



EMPLOYMENT TRIBUNALS

Claimant: Mr C Mallon

Respondent: Rise Technical Recruitment Ltd

Heard at: Birmingham by CVP on 25 May 2022
Reserved decision 20 June 2022

Before: Employment Judge Hindmarch

Appearances

For the Claimant: In person

For the Respondent: Ms Cross – Project Manager

JUDGMENT

The Employment Judge considers that the Claimant's claim has little reasonable prospects of success and the Claimant is ORDERED to pay a deposit of £100 no later than 14 days from the date this order is sent as a condition of being permitted to continue with the claim. The Judge has had regard to any information available as to the Claimant's ability to comply with the order in determining the amount of the deposit.

REASONS

1. This application by the Respondent for a strike out or deposit order came before me for an Open Preliminary Hearing on 25 May 2022. Due to time constraints, I reserved my decision making to 20 June 2022.
2. The Claimant was in person. The Respondent was represented by Project Manager Ms Cross. I had a bundle of documents from the Respondent amounting to 120 pages. I also had a Skeleton Argument from the Respondent, I had an email from the Claimant with 7 attachments comprising his CV, extracts from a Consultant Psychiatrists report, some caselaw, and a note of 'suggested reasonable adjustments'.
3. By an ET1 filed at the Bristol Employment Tribunal on 21 January 2021, the Claimant brought a claim against the Respondent for disability discrimination.

By an ET3 filed on 24 June 2021, the Respondent indicated its intention to defend the claim.

4. The Claimant has made a number of claims against different Respondents. In February 2022, the Regional Employment Judge for Bristol directed that all claims be transferred to the Midlands West Region to be case managed either collectively or individually. On 29 April 2022, there was a case management hearing before Employment Judge Woffenden who listed this Open Preliminary Hearing.
5. I heard submissions from both parties and the Claimant gave evidence as to his means.
6. The Respondent is a recruitment company specialising in the engineering, energy, technology, and construction sectors. The Respondent has over a thousand live vacancies at any one time. The Respondent shortlists candidates based on their CV and/or covering letter and only contacts the shortlisted candidates by telephone to discuss their experience.
7. The Claimant has applied for multiple jobs with the Respondent. He admits that he may not be qualified for every role he applies for, although he says he is certainly qualified for some.
8. The Claimant says that due to his disability (dyspraxia/autism) he sends a list of his required reasonable adjustments with each job application and that what he requires is that the Respondent call him and conduct a 5–10-minute telephone interview. He accepts he sends a generic CV, rather than tailoring it to the particular role he is applying for, but says he is unable to fill in forms and he takes a long time to commit matters to writing. Instead, he requires the Respondent to call him so that he can speak about his relevant experience and talk to any essential or desirable criteria. The Claimant's CV, a copy which was at pages 49-59 of the Respondents bundle states 'Due to my disability, I request a 'reasonable adjustment' to be made in the application process by completing an 'oral application'. This would be a five to ten minutes phone call to talk about my relevant experience. I would like the essential criteria emailed to me (in the body of an email) so I can prepare in advance as with my medical condition I can forget detail of the past when suddenly asked of me. The oral application to be arranged via email and please judge me on the role by what I say and not my written CV and see the end of this CV for specific information about my disability.'
9. The Respondent says it would be disproportionate for them to have to call the Claimant in respect of every application he makes. It says, given the number of applications the Claimant makes, this would take hours. The Respondent also says that a telephone call would not improve the Claimant's chances of success as in many applications as he often does not have the relevant experience and/or does not meet their clients requirements.
10. The Claimant says he has a wealth of experience in the sectors the Respondent recruits to. He says he is willing to travel and has done in his career. His CV sets out his qualifications and work experience.

11. The Respondent employs some 140 consultants who utilise the Respondents database to search for relevant CV's and to record any interaction with candidates. A consultant will review a CV and shortlist candidates based on experience and the requirements of the role. If a candidate is short-listed the consultant will speak to them, using a standard telephone interview template to record the conversation.
12. The Respondent accepts that it did not telephone the Claimant, as requested in his CV, to speak to him about each role or any that he applied for.
13. The Respondent included in its bundle a Judgment in a claim brought by the Claimant against another company MBA Notts Ltd where the Claimant was unsuccessful. In that case the Employment Tribunal sitting in Nottingham on 1 March 2019 considered whether to strike out Mr Mallon's claim on the basis it had no reasonable prospects of success. The Respondent in that case was also a recruitment company and the claim concerned an unsuccessful job application made by Mr Mallon. In that case the Tribunal did strike out the claim. The Claimant did not have any experience in the field for the particular role he had applied for. The Judge determined that an 'oral application' would not have improved his chances of securing the role and the Respondent's failure to hold the 'oral application' would not therefore remove or mitigate any disadvantage.
14. The Respondent in this claim included another Judgment concerning the Claimant in its bundle at pages 117-119. These pages were only certain paragraphs of the Judgment. They demonstrate that a claim made by the Claimant of direct disability discrimination in the Bristol Employment Tribunal against Electus Recruitment Solutions Limited was struck out in August 2021, but that a claim of failure to make reasonable adjustments was not struck out. The pages of the Judgment that are in the bundle show the Judges comments regarding the number of claims (over 100) the Claimant has made in the Employment Tribunal and that some Judges have expressed concern about the Claimant's motives and approach.
15. The Claimant referred me to the cases of Mr N O'Sullivan v London Borough of Islington (Case no 2207632/2016), Leevin Owen Meier v British Telecommunications PLC case reference 4123/17 and a case he had brought himself against Aecom Limited case no 3202234/2016. In the latter case the Claimant had succeeded before Employment Judge Gardiner (and members) in the East London Employment Tribunal on 3 November 2021 in a claim of failure to make reasonable adjustments. He told me the remedy hearing had not yet taken place.
16. In the claim against AECOM Limited, Mr Mallon had been interested in a role with AECOM. The process for applying for the role was to complete an on-line application form which was accessed by creating a personal profile with a username and password. Mr Mallon struggled with this and instead emailed his CV to the Respondent's HR Department and asked for an 'oral application'. AECOM replied asking Mr Mallon to complete the on-line application.
17. The facts of the previous cases that each party referred me to were therefore different to the claim before me. I have read these Judgments but have not

found them of assistance in the matters I have to decide. In the MBA Notts case, the Claimant was not qualified for the role in question. In this case it is likely the Claimant was qualified for at least some of the many roles he applied for. In the AECOM case the Claimant was unable to access the on-line application. In this case there was no such barrier. The Claimant could upload his CV and apply for many posts. The issue here is whether the Respondent should have offered him an 'oral application' in circumstances where it was the Respondents practice to only telephone candidates after a consultant had shortlisted them.

18. As well as contending the claim had no reasonable prospects of success, the Respondent also asked me to consider the Claimant's conduct. The Respondent says it has tried to speak to the Claimant by telephone in order to better understand him but that the Claimant has been rude and un-cooperative. The Claimant says he did not want to engage with a particular individual staff member of the Respondent as he had already received a rejection email for the role in question and felt a judgement had already been made about him.
19. The Respondent also argued that the Claimant was a serial litigant. It referred me to a list of 49 Judgments it had compiled concerning the Claimant. The Claimant accepted he had made a significant number of claims and that some had been struck out or been the subject of deposit orders.
20. I heard the Claimants evidence of means. He does not receive any state benefits. He runs a small on-line business selling nano technology graphics and draws income of around £184 per week. His partner earns around £300 per month. Their mortgage and utility bills are around £1300 a month. The Claimant has savings of £1500 but also has debts including owing £1225 on a credit card. The Claimant has a dependent son.

The Law

21. Rule 37 (1) (a) Schedule 1 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 gives me the power to strike out a claim where there is no reasonable prospects of success. A strike out is the ultimate sanction. For a strike out order to be appropriate the claim must be bound to fail.
22. The threshold is high. In Ezsias v North Glamorgan NHS Trust (2007) EWVA Civ 330, the Court of Appeal held that where facts are in dispute, a Tribunal should rarely strike out a claim without the evidence being tested at final hearing. Discrimination claims should only be struck out in the plainest and most obvious cases, Anyanwu v South Bank Students Union and South Bank University (2001) IRLK 305. The Claimant's case should be taken at its highest.
23. Deposit orders are dealt with by Rule 39. A Tribunal may make a deposit order if a Judge considers that a Claimant's allegations have little reasonable prospects of success. Where such an order is made a Claimant should consider carefully whether to pay the deposit and proceed with the claim and perhaps should take legal advice.

24. The claim is one of a failure to make reasonable adjustments under S20 (3) Equality Act 2010 “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.”
25. The provision criterion or practice here is that the Respondent requires job applications to be made by CV. The Claimant says he is disadvantaged as he cannot convey his suitability for a particular role in writing. He requires an adjustment to the PCP, namely an ‘oral application’.

Conclusions

26. The Claimant has made many applications to the Respondent. He accepts he is not suitable for all the roles he applies for. His CV is comprehensive and shows his qualifications and work experience. On the face of it he would warrant short-listing for at least some of the many roles the Respondent advertises in the fields it covers. The Claimant is articulate in his speech. He says if the Respondent allowed him an ‘oral application’ for the roles he was plainly qualified for, he would be able to speak to the essential criteria and would be able to express himself in a way that would best enhance his chances of success.
27. I must take his case at its highest at this stage. If I accept he is a disabled person for the purposes of the Equality Act (the Respondent disputes this), and I accept that his disability manifests itself in a way which limits his written communications, then the Respondent requiring a CV only application may place the Claimant at a substantial disadvantage compared with those who do not have his limitations in written communications. At this stage I therefore cannot say the claim has no reasonable prospects of success.
28. Turning to the issue of a deposit order I find it is appropriate to make such an order. It is common ground the Claimant has made hundreds of job applications to the Respondent. He readily admits he does not have the skills for some of these. What he has not done is identify an actual role he says he would be able to do if he were given the ‘oral application’. Instead, he has made generalised observations about some of the roles the Respondent advertises. In order to succeed he will need to be much more specific. Taking his claim at its highest, that he may be suitable for some of the roles and that an ‘oral application’, had the Respondent provided it, may have meant he was successful, I find there is little prospects of success. The Claimant must pay a financial deposit if he intends to pursue this claim. Having regard to the Claimant’s means I order the Claimant to pay a deposit of £100.
29. I do understand the Respondent’s frustrations about the number of claims the Claimant has brought. This claim is being dealt with in isolation. The Claimant has indeed brought a number of claims, many of which has not been successful. Whether this claim succeeds will be a matter for a final hearing. I do not find on the evidence before me that the Claimant is a vexatious litigant.

Case Number : 1400489/2021

Employment Judge Hindmarch

1 August 2022