



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hawkins
Respondent: The Secretary of State for Justice

At a Preliminary Hearing by CVP

Heard at: Nottingham
On: Tuesday 18 May 2021
Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person
Respondent: Mr Jones, Counsel

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

1. The claim for Breach of Contract is withdrawn and dismissed.
3. The claim of associative disability discrimination is struck out as having no reasonable prospect of success.
2. The hearing listed to commence on 10 January 2022 is cancelled.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on the 14 August 2020. He

remains employed by the Respondent as an Administrative Officer and he has submitted claims of:

- Associative disability discrimination.
- Harassment.
- Age discrimination.
- Breach of Contract.

The claim of Breach of Contract was withdrawn and dismissed at a Preliminary Hearing conducted by my colleague Regional Employment Judge Swann.

2. The Parties have not received any Judgment in respect of that and so I have added that Judgment to dealing with the associative discrimination claim today.
3. At that Case Management Preliminary Hearing Regional Employment Judge Swann identified, the Claimant agreed, what the basis of his claim of associative disability discrimination was. This is dealt with in paragraphs 3 and 4 of the Case Management Summary which says:

“3. More particularly the Claimant avers in summary that by reason of associative disability discrimination (the Claimant’s wife being the disabled person in this case), the Claimant has suffered less favourable/detrimental treatment resulting from the Covid 19 pandemic and the procedures adopted on the part of the Respondent in failing to provide a safe system of work for the Claimant. The Claimant maintains that because of previous failures to ensure sufficient spacing in the office where he works the Claimant avers this has created a risk environment which means that he could be subject to catching Covid 19 which if transmitted to his wife would cause severe health difficulties for her arising from three disabilities that are relied on for the purpose of these claims, namely the Claimant’s wife’s diabetes, her ulcerative colitis and her vascular dementia.

4. The reasonable adjustments that the Claimant maintains should have been put into place are that he should have been allowed at all times to have continued to work from home or to have continued on special leave with pay given that his wife was a vulnerable person because of her disabilities in a high-risk situation and that both of them should have been shielding as a result. The Claimant maintains that he reluctantly returned to work when requested by the Respondent”.

4. Regional Employment Judge Swann then gave permission to the Respondents to provide an amended response to the claim as it had now been agreed.
5. The amended response was filed on 8 January 2021. In the amended response at paragraph 48 the Respondents said that they were under no duty to make adjustments that arose in light of the Claimant’s wife’s disability status. They relied on the binding authority of *Hainsworth v Ministry of Defence* [2014] EWCA Civ 763. They invited the Claimant to withdraw her claim of failure to make reasonable adjustments

6. In the absence of the Claimant withdrawing the claims under sections 20 and 21 of the Equality Act 2010 the Tribunal was invited to dismiss those complaints pursuant to Rule 37 of the Employment Tribunal Rules of Procedure 2013.
7. Alternatively, it was contended that the Tribunal should make a Deposit Order pursuant to Rule 39 of the Employment Tribunal Rules of Procedure 2013 on the grounds that the contention and/or arguments of the Claimant had little reasonable prospect of success.
8. Today's hearing was for me to determine that application. Having determined the application, I was to issue fresh case management orders and consider the listing of the final hearing.

The Hearing Today

9. Prior to the hearing I had received from the Respondent's a bundle of documents that were relevant to the issues I had to determine. That bundle included copies of the relevant case law which Mr Jones had referred me to in the written submissions that I had also received. It was not necessary for me to hear any evidence and I listened to oral submissions from both Mr Jones and Mr Hawkins.
10. The Respondent's position on disability had been set out at paragraph 46 of their amended response. For the purpose of this action alone they did not dispute the disabled status of the Claimant's wife in so far as the condition relied upon by the Claimant namely (exclusively) the Claimant's wife's condition of diabetes, ulcerative colitis and vascular dementia.
11. Whilst the Claimant had provided further medical evidence in particulars relating to other medical conditions he did not seek to reply upon those conditions in support of his wife's disability status.
12. Mr Jones position is that it was a binding principle that the reasonable adjustments provisions under section 20 and 21 of the Equality Act 2010 do not protect a non-disabled employee who is associated with a disabled person. On the wording of the Equality Act 2010, the reasonable adjustment duty only applies where an employee is disabled and this position is not in breach of Article 5 of the Framework Directive as described in the case of Hainsworth.
13. Mr Hawkins's argument was that Hainsworth was irrelevant to his claims. He said that he had lost his father and sister in law through Covid and that his wife was vulnerable and adjustments needed to be made so that he could protect his disabled wife.

The Law

14. Mr Jones in his submission referred me to the following authorities namely:

- Hainsworth v Ministry of Defence [2014] EWCA Civ 763
- Coleman v Attridge Law [2008] IRLR 722 ECJ
- CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia [2015] IRLR 746

15. Mr Jones described to me the history of the case of Hainsworth v Ministry of Defence. Hainsworth was a civilian employee attached to the British Armed Forces. She was employed as a teacher. Her case was that her employer operated a PCP whereby she was required to provide her services as a teacher within the area of British Forces in Germany. Part of her case was that she was associated with her 17-year-old disabled daughter. Owing to her disability the daughter could not be schooled through the mainstream provision in Germany. Hainsworth applied to transfer to a location in the United Kingdom to be able to meet those special needs of her daughter which was rejected. Her case was that it would have amounted to a reasonable adjustment to the PCP for her employer to have allowed her application.

16. Her claims were rejected firstly by the Employment Tribunal, secondly by the Employment Appeal Tribunal and thirdly by The Court of Appeal. The provisions of the Equality Act 2010 state that an employer owes a duty to make reasonable adjustments only in respect of a disabled person who is either an applicant for employment with the employer or already is its employee.

17. In the Court of Appeal she also contended that Article 5 of the Equal Treatment Framework Directive 2000/78/EC should be interpreted so as to give effect to her EU rights. The Court of Appeal concluded that Article 5 of the Directive did not support the Claimant's case at all that was because the focus of Article 5 is upon provisions to be made by an employer for its disabled employees, prospective employees and trainees.

18. The Claimant in Hainsworth also sought to reply on the case of Coleman. A case where a complainant said she had been treated less favourably than other employees because she was a primary carer of a disabled child. The Court of Appeal in Hainsworth distinguished Coleman. In that case the complainant was on her case herself a victim of positive discrimination. In Hainsworth however, the Claimant had to assert a duty upon her employer to act effectively for the benefit of her child. Article 5 did not give rise to such a duty as it was limited so as to require measures only for the assistance of a disabled employee or prospective employees.

19. Rule 37 of the Employment Tribunal Rules and Procedures 2013 provides as follows:

“At any stage of the proceedings either on its own initiative or on the application of 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 as no reasonable prospect of success...”

My Conclusion

20. I am satisfied that I must follow the settled law as set out in the Hainsworth case. The same principle applies in this case as in the case of Hainsworth. That the reasonable adjustment provisions under section 20 and 21 of the Equality Act 2010 do not protect a non-disabled employee who is associated with a disabled person. On the wording of the Equality Act 2010 the reasonable adjustment duty only applies where an employee is disabled and that this position is not in breach of Article 5 of the Framework Directive.
21. For these reasons I have no alternative but to strike out the claim of associative discrimination under sections 20 and 21 of Equality Act 2010 on the grounds that it has no reasonable prospect of success.
22. The hearing due to take place commencing 10 January 2022 is hereby cancelled

Employment Judge Hutchinson

Date: 6 July 2021

JUDGMENT SENT TO THE PARTIES ON

9 July 2021

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FOR THE TRIBUNAL OFFICE

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