



EMPLOYMENT TRIBUNALS

Claimant: Mr R J Bryce

Respondent: (1) Active Security Solutions Limited
(2) Stonegate Pub Company Limited
(3) Security Industry Authority
(4) Chief Constable of Staffordshire Police

Heard at: Birmingham (by CVP) **On:** 6 September 2022

Before: Employment Judge Edmonds

Representation:

Claimant: In person
First Respondent: Mr T Lang, solicitor
Second Respondent: Miss G Rezaie, counsel
Third Respondent: Mr A Lo, counsel
Fourth Respondent: Mr E Gold, counsel

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

JUDGMENT

1. The claims against the third and fourth respondents are struck out.
2. The claims against the first and second respondents remain listed for an open preliminary hearing via CVP on 23 January 2023 at 10am. The third and fourth respondents are no longer required to attend that hearing.

REASONS

Background and facts

1. The claimant was employed by the first respondent as a licensed door supervisor, and at the time of the relevant incident which led to the issues in this case (1 August 2021) was assigned to perform his duties at the second respondent's premises. The third respondent is a regulator of the security

industry, and the fourth respondent is the Chief Constable of Staffordshire Police.

2. The claimant says that he is disabled by reason of Asperger's Syndrome and dyslexia. As a result of this, we made various adjustments to the proceedings, including permitting the claimant to make further written submissions following the hearing, and giving the respondents the opportunity to reply to those (which both the third and fourth respondents did). It has been raised by the fourth respondent that the written submissions from the claimant in fact went further than what I had permitted (which was to supplement the oral submissions already given with any additional submissions which he wished to make, rather than inviting wholesale new detailed submissions). Whilst I agree that the claimant's submissions did go beyond what had originally been envisaged, and enclosed a number of exhibits which had not been in the file used at the Preliminary Hearing, I do not believe that they went so far as to mean that I should decline to admit them given that the respondents have had the opportunity to reply should they wish to do so. I have therefore considered the points raised by the claimant when reaching my decision, although given the scale of those points I do not refer to each and every one of them in these reasons.
3. On 1 August 2021 an incident occurred between the claimant and a member of the public who was seeking entry into the second respondent's premises. During this incident the claimant activated a CCTV body camera and sprayed a UV/Smart spray at the member of the public. The police attended the incident, and ultimately reported it to the third respondent, who then suspended the claimant's license on 9 August 2021.
4. The claimant has brought a number of claims in relation to the incident on 1 August 2021 and what happened subsequently, against all four respondents. The third and fourth respondents have applied for the claims against them to be struck out under Rule 37 of the Employment Tribunal Rules on the basis that the claims against those respondents have no reasonable prospects of success. Whilst the third and fourth respondents made separate submissions on these points, given the similarities between the arguments made by each of them, I deal with them collectively and only refer to an individual respondent's assertion where it is relevant to do so. The grounds upon which the striking out of the claims were sought are as follows (although please note that I have combined certain points and changed the order of these from that provided by the parties in order to group related matters together):
 - a. That the Tribunal does not have jurisdiction to consider the claimant's complaints against the third and fourth respondents, and that nothing arises from section 111/112 of the Equality Act for which they could be liable;
 - b. That the claimant has no arguable case against the respondents, that no unfavourable treatment or harassment had been identified and that no cause of action has been identified; and
 - c. That the claimant is unlikely to be able to show that he is disabled within the meaning of the Equality Act, and that the evidence provided in relation to disability is inaccurate.

5. At the start of the hearing, I indicated that, in the alternative, if I was not minded to strike out the claimant's claims against the third and fourth respondent, I would also consider whether to require the claimant to pay a deposit under Rule 39 of the Employment Tribunal Rules to continue with his claim. I heard evidence from the claimant in relation to his financial means, and evidence of this was submitted following the hearing. I was also provided with a Bundle amounting to 218 pages.

The law

6. Rule 37(1) of the Employment Tribunal Rules says:
"At any stage of the proceedings, either on its own initiative or on the application of a 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 has no reasonable prospects of success;*
 - (b) That the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
....."
7. It will generally not be appropriate to strike out a claim where there are disputed facts that have not yet been determined, particularly where the claimant is a litigant in person (see, for example *Cox v Adecco and ors 2021 ICR 1307*).
8. Claims relating to discrimination which are brought in the Employment Tribunal fall under Part 5 of the Equality Act.
9. Section 120 of the Equality Act states that:
"(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to –
 - (a) A contravention of Part 5 (work);*
 - (b) A contravention of section 108, 111 or 112 that relates to Part 5".*
10. Section 111 of the Equality Act states that:
"(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or 112(1) (a basic contravention).
(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.
(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.
(4) For the purposes of subsection (3), inducement may be direct or indirect.
.....
(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B."
11. Harvey on Industrial Relations and Employment Law (at 522) states that, in relation to section 111(7):

“This is a roundabout way of ensuring that liability for instructing, causing or inducing only applies if the person seeking to influence the other has some kind of relationship with the other from which the influence could stem”.

12. Section 112 of the Equality Act states that:
(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3,4,5,6 or 7 or section 108(1) or (2) or (11) a basic contravention).
.....
13. “Knowingly” in this context means that “...*the party potentially liable must be shown either to have wanted the discriminatory result to follow, or to have known that the employer would treat or was contemplating treating the victim in a discriminatory way. It will not necessarily be enough if the alleged aider merely suspects that a discriminatory act will be the outcome of his own behaviour, without really wanting it to come about, far less if it can only be said that he should, as a reasonable person, have realised (but did not) that discrimination would be the result*” (*Hallam v Avery [2001] IRLR 312*). As set out in *Sinclair Roche & Temperley v Heard [2004] IRLR*, the “aiding” cannot be unconscious.
14. Section 29(6) of the Equality Act (which appears in Part 3 and not Part 5) states that:
“A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.”

Conclusions

Jurisdiction

15. The third and fourth respondents both submit that their actions in relation to the claimant were purely in the exercise of a public function: in the third respondent’s case, regulating the UK’s private security industry, and in the fourth respondent’s case, policing functions. As such, they argue that the proper forum for any such complaint is the county court, with such claim being framed under section 29(6) of the Equality Act and not Part V.
16. The claimant argues that the facts of this case are such that Part V does apply, regardless of the fact that the third and fourth respondents were not his employer and he was not providing services to them. The claimant refers specifically to use of the word “relates” in section 120 of the Equality Act, and that section 111 of the Equality Act refer to “a person” and not an “employee”. He refers to the Explanatory Notes to the Equality Act in further support of this premise. He argues that the acts of the third and fourth respondents did relate to Part 5, in that the information was provided to his employer and then had an impact on his employment. He argues that, unless this were the case, then he would be left without recourse against the third and fourth respondents and that this cannot be right. He also submits that the county court is not as specialised as the employment tribunal and therefore that the Tribunal is the best jurisdiction to consider the complaint.

17. I first wish to address the claimant's assertion that, if he is not permitted to continue with his claims against the third and fourth respondent in the employment tribunal, then he has no redress. That is not the case. Section 29(6) does provide the claimant with another forum in which to pursue his complaints, should he wish to do so – the county court. Whilst I appreciate the claimant may feel that the employment tribunal is more specialised and would prefer it to be dealt with in this forum, that is insufficient basis for departing from the forum specified in legislation, and I would also reassure the claimant that the county court is well versed in dealing with a variety of matters.
18. As to the claimant's assertion that the facts of his case do occur in a work context and therefore fall within Part 5 generally, sections 39 to 60 of the Equality Act list specific categories of person who fall within the scope of Part 5. Whilst this is clearly broader than a simple employer/employee relationship, none of those categories apply to the relationship between the claimant and either the third or fourth respondents.
19. Moving onto the claimant's assertion that in fact sections 120 and 111 are broad enough that the alleged acts of the third and fourth respondents do fall within its scope. From his submissions, it appears that he intends to argue that the third and fourth respondents in some way instructed, caused or induced the first and second respondents to carry out discriminatory acts. In his claim form the claimant positioned the claims against the third and fourth respondents as being specifically in relation to:
 - a. Discrimination arising from disability; and
 - b. Harassment.

He does not specifically set out at any point that he is asserting that the third or fourth respondents instructing, caused or induced any breach. That appears to be the argument that he now puts forward, but there is nothing in his claim form or further and better particulars setting this out, despite those being detailed pleadings which refer to other specific legislative provisions. Regardless, however, it is also important to consider section 111(7) of the Equality Act: for liability to occur, the party must be in a position to commit a basic contravention. I have seen no evidence to demonstrate that there is a relationship between the first / second respondents and the third / fourth respondents that would meet this test. Whilst I accept that the claimant could apply to amend his claim through additional further and better particulars, I must look at the claim as it now stands and note that he already had the opportunity to particularise his claim at an earlier stage. In any case, there would still be the issue that the appropriate forum for any claims against the third and fourth respondents would be the county court.

20. In relation to the claimant's pleaded case, one issue which has come up in the course of these proceedings is the extent to which allowances should be made for the fact that the claimant is a litigant in person in relation to his pleadings. On the one hand, the claimant is indeed a litigant in person and he also asserts that he has Aspergers Syndrome and dyslexia, so it is important that we do not expect the same level of clarity from him as we would from a solicitor or counsel. However, as the fourth respondent points out, the claimant does have a law degree and it is clear from the very

detailed correspondence he has written throughout the case that he is capable of formulating legal arguments and digesting legal text. That said, I do acknowledge that, as he is not an employment law specialist, the claimant will not necessarily understand the exact formulation to be applied and I do therefore recognise that he remains a litigant in person, despite his understanding of certain points.

21. Turning to section 112 of the Equality Act, I do not think this helps the claimant either. For any claim to succeed, he would need to demonstrate that the third and/or fourth respondents wanted the other respondents to discriminate against the claimant, or to have known that this would happen. The claimant's pleaded case does not make such an assertion. In any event, I do not believe that this would be sufficient to bring the fourth respondent's actions within the scope of section 120 of the Equality Act 2010: all that the third and fourth respondents did was to pass on information, and in the third respondent's case, suspend the claimant's licence, in accordance with their statutory duties and public functions. That falls within section 29(6) and not Part V of the Equality Act 2010.
22. Therefore the claimant's claims against the third and fourth respondents are struck out as the Tribunal does not have jurisdiction to hear them. In reaching my decision, I have also taken account of the principle that claims should not generally be struck out where there are disputed facts. However, in this case, the facts of the case are broadly agreed in any event. Furthermore, the basis for striking out the claim is primarily because I do not believe the Tribunal has jurisdiction to consider the claims, that would be the case regardless of what the facts are. There are no disputed facts where, if the claimant's account of events was preferred by the Tribunal, it would bring the claimant's claims against the third and fourth respondents within the jurisdiction of the Tribunal.

That the claimant has no arguable case

23. The third and fourth respondents submit that there is no clear basis for the claimant's claim as pleaded and it is unclear what acts the third and fourth respondents have done which are alleged to be discriminatory. The claimant has pleaded his claim as one of discrimination arising from disability and of harassment, but has not identified the unfavourable treatment and unwanted conduct.
24. I do not hold it against the claimant that he has not identified each individual element of his claims, as that is something that can be done as the list of issues in the case is identified, and he remains a litigant in person despite his legal background. However, in order for his claim to have any reasonable prospects of success, it must be capable of being identified.
25. In relation to the claim for discrimination arising from disability, if the claimant's argument is that the unfavourable treatment was the passing of information to the first and/or second respondents, then he would still need to show that the passing of information occurred because of something arising in consequence of his disability. This would require the claimant to show that the use of spray against the customer occurred because of his disability. Whilst the claimant has put forward that he has issues with

memory as a result of his condition, I do believe that the claimant will have difficulties in establishing the necessary connection to meet this test.

26. In relation to the test for harassment, it is clear that the passing on of the information to the first and second respondents would have been unwanted. The claimant would of course also need to show that the conduct had the purpose of effect set out in section 26 of the Equality Act, and the claimant's perception, the circumstances of the case and whether it it was reasonable for the conduct to have that effect will also be taken into account.
27. In relation to both the discrimination arising and harassment claims, I do have concerns that the claimant may struggle to meet the relevant legal tests. However, as we have not fully explored the issues in the case, I would not be inclined to strike the claimant's claims out purely on that basis, were it not also for the Part 5 issues identified above. Were it simply a question of whether the actions amounted to discrimination arising from disability and/or harassment, I would consider that the claimant has little, but not no, reasonable prospects of success. Had I not already determined that the claims should be struck out for other reasons, I would have considered the claimant's financial means and whether to issue a deposit order. That is however not necessary given that I have decided to strike those claims out for other reasons.

Disability

28. The fourth respondent argues that the claim should also be struck out on the basis that the claimant is unlikely to meet the test for disability, and that his medical evidence is insufficient.
29. Whilst I agree that the medical evidence provided to me at the hearing on 6 September was prepared many years prior to the incidents in question, and did not address any impact that the claimant's conditions might have on him in his role as licensed door supervisor, it also became clear during the hearing that the claimant had misunderstood the information he was required to provide and agreed to provide further information following the hearing. I was told that the claimant had previously provided an impact statement in another case, but as I was not involved in that case I make no comment on that. I therefore make no findings in relation to the likelihood or otherwise or the claimant showing that he was disabled within the meaning of the Equality Act 2010 at the relevant time, and would not strike the claimant's claims out (or issue a deposit order) on that basis.

EU Law

30. Finally, the claimant has requested through separate correspondence sent on 18 October 2022 that I consider making a reference to the Court of Justice of the European Union about whether the Tribunal has the jurisdiction to hear the complaints made by the claimant against the third and fourth respondents.
31. Under section 6(1)(b) of the European Union (Withdrawal) Act 2018, only very limited matters may be referred to that court after 31 December 2020, none of which are applicable here. Therefore, it would not be in my power to

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make a reference even if I wished to do so. However, for the avoidance of doubt, even if that were not the case, I conclude that the legal position is clear and that there is no conflict or apparent conflict with any European Directive or other relevant legislation, and therefore would decline to make a reference in any case.

**Employment Judge Edmonds
15 November 2022**