



EMPLOYMENT TRIBUNALS

Claimant

Mr K Kemp

Respondent

**v Ealing and Hammersmith and West
London College**

PRELIMINARY HEARING

Heard at: Watford

On: 11 May 2017

Before: Employment Judge Wyeth

Appearances:

For the Claimant:

In person

For the Respondent:

Ms A Townley-Smith

JUDGMENT

1. The claimant's complaint of indirect age discrimination is struck out for having no reasonable prospect of success.

REASONS

1. By way of a claim form issued on 9 February 2017 the claimant made three complaints of ordinary unfair dismissal, automatic unfair dismissal for making a public interest disclosure (s.103A of the Employment Rights Act 1996) and indirect age discrimination contrary to s.19 of the Equality Act 2010. The matter was originally listed for a case management hearing which was converted to an open preliminary hearing to determine whether or not any of those claims had no reasonable prospect of success so as to be struck out or alternatively whether any claims had little prospect of success such as to justify the ordering of a deposit and whether or not such a deposit should be made.

2. Notice of that hearing was sent to the parties on 12 April 2017. The parties confirmed at the outset that they understood that this was the purpose of today's hearing. I started by ascertaining the claims that the claimant was bringing and the issues in those claims and then went on to establish what aspects of the pleadings were agreed and what were disputed.
3. The age discrimination complaint was limited to a discreet point. The claimant maintains that as part of the selection process for redundancy, the respondent required candidates in the pool for selection to have Level 2 qualifications in English and Mathematics. The claimant explained that Level 2 was a qualification that was introduced in 1991 alongside GCSE's and the government abolished that qualification in 2016. The claimant left school in the seventies and as a consequence could not have obtained that qualification during his early years' education and was unlikely to have a Level 2 qualification thereafter. He accepts that he only picked up on this point after his dismissal and he did not raise it at the time. He is bringing an indirect discrimination claim on that point only. He says that people who left the education system prior to 1991 are likely to suffer a disadvantage by not having that qualification.
4. The respondent accepted that there was a reference to a requirement to have a Level 2 qualification as part of the selection process but there was a two stage process to the selection for redundancy. That provision, criterion or practice only applied to the first stage of the selection process and all four candidates were awarded at least 5 points. Three of the four candidates, including the claimant, scored 5. As such the claimant was awarded and scored as if he had the equivalent of Level 2 in English and Maths. Indeed, one of the candidates was awarded 10 points because he had a qualification higher than Level 2. In any event, it did not in any of the candidates being selected for redundancy at that stage and all four candidates, including the claimant, proceeded to the second stage of the redundancy process. The claimant accepts that the criteria itself did not prevent him from going through to the second stage of the selection process.
5. The first stage required all candidates to score in excess of 85% and according to the respondent none of them did. As a consequence all of the candidates went through to the second stage of the selection process which was a job interview and a lesson observation.
6. The respondent has also confirmed that the remaining four candidates including the claimant were all of an age that was well above the group that the claimant relies on for the purposes of group disadvantage. The claimant relies on anyone older than 43 years as suffering a disadvantage from this requirement. At the relevant time the claimant was 57. Of the remaining three candidates who eventually remained in employment, the youngest was 52, the other two candidates were 60 and 67. Accordingly it does not appear that this provision, criterion or practice put the claimant or anyone over the age of 43 at any particular disadvantage. As such I am satisfied that even if it was applied in the way the claimant asserts, it did not put the claimant or those of the claimant's age group at a disadvantage.

7. The claimant himself accepted that he was put through to the second stage and that the provision criterion or practice (“PCP”) was applied only to the first stage. The claimant says that had that PCP not applied he might have avoided having to go through to the second stage. The insurmountable difficulty for the claimant is that all other individuals who went through to the second redundancy stage were within his defined age group and were in entirely the same position. The PCP caused no group disadvantage.
8. Accordingly I am satisfied that that claim has no reasonable prospect of success and should be struck out.
9. When reaching my decision I have had very careful regard to the authorities addressing the appropriateness of striking out discrimination cases. I am acutely aware of the fact that ordinarily, where there are disputes of fact, these matters should be tested by way of oral evidence. I am nevertheless not persuaded that it is necessary for this complaint to proceed to be dealt with at the substantive hearing. It is quite evident from the agreed facts that the claimant did not suffer any disadvantage as a consequence of that criterion being imposed and, in any event, will simply be unable to overcome the requirements of the wording of s.19 to be able to succeed in a complaint of that kind. On that basis I have come to the decision that the claim should be struck out as having no reasonable prospect of success.

Employment Judge Wyeth

Sent to the parties on:

31 May 2017....

For the Tribunal:

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