Appeal No. UKEAT/0175/20/LA (V)

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 9 February 2021
Judgement handed down on
25 February 2021

Before

HIS HONOUR JUDGE JAMES TAYLER

(SITTING ALONE)

MR CHRISTIAN MALLON — APPELLANT

AECOM LIMITED — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR CHRISTAN MALLON
(The Appellant in Person)

For the Respondent

MS TALIA BARSAM
(Of Counsel)

Instructed By:
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The Broadgate Tower
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London
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SUMMARY

DISABILITY DISCRIMINATION, PRACTICE AND PROCEDURE

The Claimant has dyspraxia. He contended that he required a reasonable adjustment to make a job application to the Respondent orally, rather than online. The Respondent sought strike out or a deposit order. For the purposes of the strike out application it was accepted that a PCP was applied of requiring an online application. The claim was struck out on the basis that the Claimant would not be able to establish that the application of the PCP placed him at a substantial disadvantage in comparison with people who are not disabled. Having regard to the definition of substantial, being more than minor or trivial, the Employment Judge erred in law in striking out the case on the basis of the material put before him, the arguments advanced and his analysis.

It is important in considering reasonable adjustment claims, to consider the possibility that the case is about physical features (which includes furniture) or auxiliary aids (which include services). No consideration was given to whether this case should be analysed as an auxiliary service claim.

HIS HONOUR JUDGE JAMES TAYLER

Introduction

1. This is an appeal against the Judgment of Employment Judge Burgher, sitting at the East London Hearing Centre on 9 May 2019, striking out the Claimant's claim of disability discrimination, by way of a failure to make reasonable adjustments to a job application process, on the ground that the claim had no reasonable prospect of success. The Judgment with reasons was sent to the parties on 14 May 2019.

2. The Claimant, who acts in person, appealed by a Notice of Appeal, received by the Employment Appeal Tribunal on 24 June 2019. In essence, the Claimant alleges that the Employment Judge should not have concluded that he had no reasonable prospect of establishing that he needed an adjustment because his disability, dyspraxia, caused him difficulties in completing online applications.

3. Mathew Gullick, Deputy Judge of The High Court, decided that there were no reasonable grounds for bringing the appeal, considering, in particular, that the Employment Judge had been entitled to conclude that the Claimant's ability in the past to make online applications for jobs, and repeatedly to the Employment Tribunal, was totally inconsistent with the claim that any provision, criterion or practice ("PCP") that had been applied, of requiring an online application, was substantially to his disadvantage.

4. The matter was considered pursuant to rule 3(10) of the Employment Appeal Tribunal Rules 1993 (as amended) by HHJ Auerbach, who permitted the appeal to proceed to a full hearing. He gave the following reasons:

> **It crosses the threshold of arguability that the Judge went further than he should in making the order, on the basis of findings of fact, or assumptions that the Appellant would not be able to prove certain facts at trial, about which there was a material dispute, and/or by relying on a view it took at this PH about his credibility on those matters.**

The applications

5. At the Employment Tribunal an application was also made that the claim should be dismissed as being an abuse of process because the Claimant had vexatiously brought claims of a similar nature in the past. Three claims had been dismissed on the merits. In one case, against John Lee Recruitment Limited, the Claimant had been ordered to pay costs.

6. In respect of the Claimant's claim against DEFRA, case number 4/17FET/1408/16, EJ Burgher recorded:

> **the Fair Employment Tribunal found that the Claimant could have got help from someone else to complete an application form, including a job centre, and it expressly rejected the Claimant's evidence that it was a problem for him to speak to his partner to do this.**

7. The Respondent also noted that the Claimant had withdrawn a further 29 claims; 17 of which the Claimant contended had been withdrawn "as a result of his lack of knowledge of the requirements to advance a claim" (an argument the Employment Judge found unconvincing); and 12 after the award of cost against him in the John Lee Recruitment Limited case. The Employment Judge recorded that:

> **The Claimant stated that he maintained his claim in this matter because it concerns an online application form which is different he says to all the claims he has withdrawn which he says concerned CV applications as a PCP when he requires an oral application.**

8. The abuse of process argument was rejected. However, the Employment Judge considered the previous cases were relevant in demonstrating that the Claimant was aware of the difficulties he faced in advancing this type of claim.

9. Because the claim was struck out, the Employment Judge did not go on to consider an alternative application for a deposit order, made on the basis that the claim had little reasonable prospect of success.

The issues in the claim

10. The issues in the claim had been identified by EJ Russell at a Preliminary Hearing for Case Management on 8 February 2019, as follows:

> **1. Did the Respondent apply a provision, criterion or practice (PCP) in that it required an on-line application form as a pre-condition to being considered for employment?**
>
> **2. Did any such PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that due to his dyspraxia he struggles with on-line systems? The Respondent will say that the Claimant was not required to complete the on-line test personally and that somebody could do it on his behalf.**
>
> **3. lf so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? The Claimant will say that the Respondent should have permitted him to make an oral application. The Respondent will say that this was not reasonable and that other help was offered.**

The basis of the claim

11. The Employment Judge analysed the Claimant's case from paragraph 15 of his Judgment:

> **15. The Claimant stated that he requested an oral application instead of the online with the Respondent in this matter but this was not provided. He stated that he was genuine in his desire to work in London as he has had very long commutes to work for significant periods in previous roles.**
>
> **16. The contemporaneous emails that were sent between the parties from 7 August 2018 to 29 August 2018 were referred to. The Respondent sent several**

emails to the Claimant asking the Claimant to provide details of the assistance he required in submitting the form so that his disability could be accommodated. The Claimant did not respond with any details. However, he consistently requested an 'oral application'. The Claimant's position was that the only way in which he was prepared to progress the application would be by way of oral application.

17 He stated before me that he cannot engage with online forms, password characters and dropdown menus. This was not conveyed to the Respondent at the time who were, on the face of it reasonably requesting from the Claimant what parts of the online process were said to be problematic. Further, the Respondent in this matter was also aware that the Claimant had in fact completed online forms for them when he worked with them previously.

18 The Claimant asserted that he could not ask his wife for help in completing the online form as she was not his carer; he was embarrassed to asked friends for help as they did not know that he suffers from dyspraxia; and it would have taken too much time to go to an advice centre for assistance. In respect of the online form that he had previously submitted to the Respondent, he stated he asked his wife for assistance with that because it was a job offer as opposed to an application. I was unable to accept this distinction as likely to be credible.

19 It is evident that it was the Claimant's choice about who to ask and who to seek assistance from. It is reasonable to infer that if the Claimant was genuinely interested in the role he would have sought assistance in progressing the online application form. In view of the fact that the Claimant was aware of previous Tribunal findings against him on this specific matter it is like[y] to be implausible for the Claimant to continue to maintain that he could not have availed of assistance.

20 When addressing the submission that the online form was not more involved than the numerous online Employment Tribunal claims he has made, the Claimant stated that he was now experienced at submitted Employment Tribunal claims and was familiar with the process. This did not apply to online processes that he had not encountered before and he would need time to handle them.

The Tribunal's direction on the law in respect of strike out in the Employment Tribunal

12. The Employment Judge directed himself with care, considering the power to strike out provided in rule 37 of the ET Rules 2013, and relevant authorities. I do not consider that there is any error in the direction, so do not repeat it, save to note that the Employment Judge was clearly aware that strike out is a draconian measure, generally inappropriate where there is a core of disputed fact, to be approached with particular caution in discrimination claims and inappropriate in all but the clearest cases. However, he clearly accepted it could, in very limited circumstances, be appropriate in discrimination claims.

13. While I have no criticism of the direction on strike out, it is also important to see rule 37 ET Rules 2013 in the context of the overriding objective provided for in rule 2. It is always important before applying for strike out to consider the proportionality of doing so, including the likelihood that it will really result in a saving of expense and avoid delay. Failed applications for strike out result in considerable expense and often delay the hearing of the claim. Parties should consider with care the words of HHJ Serota QC in **QDOS Consulting Ltd v Swanson** UKEAT/0495/11:

> **I would observe, bearing in mind the high cost to employers of conducting a hearing in the Employment Tribunal not only in terms of its legal costs but the expense of its employees attending lengthy proceedings …, there is a temptation to take advantage of a procedural shortcut to avoid these expenses. As Bingham LJ put it in the passage that I have cited, "a technical knockout in the first round is much more advantageous than a win on points after 15". However, applications to strike out on the basis that there is no reasonable prospect of success should only be made in the most obvious and plain cases …**
>
> **Applications under r 18(7)(b) that involve issues of discrimination must be approached with particular caution. In cases where there are real factual disputes the parties should prepare for a full hearing rather than dissipate their energy and resources, and those, I would add, of Employment Tribunals, on deceptively attractive shortcuts.**

14. Proportionality was of particular significance in this case, as the full hearing is likely to be short by discrimination claim standards, only being likely to involve the correspondence that was put before the Employment Tribunal in the strike out application, some medical evidence, and the evidence of the Claimant and the person with whom he corresponded at the Respondent.

15. I appreciate that, even where there is a factual dispute in a discrimination case, strike out could be appropriate where, for example, accepting a parties case at the highest, the claim or defence has no reasonable prospect of success: the key facts might not be disputed, the claim or defence might be wholly inconsistent with incontrovertible documents, or, even if it is assumed that evidence on a disputed matter will be accepted, the claim or defence could still be hopeless.

A fanciful prospect of success is not sufficient. No one stands to gain by a hopeless claim or defence going to trial – but one does need to be sure that there really is no realistic hope of success.

16. There are many cases where an application for a deposit order alone may be proportionate. While it may be thought that as the test for making a deposit order, that the claim has little reasonable prospect of success, is similar to that for strike out, so that, if an application is made for one of the two, there is little point in not seeking the other, in the alternative; an application for a deposit order is considerably less likely to develop into an impermissible mini-trial in which the tribunal is tempted into making findings of fact on a summary assessment of a limited part of the evidence. The making of a deposit order is a significant disincentive to continuation with a weak claim, or defence; as not only is the party against whom it is made required to pay a deposit (of an affordable amount) as a condition of pursuing the claim; if the allegation or argument in respect of which the deposit was ordered is determined against the paying party, for substantially the reasons given in the deposit order, the paying party shall be treated as having acted unreasonably in pursuing that allegation or argument for the purpose of rule 76 (costs), unless the contrary is shown.

Reasonable adjustments, the law

17. While the Employment Judge considered the law of strike out with care, there was no specific direction as to the law relevant to claims of failure to make reasonable adjustments. As is common in applications for strike out, the legal issues in the underlying claim were taken for read. This is risky, particularly if the claim is not entirely straightforward. Disability discrimination is a complex area of law.

18. The duty to make reasonable adjustments is provided for in section 20 **Equality Act 2010** ("EqA 2010"). The duty to make reasonable adjustments comprises three requirements (s. 20(2)). The duty is often analysed as if only the first requirement existed. The analysis in this case was on the basis that it was a first requirement (PCP) case. Section 20 provides in relation to first requirement cases:

> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.**

19. In a first requirement claim, for the duty to make reasonable adjustments to arise, it must be determined that (1) the employer adopts a PCP; (2) the PCP places the disabled person at a disadvantage; and (3) the disadvantage is substantial.

20. S. 212 EqA 2010 defines the term substantial:

> **212 General interpretation**
>
> **(1) In this Act— …**
>
> **"substantial" means more than minor or trivial;**

21. There is much important case law about first requirement reasonable adjustments claims. I will not conduct a general analysis of the case law as it was not considered by the Employment Judge in this case. However, I note a number of points of potential relevance to this case that I would have expected to be considered:

21.1. The concept of PCP is not to be approached in too restrictive a manner; **Carrera v United First Partners Research**, UKEAT/0266/15. HHJ Eady QC considered that an expectation that employees work late was sufficient to

be a PCP, even if there was no absolute requirement, as appeared to be the literal reading of how the PCP had been defined

21.2. The duty to make reasonable adjustments applies to the employer or potential employer. While it may assist, there is no requirement on the disabled person to suggest what adjustments should be made: **Cosgrove v Ceasar and Howie** [2001] IRLR 653

22. If an employer, would otherwise be under a duty to make an adjustment, care should be taken before it is assumed that the adjustment is not reasonably required because someone else can make the adjustment. Friends and family may be prepared to help a disabled person, but they should not be expected to step in and make a reasonable adjustment for an employer, or potential employer, to save it from the trouble of having to make the adjustment itself. Similarly, great care should be taken before concluding that a PCP does not place a disable person at a disadvantage because someone other than the employer, or potential employer, can provide the help that would otherwise have been required as a reasonable adjustment.

23. While consideration is often given by parties and employment tribunals to the first requirement, the second and third are sometimes overlooked.

24. The second requirement concerns physical features. A physical feature is defined to include "a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises": s. 20(11) EqA 2010.

25. The third requirement concerns auxiliary aids. Section 20(5) EqA 2010 provides:

> **(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

26. Section 20(11) EqA 2010 provides:

> **(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.**

27. In this case no consideration was given to whether the claim should be analysed on the basis that the Claimant was contending that he needed an auxiliary service, by way of assistance in completing the online application form. While the Claimant did not refer to the "third requirement" or rely on sections 20(5) and (11) EqA 2010, he is a litigant in person. Tribunals should have in mind when determining the issues in reasonable adjustments claims that it may not be a PCP case but may be about physical features (including furniture etc) or auxiliary aids (including services). For example, it is all too common for claims in which an employee contends that s/he needed an ergonomic chair, or voice recognition software, for the claim to be incorrectly analysed in terms of PCPs.

28. Ms Barsom noted that there is no ground of appeal that the Employment Judge misdirected himself in law in respect of reasonable adjustments. It would be pedantic to point out that there could hardly be a misdirection where there was no direction. For the purposes of the appeal I will assume that the Employment Judge had in mind the correct legal tests. However, it is still important to consider the tests as it is against them that I must consider whether it was open to the Employment Judge to conclude that the claim had no reasonable prospect of success.

<u>The decision to strike out</u>

29. The Employment Judge held:

> **34 The Claimant was aware from the clear pronouncements in previous judgments issued to him in the claims that he has brought regarding the necessary requirements to establish complaints, in particular:**
>
> > **34.1 There needs to be a PCP; and**
> >
> > **34.2 That PCP needs to place the Claimant at a substantial disadvantage when compared to non disabled persons.**
>
> **35 I consider that it is plain and obvious that the Claimant will be unable to maintain that there was a PCP, of an online form, applied by the Respondent [that] placed him at a substantial disadvantage.**

30. The Employment Judge did not consider the possibility that this should be analysed as a third requirement (auxiliary aid) case, in which, for example, the Claimant required an auxiliary service of a person, provided by the Respondent, to complete the online form during, or after, a discussion with the Claimant. This claim was only considered as a first requirement (PCP) case. The auxiliary service analysis was not raised by the Respondent.

31. The issues had been set out by EJ Russell at the Preliminary Hearing for Case Management on 8 February 2019. Understandably, as a litigant in person, the Claimant had not put the claim as either a PCP or auxiliary service case. The Claimant contended in his claim form that he needed to be allowed to make an oral application rather than having to complete an online form because of his dyspraxia. EJ Russell properly assisted in seeking to draw out a list of issues from this factual complaint. It is important that when so doing, in reasonable adjustment cases, employment judges remind themselves of the possibility that the claim might more properly be analysed as a physical features or auxiliary aids case; or that such an analysis should go forward as an alternative to the PCP analysis. An employment judge could rarely be fairly criticised for improperly entering into the arena, if s/he ensures that the factual claim being advanced by a litigant in person is analysed by application of the correct legal principles.

32. The overall assessment of the Employment Judge was that "it is plain and obvious that the Claimant will be unable to maintain that there was a PCP, of an online form, applied by the Respondent [that] placed him at a substantial disadvantage." The sentence is a little unclear in that it could indicate that the Employment Judge did not accept that a PCP was applied at all. However, the rest of the analysis seems to be on the assumption that a PCP could be made out. Ms Barsam accepted that was the case, and stated that the application for strike out was advanced on the basis that there was a requirement to complete an online application (the PCP), but that the Claimant would not be able to establish that any adverse effect of the application of the PCP was substantial. In those circumstances, for present purposes, it probably does not make a significant difference whether this should have been analysed as an auxiliary service case, rather than a PCP case.

33. I will also assume that the Employment Judge was well aware that the word "substantial" required no more than that the disadvantage of requiring an online application was more than minor or trivial.

34. I will now consider the reasoning of the Employment Judge for the overall assessment, which he set out in the subparagraphs of paragraph 35, and in paragraph 36 of his Judgment.

> **35.1 There was no strict time frame or bar on seeking assistance in completing the online application form.**

35. It does not follow from the fact that there was no time frame in which to complete the online application, that the Claimant was not put at a more than minor or trivial disadvantage, if filling in the online application would take him significantly more time than a person who is not disabled. If the time allowed to make an application was so short that a disabled person could not complete the form at all in the time available, a particularly severe disadvantage would be

suffered. Nonetheless, even if unlimited time is available, a disabled person could still be at a substantial disadvantage if s/he has to spend much longer completing the form than a person who is not disabled. Determination of the additional amount of time required by a disabled person to complete the application, and whether it constitutes a substantial disadvantage, is quintessentially a matter of fact, likely to require determination on a consideration of the evidence.

36. Similarly, the fact that the Claimant could seek assistance in completing the online application, did not necessarily mean that he was not put at a substantial disadvantage by having to do so. If a person who did not have a disability could complete the form without assistance, depending on the facts of the case, the requirement for assistance, itself, could be a disadvantage that is more than minor or trivial. Most people would want to be able to complete a job application themselves, without having to rely on their friends and family. Proper determination of this point is likely to be fact sensitive.

> **35.2 The contemporaneous correspondence shows that the Respondent was reasonably requesting from the Claimant what adjustments he needed to complete the online application. The Claimant did not respond to this but simply demanded an 'oral application' and provided his telephone number. In effect, the Claimant seeks to establish that it is a reasonable adjustment for the Respondent to transcribe what he says and put it into the form themselves.**

37. Even if it is correct that the Claimant's demand for an oral application, without further elaboration, was unreasonable, this does not go to the question of whether the Claimant was put at a substantial disadvantage by being required to complete an online application, which was the only matter in issue in the strike out application. The claim was not dismissed on the basis that there was no reasonable prospect of establishing that a member of the Respondent's staff speaking to the Claimant by telephone, entering his details into the online form and uploading the CV he had sent by email, could be a reasonable adjustment. The correspondence in the

bundle seems to show a degree of intransigence on both sides, that would require consideration on a proper analysis of the evidence. If it was contended that the Claimant requested an oral application because he knew that the Respondent would not provide one, and so he would have a basis for a claim, despite not really wanting the job, and so was at no disadvantage, that is a matter that could not be assumed on a summary consideration at this preliminary hearing, and would have to be put fairly to the Claimant.

> **35.3 The Respondent will be able to establish that the Claimant had been able to complete online forms previously, as the Claimant accepts this.**

38. As is apparent from the reasoning of Gullick DJHC, at the sift of this appeal, this was the Respondent's strongest argument. However, I do not consider that it necessarily follows from the fact that a person has previously been able to complete an online form that s/he may not be at a substantial disadvantage in doing so, depending on how long it takes, and what assistance is required. Any difficulties that the Claimant faced in completing claims to the Employment Tribunal would be likely to require fact finding. I also do not consider that the Claimant's argument that he finds it much easier to fill in an online form once he has already completed one of that type, is so obviously without merit that it should be dismissed summarily.

> **35.4 The Claimant is not likely to establish that he would not have been able to ask his partner, a job centre, or advice centre for help in completing the form or that his disability prevented him from doing so. This position was explicitly rejected in his Defra case. It is incredible for the Claimant to maintain the same position. On the submissions before me the Claimant could have asked for assistance but chose not to.**

39. This reasoning again conflated the question of whether the Claimant could complete the application with assistance, with that of whether he was at a substantial disadvantage in so doing. This would be likely to require a careful factual analysis, particularly to avoid a determination that an employer could avoid a duty to make reasonable adjustments by, in effect, requiring that someone else make the adjustment for them. I do not see how at a summary

hearing it could be determined that the Claimant's contention that his partner did not feel able to complete every online application for him, because she did not see herself as his carer, whereas she had been prepared to provide help where an interview had been offered, was unarguable. I also cannot see how it could be decided, without evidence, that it would be easy for the Claimant to obtain assistance from the job centre or an advice centre in completing every online application that he wishes to make in his search for employment.

> **35.5 The Claimant failed to provide any specifics to the Respondent of the actual difficulties of the online form had for him to the Respondent despite numerous invitations to do so; and**

40. Even if the Claimant was unreasonable in this respect, I do not see that it shows that there was no arguable claim that he was put to a substantial disadvantage by having to complete an online application. The Claimant's contention was that he had sent a fact sheet about the difficulties faced by people with dyspraxia with his CV, and he thought it would be sufficient to explain why he found online forms difficult. I do not consider that that was so unarguable that it would not require consideration on the evidence.

> **35.6 The Claimant's position is that he would have only sought to progress the application by way of oral application and this demonstrates a lack of reasonable cooperation in seeking [to] ameliorate the effects of any alleged PCP. The Claimant's single-minded demand for an oral application evidently disregarded the need for him to show that what he was being asked to do actually placed him at a substantial disadvantage.**

41. The issue in the strike out application was whether it was unarguable that the Claimant would be able to demonstrate that he was put at a substantial disadvantage by having to complete an online application form. At the hearing he stated that his dyspraxia causes him considerable difficulty in registering for online applications because of having to use a password, and that he finds it very difficult to deal with drop down menus. Even if he failed to explain this to the Respondent, that was not the issue on which the strike out was based. I do

not consider that these were points that were so unarguable that there were no factual issues that would be likely to require determination on the evidence.

> **36 Having considered Anyanwu, Ezsias and Ahir I consider that this is one of the rare cases where the exception against striking out discrimination cases applies. The number of claims that the Claimant has previously advanced relating to similar matters against different respondents, that have been dismissed or withdrawn [of] his own volition, is indicative of a lack of substance to those claims. There is a similar lack of substance in this claim and there is no credible basis to maintain this claim.**

42. This suggests the possibility that, having rejected the application that the claim be struck out as an abuse of process, because of the number of claims that the Claimant had brought (and usually withdrawn) in the past, and the failure of the three that had gone to hearings, the same reasoning was brought in through the back door, to bolster the contention that this was a claim that could be decided summarily on the basis that there were no reasonable prospects of success. I do not consider that, without further investigation, it could properly be determined on a summery basis that the Claimant's contention that he was put at a substantial disadvantage in completing an online application was false, that he knew that was the case, and that online application forms cause him no significant difficulty in reality.

43. I do not consider that on the material that was before this Employment Judge, on the basis of the arguments advanced and his analysis of them, it could properly be said that this claim had no reasonable prospects of success. I consider that the Employment Judge erred in law in striking out the claim.

44. The matter shall be remitted to the Employment Tribunal. It may be considered appropriate to conduct case management to consider the issues further, including whether the case should be considered, possibly in the alternative, as an auxiliary services claim. The

A Respondent may wish to consider whether it is proportionate to continue to seek strike out of the claim.

B 45. Since the Preliminary Hearing in the Employment Tribunal, the Claimant has been diagnosed as having autism. Consideration may need to be given to how the Employment Tribunal process can be adapted to accommodate his disabilities.

C 46. Having regard to the principles in **Sinclair Roche & Temperley v Heard** [2004] IRLR 763, I consider that the matter should on remission be dealt with by another Employment Judge. I have no doubt as to the professionalism of this Employment Judge, and consider that the D Respondent could have done more to make sure that the underlying nature of the claim was subject to more focus. However, the judge expressed himself with considerable vehemence as to the underlying merits of the claim, and I consider that the Claimant could have an E understandable concern that the same result might be reached again, unless the matter is considered entirely afresh.

F 47. Although this appeal has succeeded, the Claimant should not assume that outcome means more than that on the basis of the material before the Employment Judge, and on the basis of the arguments and analysis adopted, I do not consider that it could properly be said that the claim had no reasonable prospect of success. The Respondent may seek to renew their G application for strike out and/or may seek a deposit order. If the claim has sufficient merit to proceed to a final hearing that does not mean that it will be successful.

H 48. The Claimant told me that he is focused on obtaining work. His chances of obtaining work will increase if he explains to any prospective employers the nature of his disability and

A the effects it has on his ability to complete online forms; and co-operates with them to find effective means for him to make his applications. The Claimant told me that his applications are for jobs that he genuinely wants. Were that not the case, and were it to be established that multiple applications were being made for jobs that he does not want, with the aim of bringing claims, possibly to achieve settlements, that is a matter that could result in strike out and costs.

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