



EMPLOYMENT TRIBUNALS

Claimant

-v-

Respondent

Mr Sukhjinder Deo

Grace Dieu Manor School

PRELIMINARY HEARING

Heard at: Leicester **On:** Monday 17 July 2017

Before: Employment Judge Evans (sitting alone)

Representation

For the Claimant: In person

For the Respondent: Mr Forrest, consultant

JUDGMENT

1. The claim of discrimination because of marriage or civil partnership is **dismissed** following its withdrawal by the Claimant at the Hearing on 17 July 2017.
2. The claims of discrimination because of (1) race; (2) sex; (3) religion or belief are **not** struck out as having no reasonable prospect of success.
3. The claim of unfair dismissal is **not** struck out as having no reasonable prospect of success.

REASONS

Background

1. On 3 January 2017, the Claimant presented claims of race discrimination, discrimination because of religion or belief, discrimination because of marriage or civil partnership, sex discrimination and unfair dismissal to the employment tribunal following his dismissal by the Respondent.
2. There was a closed telephone preliminary hearing on 27 February 2017 before Employment Judge Solomons. The Claimant did not attend. He has subsequently explained, as ordered by EJ Solomons, and I accept, that he did not attend because he did not receive notification of the hearing.
3. EJ Solomons noted that: "there appears to be no material in the claim form setting out

grounds for saying that the Claimant's dismissal was affected by discrimination in any way".

4. EJ Solomons ordered, *inter alia*, that there should be an open preliminary hearing to consider:
 - 4.1. Whether any of the claims have any reasonable prospect of success and if not whether they should be struck out without a hearing.
 - 4.2. Whether any of the claims have little reasonable prospect of success and if not whether the Claimant should be ordered to pay a deposit as a condition of being permitted to proceed with any of the claims.
 - 4.3. If any of the claims are permitted to proceed, to consider the issues in the case and in particular what further particulars of the claims the Claimant should be ordered to provide.
5. This judgment deals only with the first of these three issues. The second and third are dealt with in separate orders.

Discussion of claims

6. The Claimant was employed by the Respondent as the Head of Computing. He also had responsibilities as a Data Manager and Pastoral Leader. At the end of the academic year 2015/2016 the Respondent stopped being a prep school and instead became a primary school. As such it stopped having pupils in years 7 and 8.
7. The Respondent says this resulted in redundancies. The Claimant was one of those made redundant. His dismissal took effect in August 2016. In September 2016 the Claimant began another teaching job in London.
8. At the hearing I asked the Claimant, who was unrepresented, to explain his claims. He did this by reference to the Claim Form and also a 10 page document which he handed up on the day of the hearing. A copy of this is on the Tribunal's file.

Unfair dismissal

9. The dismissal was said to be by reason of redundancy. The Claimant explained that he raised the following issues:
10. **The pool for selection:** the Claimant said that the Respondent had acted unreasonably and unfairly in the way it had identified the pool for selection. It had unfairly protected some staff from the possibility of redundancy, for example Margaret Kewell, who had been taken out of the pool for selection.
11. **The selection criteria:** existing roles were replaced by new roles. A requirement for some of the new roles to have a primary PGCE qualification had been initially included (for the new teaching roles in years 5 and 6). This was unreasonable given that the Claimant (and other staff) had taught throughout key stages 1 and 2. Although the Respondent had not in the end made holding a primary PGCE an absolute requirement, it had been kept in the job specification so not holding one put the Claimant at an unfair disadvantage.
12. **Unfairness in application of pool for selection and the selection criteria:** (1) Luke Knight was in the pool for selection but was told before the selection process was complete that he need not apply for jobs elsewhere because he would be successful in his application for an alternative post with the Respondent; (2) the application process for the new teaching roles in years 5 and 6 had involved being observed teaching a lesson but insufficient preparation time had been given; (3) two female members of staff

were given more support than the Claimant in relation to their wish to move to the year 5 or 6 roles than the Claimant; (4) the Claimant was unfairly pigeonholed as an ICT teacher which resulted in bias against him throughout the process

13. **Unreasonable way alternative employment was dealt with:** (1) the Respondent had too readily recruited external staff to fill the years 5 and 6 vacancies rather than giving existing staff (including the Claimant) support to transition into those roles; (2) a maternity cover role for year one children was offered to Mrs Jelley rather than being advertised so that all those at risk of redundancy could consider applying.
14. **Other issues:** (1) the Claimant was not given sufficient time to appeal and ultimately no appeal had been held; (2) the Claimant was told that there were insufficient funds to keep him as a data manager/cover teacher but four non-teaching management staff were recruited around the same time; (3) the Claimant had been told not to apply for the year 5 role when it had been advertised externally (after having been unsuccessful internally); (4) the Claimant was told that a technician role would be paid at only £25k. This figure increased to £30k after the Claimant told the Respondent he had obtained employment elsewhere.

Marriage discrimination

15. The Claimant said that the claim arose because the head teacher had treated him differently after he had confided in him in relation to marital difficulties he was experiencing. The Claimant was not able to explain clearly how the treatment was realistically related to the fact that he was married. The Claimant decided to withdraw the claim and did so at the hearing.

Sex discrimination

16. The Claimant said that this claim arose for two principal reasons: (1) a PCP had been applied (the inclusion in a job specification of the requirement to have a primary PGCE) which resulted in indirect sex discrimination; (2) two female members of staff who did not have primary PGCE were given more support than he had been given in their attempts to obtain the year 5 and 6 roles.

Race discrimination and discrimination because of religion or belief

17. The Claimant's primary complaint was that he had been dismissed because of his race and/or religion. Those protected characteristics were the reason(s) why he had been unfairly treated in the redundancy exercise and dismissed.
18. The Claimant also raised a series of complaints about his treatment by the Respondent in the two years preceding his dismissal. He said these were examples of less favourable treatment because of race or religion. They were set out in the 10 page document presented at the hearing.
19. It is necessary for the Claimant to provide further particulars of his discrimination claims. However he identified during the hearing employees who did not share the relevant protected characteristic by comparison with whom he said he had been treated less favourably.

The Law

20. Rule 37(1) of the Employment Tribunals Rules contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that an Employment Judge or tribunal may strike all or part of a claim or response on various grounds, including that the claim has no reasonable prospect of success.
21. In ***Balls -v- Downham Market High School & College [2011] IRLR 217, EAT***, Lady

Smith explained the nature of the test to be applied as follows:

“... the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word “no” because it shows that the test is not whether the claimant’s claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects.”

- 22. In addition to considering the material specifically relied on by the parties, the tribunal should, according to Lady Smith, have regards to the employment tribunal file as this may reveal correspondence or other documentation which contains material relevant to the issue of whether the claim has no reasonable prospect of success.
- 23. Further, a claim should not be struck out on this basis where the central facts are in dispute unless there are exceptional circumstances such as where the contemporaneous documentation is inconsistent with the facts asserted by one party.

Conclusions

- 24. The hurdle that a respondent has to get over for a strike out application to succeed is high and in this case the Respondent does not get over it.
- 25. So far as the unfair dismissal claim is concerned, the Claimant makes serious allegations in relation to how the pool for the redundancy exercise was identified and the fairness of the procedure followed. Central facts are in dispute. Overall, it cannot be said that the claims have no reasonable prospect of success.
- 26. So far as the remaining discrimination claims are concerned, the success or failure of those claims will depend, first, on what findings of fact are made by the tribunal and, secondly, what inferences should be drawn from them. Again central facts are in dispute. Again it cannot be said that the claims have no reasonable prospect of success.

Employment Judge Evans

Date: 18 July 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

...4/8/17.....

...S.Cresswell.....
FOR EMPLOYMENT TRIBUNALS