



EMPLOYMENT TRIBUNALS

Claimant
R Zarrabi

v

Respondent
R Curtis

Heard at: Watford by CVP
Before: Employment Judge Anderson

On: 17 December 2024

Appearances

For the claimant: In person

For the respondent: M Magier (Counsel)

JUDGMENT

1. The claim of harassment is struck out under Employment Tribunal Rule 37(1)(a) because it has no reasonable prospect of success.

REASONS

1. This case came before me today for consideration of an application made by the respondent on 8 November 2024 for the claim to be struck out on the grounds that it has no reasonable prospects of success or in the alternative, for a deposit order to be made. The claimant had set out her objections to the application in writing on 11 December 2024.
2. Mr Magier, counsel for the respondent, made further oral submissions in support of the application and the claimant made oral submissions supporting her written objections. In addition, I had the benefit of a bundle of documents which the claimant confirmed contained all of her disclosure relevant to this claim. I was therefore in the unusual position for a strike out hearing of having substantive documentation before me and hearing the parties' submissions on that documentation.
3. Under Rule 37 of the Employment Tribunal Rules a claim can be struck out if the tribunal concludes that it has no reasonable prospect of success. Under

Rule 39, deposit orders can be made in respect of any allegation that has little reasonable prospect of success.

4. In reaching my decision I had regard to the following case law:
 - 4.1. *Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT*. This is an EAT decision in which HHJ Tayleur set out guidance on how tribunals should approach strike out applications where the claimant is a litigant in person. This includes the following guidance particularly relevant to this case: where prospects of success turn on the facts, strike out is unlikely to be appropriate; the claim should be properly identified before any decision is made and the claimant's case should ordinarily be taken at its highest; and, a fair assessment of the claim should be carried out in the basis of pleadings and any other documents the claimant sets out. As well as considering the parties written and oral submission I have carefully considered the disclosure documents provide within the bundle and the pleadings.
 - 4.2. *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*, in which it was stated that discrimination claims should not be struck out except in the most obvious cases as they are generally fact-sensitive.
 - 4.3. *Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495, EAT*, a decision on a harassment claim in which the EAT stated (para 21) that '*whether or not the conduct is related to the characteristic in question, is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it and its other findings of fact. The fact, if fact it be, in the given case that the complainant considers that the conduct related to that characteristic is not determinative.*' This case had regard to the decision of *Hartley v FCO UKEAT/0033/15* which was referred to by Mr Maiger in submissions.
5. The claimant brings a claim of harassment on the grounds of sex and age. She is a woman in her mid-forties. The respondent is a former manager of the claimant. She was not the claimant's line manager but one rank above that. She is a woman of a similar age to the claimant. The claimant sets out 16 specific examples of harassment which were agreed following a case management hearing before EJ French on 16 October 2024. Both parties took me through all 16 of the allegations, referring to disclosure documents in the bundle where appropriate.
6. S26 Equality Act 2010 is as follows:
 - (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

7. The crux of the respondent's application is that the claimant has no prospect of showing that the harassment, if there was harassment, was related to the protected characteristics of sex and age. Mr Magier said, in addition, that the first 13 of the 16 allegations were out of time, which while not determinative, made it more difficult for the claimant to prove her case. He noted that allegations 14 to 16 were allegations against the employer and not against the respondent. Mr Magier said that the respondent disputed that the allegations showed instances of harassment, but that they were generally incidents where the respondent was raising legitimate issues about performance in a supportive way. He said that even if the claimant's case was taken at its highest, as was appropriate in a strike out hearing, abusive conduct was not unlawful in itself, but only if it was related to a protected characteristic, and not one of the claimant's allegations is related to age or sex.

8. It is my view, on the evidence before me, that very few of the allegations raised constitute harassment, i.e. unwanted conduct that has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile degrading or humiliating environment. For example, the first allegation is that an email sent on 29 October 2019 from the respondent to the claimant is abusive. I have read it and it is polite and thoughtful, acknowledging that there are some issues and setting out the authors hopes that these can be addressed and the claimant can be supported. There are other emails that complained about that are more forthright, for example in relation to allegation 3 where the respondent questions the claimant leaving work early on a specific day early in the pandemic. The respondent is clearly concerned and disappointed, but the tone is not, in my view, hostile. However, I do not think it is useful for me to set out each allegation and my views on the documentary evidence surrounding it in relation to whether it is harassing in nature. I accept that there is, in viewing the correspondence in total, a clear indication that the respondent is unhappy with the claimant's work and wants to address that. The claimant says that the respondent had no grounds on which to take that position. That is a matter which would require further disclosure and witness evidence to determine, and it would not be appropriate to strike out this application if that was the basis for the application. It is not and I have therefore taken the approach taken by Mr Magier, while noting that no admissions were made by the respondent, that the claimant's case should be taken at its highest and I am assuming that the allegations relied upon could constitute unwanted conduct for the purposes of s26 Equality Act 2010.

9. As noted above, in order for a claim of harassment under the Equality Act to be made out the unwanted conduct must be related to a protected characteristic and the claimant relies on age and sex. The claimant completed an ET1. She referred to harassment after ticking the box 'I am making another type of claim which the Employment Tribunal can deal with' and states 'On going harassments and bullying – always treated differently, humiliated, and denied career development opportunities.' She does not tick any of the protected characteristics listed under discrimination. In a grounds of claim running to five pages and setting out in detail the harassment the claimant alleges, there is no

reference to discrimination generally, or specifically to age or sex discrimination.

10. The claimant filed two claims in September 2023. They were similar in nature but one named the claimant's employer as the respondent. That claim was struck out on the basis that it was a claim under the Protection From Harassment Act 1997 and not within the jurisdiction of the employment tribunal. EJ Anstis asked the claimant on 11 March 2024 to explain why this claim should not be struck out on the same grounds. The claimant raises six points of objection to strike out in which she refers to sex and age discrimination only twice. In a lengthy paragraph about being subject to four years of bullying she says *'I was denied a professional development course....another male colleague in his thirties of similar work and experience was given the opportunity to do it'*, and in a separate point *'I was the only female assistant Principal in my 40s and [the Respondent] felt threatened by my strength as a leader as we are both in the same age range.'*
11. The claimant raised a grievance against the respondent in May 2023. She raised in her grievance that she was discriminated against. In the outcome letter for the grievance, it is noted by the decision maker that during their meeting he asked the claimant about the basis of the discrimination claim and noted that the claimant seemed unsure about this and said that it could be race.
12. In the claimant's submissions today she focused largely on the alleged harassment and why she thought that the actions taken by the respondent were unwarranted but had little to say on why the conduct was related to sex or age. At one point I asked the claimant to address the matter of the link to a protected characteristic in relation to allegation 1. She said, *'none of the others I spoke to said that they received such emails so I am confident that it is my age and sex'*. She referred to a male colleague going on a development course when she had been told she could not and then explained that she was given the reason that the course was for those expected to become head teachers within the next three years. In relation to allegation 10 which concerned an accusation of late reporting of malpractice relating to an exam, the claimant said that in a meeting with her line manager and the respondent, the respondent referred to the line manager not always doing things by the book. The claimant noted that her line manager was in her thirties, so younger than the claimant. I asked the claimant to take me to any document she believed supported her case that harassment related to sex and age. She said that debarring the claimant from assisting in exams and removing responsibilities from her showed that the respondent is afraid of her and does not want her to progress. She said the respondent was threatened by her strength.
13. I have taken into account the fact that the claimant is a litigant in person but note also that she has had a significant period in which to clarify her claim and the current list of issues was agreed with EJ French in a case management hearing during which her documentation and claims were considered in detail. The claimant has known since that hearing that the respondent was seeking strike out and at least since 8 November 2024 of the grounds for that application. Today Mr Magier went into greater detail in support of the

application he had done in the written application and I gave the claimant an opportunity to consider his submissions before she responded to them.

14. I am satisfied that the claimant has not been put in a position where the strength of her claim has been ascertained only by requiring her to explain it under the stresses of a hearing. She has had time and opportunity to set out her highest case and I have considered the relevant documents carefully. I note that this is a discrimination case and strike out in such cases is rare, however this is not, in my view, a case where the prospects depend on resolving disputed facts in favour of one party or the other.
15. Drawing on all the evidence before me, I find that the claimant has no reasonable prospects of succeeding in a claim of harassment against the respondent based on the protected characteristics of sex and age. There is nothing at all in the documents, or the pleadings, which would support that view. The comments that the claimant has made about the connection appear to be speculation and often not related to sex and age at all (i.e. that the respondent was threatened by her or afraid of her). A comparator is not required in a harassment claim but I have taken into account the claimant's claim that a man went on a course when she could not and a woman in her thirties had not received a penalty for not following exam procedures. However, even if these facts are correct, and I expect the respondent may contest the second point, this does not provide any basis from which it could be concluded that the respondent's actions related to age and sex in an organisation clearly employing many people of all ages and both sexes, and this does not indicate any pattern of discriminatory behaviour. I accept that it is possible, though I do not think it is likely, that on the evidence presented the claimant may have been harassed by the respondent in the ordinary sense of the word and I accept that the claimant very strongly and genuinely believes that she was treated badly by the respondent. However I do not find, on the evidence and submissions before me today, that she has any prospect of success of showing that she was harassed for the purposes of s26 Equality Act 2010 where there is no evidence that the behaviour was related to a protected characteristic and particularly where the claimant confirmed to me at the outset of the hearing that all of the documentation on which she seeks to rely in this case was within the bundle.
16. I have not gone on to consider the matter of time in any depth. I note that here is a substantial gap of two years between allegations 10 and 11. I note also that allegations 14 to 16, those which are clearly in time, are not allegations against the respondent. However, these are observations and did not form part of my decision on prospects of success.
17. For the reasons set out above the claimant's claim of harassment against the respondent is struck out.

Employment Judge Anderson

Date: 17 December 2024

Sent to the parties on:
20 January 2025

For the Tribunal Office