



EMPLOYMENT TRIBUNALS

Claimant: Miss S McLaren

Respondent: Framework Housing Association (1)
Ms L Mayor (2)
Mr M Rose (3)

Heard at: Nottingham On: 4 February 2025

Before: Employment Judge M Butler (sitting alone)

Appearances

Claimant: Miss C McLaren, Claimant's daughter
Respondent: Mr B Frew, Counsel

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Claimant was not at the material time disabled for the purposes of s.6 of the Equality Act 2010 ("EqA") and the claim of direct disability discrimination is dismissed.
2. The claim of direct race discrimination is dismissed on withdrawal by the Claimant.
3. The claim of direct sex discrimination is struck out on the ground that it has no reasonable prospect of success and because of the unreasonable conduct of these proceedings by the Claimant.

REASONS

Background

1. This preliminary hearing was listed by Employment Judge McTigue at the last preliminary hearing on 15 October 2024. The purpose of the hearing is to determine:

1.1 the Claimant's application to amend her grounds of claim and add Ms J Manning as a fourth respondent;

1.2 whether the Claimant was disabled as defined by s.6 EqA when the alleged discrimination took place;

1.3 whether the claim or any part of it should be struck out as having no reasonable prospect of success;

1.4 whether a deposit order should be made on the ground that the claim or any part of it has little reasonable prospect of success; and

1.5 to finalise the list of issues and make necessary further case management orders.

2. I address these matters as set out below.

The evidence

3. There was an agreed bundle of documents extending to 80 pages and an additional document in the form of a single sheet of a heavily redacted report of unknown provenance making reference to psychological issues of a person who could not accurately be identified.

Application to amend and add a fourth respondent

4. At the commencement of the hearing, I noted that the document claiming to be an amendment application which was submitted by Miss McLaren did not actually add any further or different claims to those already submitted. She confirmed this was the case and that the document at pages 52 -63 merely added further background to the allegations already made. She also confirmed she was not pursuing any claim to join in Ms Manning as a fourth respondent. Accordingly, there was no application to amend to be considered.

Disability

5. S.6 EqA provides:

A Person (P) has a disability if-

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

6. At the last preliminary hearing, the Claimant is recorded as having said her disabilities were PTSD, depressive disorder and personality disorder. Before me

today, the claimed disabilities seemed to have changes as personality disorder has been replaced with work related stress.

7. The medical evidence is in the form of GP records (pages 68-71) and another document referred to in paragraph 3 above. The GP records were redacted and, in respect of one such redaction, I have serious concerns that it has been deliberately redacted to mislead the Tribunal. At page 70, the entry in the record for what looks to be 8 May 2024 has been redacted in two places. The first redaction removes a reference to her son affecting her stress for the worse and the entry which states, "not feeling depressed just very stressed" has clearly been amended by the attempted redaction of the word "not" in an attempt to make reference to depression.

8. The reason for my concern is that nowhere in the records disclosed is there any reference to depression or depressive disorder, personality disorder or PTSD. Miss McLaren says this must have been a mistake by the GP when redacting some of the records but I do not accept that explanation. In my experience, GP's do not make manuscript amendments or redactions to their records before sending them to patients or elsewhere. They are even less likely to redact an entry in a patient's record to entirely change its meaning. Indeed, the consequences of such action would be a matter for the General Medical Council. Accordingly, I conclude that the redaction was a deliberate attempt to bolster the Claimant's claim.

9. The other document produced was one page of a report from 2007 or 2008 which had been heavily redacted. It was not possible to identify the subject of the report from the unredacted text, but Miss McLaren said the subject was the Claimant. I considered this but do not accept it is possible to draw that conclusion. Miss McLaren said she had tried to obtain the full report from the Claimant's former solicitors who represented the Claimant in family proceedings but they had not replied to correspondence. The page in question was said to be the only page remaining, the Claimant had made the redactions and had thrown the rest of the report away with other documents. This is at odds with the comment by the Claimant in what I assume is meant to be her impact statement where it is said, "Attached medical records relating to time of incident and a segment of Syreeta McLarens psychiatrist/psychology report. ***Due to the sensitivity and nature of report and what its known to include Syreeta feels comfortable with only the information displayed to be shared***". This suggests the Claimant does have the complete report but chose only to produce a one page, heavily redacted page. This does not assist the Claimant's case.

10. What the GP records do show is that the Claimant suffered from work related stress. Following the judgment in **Herry v Dudley metropolitan Borough Council UKEAT/101/16/LA**, stress is not a clinical impairment. This left the Claimant in a difficult position as there was no evidence before me relating to any condition other than stress at work. I invited the parties to make submissions and adjourned for 20 minutes to allow Miss McLaren time to prepare.

11. Miss McLaren said she had only been given 5 weeks pursuant to Employment Judge McTigue's order to provide medical evidence. She did not have that evidence today and so could not satisfy the burden of proof which rests with the Claimant. Accordingly, she wanted an extension of time to obtain a report from the Claimant's former solicitors. No evidence was produced to show

an attempt had been made to contact the solicitors or why after almost 4 months no further contact seems to have been attempted.

12. Mr Frew submitted the Claimant and her daughters had sought to mislead the Tribunal by amending the Claimant's GP records. No evidence of the alleged disabilities upon which the Claimant relies has been produced. The only reference to any condition in the GP records was to work related stress which is not a disability.

13. I find the Claimant's evidence to be unreliable and I am particularly concerned with the attempts to redact parts of her records so that they are changed to assist her claim. The explanations and narrative which supports them are completely unconvincing. The reality is that she is as a consequence a long way from satisfying the burden of proof upon her. It is a rare occurrence in Tribunal litigation that a claim to be disabled by a particular impairment or impairments is not supported by any evidence at all. I find that the Claimant was not disabled at the material time by virtue of work related stress.

Direct sex discrimination

14. The Respondent applied for a strike out of this claim or a deposit order. Mr Frew submitted that this claim has no reasonable prospect of success. The alleged incidents of sex discrimination relied upon by the Claimant are at page 46 and are:

14.1 *All of the Claimant's grievances were not taken as seriously as Laurie Mayor's grievance relating to bullying and harassment in October 2023. Ms Mayor is female.*

14.2 and 3 *Mark Rose refused to talk to the Claimant's daughter on 5 April 2024 and 8 April 2024 via email correspondence. There is no information as to how this was done because the Claimant is female but a comparator's relative was engaged in correspondence by Mr Rose.*

14.4 *The Respondent failed to undertake a risk assessment prior to the Claimant's return to work on 3 April 2024. Again there is no evidence of a male employee being afforded this facility.*

15. Mr Frew submitted that in none of these cases was there even a hint of a causal connection between the matter relied upon and the Claimant's gender. The Claimant has the burden of proof but does not even suggest she has a hunch that her alleged treatment was because of her gender. He submitted it was also a vexatious claim as the Claimant and her daughters have acted in an appalling way. These matters conspire to suggest that a strike out is appropriate.

16. Miss McLaren made emotional submissions to the effect that the Respondent had created a hostile atmosphere at work, had given the Claimant no support and had breached their duty of care. They had failed to follow a fair disciplinary procedure and tried to paint the Claimant in a poor light. She had only returned to work due to financial hardship.

17. Rule 38 of the Tribunal's Rules of Procedure 2024 provides:

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds-

(a) that it is scandalous or vexatious or has no reasonable prospect 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.

18. I bear in mind the judgment of the Court of Appeal in **Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330** wherein the Court said a Tribunal should not strike out a discrimination claim as an abuse of process except in the most obvious and plainest cases. The reasoning behind these comments is that where there are disputed facts, they should be determined at a full hearing. I accept Mr Frew’s submissions on two fronts. Firstly, there is no identifiable causal link between the Claimant’s allegations of her treatment and her gender. Miss McLaren’s submissions did not touch upon gender at all but relied on allegations of bullying, lack of support and duty of care. Secondly, the conduct of the Claimant’s case has been concerning in relation to the manuscript redaction of the Claimant’s medical records. Regrettably, there seems to me to be only one conclusion to be drawn from this.

19. Accordingly, I strike out the sex discrimination claim because it has no reasonable prospect of success and that the conduct of these proceedings has, at best, been unreasonable.

Employment Judge M Butler

Date 4 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
.....10 February 2025.....

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FOR THE TRIBUNAL OFFICE