: Mr S Robinson, Solicitor

JUDGMENT

The following claims of the claimant are struck out as having no reasonable prospect of success:

1. All claims in respect of his timetabling allocation in September 2022 coinciding with Friday prayers
2. All claims in respect of his work allocation and being overloaded with hours in September 2022
3. All claims of direct discrimination because of race and/or religion
4. All claims of harassment related to race and/or religion.

The claimant's separate complaints of victimisation shall proceed to the final hearing already listed.

REASONS

A complaint may be struck out if it has no reasonable prospect of success. The tribunal is given this power by Rule 37 of the Employment Tribunals Rules of Procedure 2013. A complaint of discrimination should only be struck out as having no reasonable prospect of success in the most obvious and plainest of cases, it being recognised that discrimination cases are generally fact sensitive - **Anayanwu v South Bank Students' Union and South Bank University [2001] IRLR 305**. Nevertheless, a tribunal is entitled to strike out the claims which are so

inherently improbable that they can be regarded as “fanciful” and “baseless” – **Ahir v British Airways Plc [2017] EWCA Civ 1392**. In that case the Employment Judge came to a calculation that there was no reasonable prospect of the claim succeeding partly because of its inherent implausibility and partly because the claimant pointed to no material which might support his case. The Court of Appeal considered that this was a permissible basis for his conclusion. It was said that employment tribunals should not be deterred from striking out the 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 is not being heard and explored. In **Anyanwu** it was recognised that the time and resources of employment tribunals ought not to be taken up having to hear evidence in cases that are bound to fail.

Time limits in employment tribunal proceedings are strict. However, in complaints of discrimination, the tribunal has a wide discretion to extend time where it is just and equitable to do so. The claimant must still nevertheless persuade the tribunal that it is appropriate to do so. A number of factors will typically be considered in determining whether to extend time, including the length of the delay in bringing the claim as well as the reasons for it. The tribunal can also consider the merits of claim. Fundamentally, however, the tribunal will be required to consider the balance of prejudice between the claimant not being able to proceed with a complaint and the prejudice to the respondent in having to defend it.

The claimant has two distinct claims of direct discrimination and harassment related to religion in respect of a timetabling issue which meant he was unable to attend Friday prayers and an alleged overloading in terms of his hours of work. Both are said to have occurred in September 2022. The claimant raised a complaint about these matters in November 2022. The workload issue was then resolved. He also accepts that the timetabling issue preventing him attending Friday prayers was resolved in January 2023, although the respondent says that in fact another employee covered the claimant’s classes from December 2022 to allow him to attend Friday prayers. The claimant only then commenced early conciliation on 22 August which concluded on 24 August 2023, the day he submitted his tribunal complaint. The complaint in respect of workload is therefore around 6 months out of time and the complaint about the Friday prayers around at least 4 months out of time.

All the claimant has been able to say by way of explanation is that he lacked the experience of bringing employment tribunal complaints in contrast to when he brought his second complaint in respect of which he commenced early conciliation on 17 September having received union advice. The claimant maintained that he did not have the time because of work pressures to research how to bring a tribunal complaint. The tribunal does not accept that he would not have had sufficient time to properly investigate the issue, not least given the significant resources available online.

Fundamentally, the tribunal considers that the balance of prejudice will be found to be in the respondent’s favour, given the prejudice it will suffer in having to evidence matters dating back to September 2022 when it reasonably concluded that they had all been resolved by January 2023, if not before. That is certainly the case

Case No: 6001635/2023 & 6002497/2023

when viewed in the full context and against the aforementioned factors. In circumstances where the tribunal considers that a just and equitable extension is not going to be granted in respect of these complaints, they have no reasonable prospect of success.

Regardless of that, those claims are of discrimination because of and/or harassment related to religion. The claimant has not advanced any positive case that this was the reason why the respondent acted as it did. There are not likely to be facts before the tribunal upon which it could reasonably conclude that the decisions taken were because of or related to religion.

The claimant was suspended from work on 26 April 2023 pursuant to a suggestion that he was marking students as present at class when they were not and that he had told students not to attend a particular timetabled lesson. All of the remaining complaints relate to that suspension, the subsequent investigation and the respondent's ultimate decision that there was no case to answer. They are pursued as complaints of victimization, which are unaffected by this Judgment. However, they are also brought as complaints of direct discrimination and harassment because of religion (in terms of the suspension itself) and also reliant on the protected characteristic of race in respect of the subsequent matters complained of.

The tribunal has discussed these complaints with the claimant today. He articulated clear complaints of victimization, i.e. that he thought that the unfavourable treatment he was complaining of had occurred because of his November complaint about the respondent's treatment of him in respect of timetabling and workload. He agreed, when the tribunal raised that he did not appear to be saying that he had suffered the unfavourable treatment because of or related to religion or race as opposed to him complaining of discrimination. In circumstances, where he is not and is not going to be articulating a complaint of direct discrimination and/or harassment and where it must be the case that he will not be seeking to show facts from which the tribunal could conclude that to be the reason for any alleged unfavourable treatment, those claims must also inevitably have no reasonable prospect of success.

Employment Judge Maidment

Date 22 January 2024

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