



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Tillman  
**Respondent:** Cazoo Limited

**Heard at:** London Central (by video)

**Date:** 16 February 2023

**Before:** Tribunal Judge McGrade acting as an Employment Judge (sitting alone)

## Appearances

**Claimant:** In person

**Respondent:** G Baker (counsel)

# JUDGMENT

1. The Respondent's applications to strike out the Claimant's claims of harassment and direct discrimination are refused.
2. The Respondent's application for deposit orders in respect of the claims of direct discrimination harassment and victimisation are refused.
3. The claims of direct discrimination, harassment and victimisation shall proceed to a final hearing already fixed for 11-13 September 2023.

# REASONS

## Background

1. By case management order dated 23 January 2023, Employment Judge Walker ordered that a preliminary hearing take place remotely on 16 February 2023, to consider the following issues: –
  1. The respondent's deposit order application;
  2. Any consequential application to amend the claim; and
  3. Case management.

2. By letter dated 30 January 2023, the respondent requested that the following additional issues be dealt with at the hearing already fixed for 16 February 2023:-
  1. An order that the Claimant has not presented victimisation or harassment claims, the same are not contained within her ET1 or the attachment to it;
  2. Alternatively, an order:
    - i. striking out the Claimant's harassment and direct discrimination claims under Rule 37 of the Employment Tribunal Rules 2013;
    - ii. in the alternative to subject them to a deposit order under Rule 39;
    - iii. for a deposit order on the Claimant's claims that have not been struck out.
3. The claimant agreed that the additional issues should be dealt with at today's hearing. I gave my decision and reasons at the end of the hearing. The Claimant has requested written reasons which are set out below. My apologies for the delay in providing these. I was only made aware on 28 April 2023 that this application had been made.

#### **Documents**

4. I was provided with a joint bundle consisting of 127 pages, a witness statement from Barbara Hungerford and a skeleton argument on behalf of the respondent.

#### **The Claim**

5. By claim form presented on 8 September 2022, the claimant presented claims of race discrimination in respect of the conduct of an interview for the role of legal counsel with the respondent.
6. The first issue that I propose to deal with in this case is whether the claimant has presented claims of victimisation and harassment.

#### **The harassment claim**

7. I have to be satisfied that there are facts stated in the application that are sufficient to enable me to conclude the claimant has presented claims for harassment under section 26 of the Equality Act 2010.
8. Section 26 of the Equality Act 2010 provides 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.

...

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.
- 9. The claimant has to demonstrate that she has stated facts that indicate there was unwanted conduct related to a relevant protected characteristic.
- 10. The claimant states in her application that she was asked several unlawful and discriminatory questions. She has listed those questions. They are as follows: –
  - 1) Did you speak Spanish growing up at home?
  - 2) Are you Hispanic?
  - 3) Are you American?
  - 4) How long have you lived here?
  - 5) When did you graduate from Spelman[undergrad]? (points to age)
  - 6) Where do you live?
  - 7) Where did you lived before you lived where you live now?
- 11. She believes that those questions were connected to her race and national origin as a black American. The respondent denies these questions were unlawful discriminatory. That will be a matter for the tribunal to determine. Taking the claimant's case at its highest, I am satisfied that the questions were connected to race and national origin.
- 12. The claimant goes on to describe the impact that this had upon her, namely that she had been harmed by the respondent in terms of her position and her ability to pursue other opportunities. She also describes how their discriminatory actions have shaken her confidence, and that she has sought therapy and other outside career support because the experience itself and their behaviour afterwards was so jarring and hurtful.
- 13. I am satisfied that these questions are sufficient to enable me to conclude that the claimant is alleging unwanted conduct related to her race and national origin, and that these questions violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her. I am therefore satisfied that there is a claim before me of harassment. There is therefore no requirement to amend.

#### **The victimisation claim**

- 14. I also have to be satisfied that there are facts stated in the application that are sufficient to enable me to conclude the claimant has presented claims for victimisation under section 27 of the Equality Act 2010.

15. Section 27 of the Equality Act 2010 provides as follows:-

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
  - (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
  - (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

16. The claimant has therefore to demonstrate that she has stated facts that indicate she carried out a protected act. In her application, the claimant states that she was asked several unlawful and discriminatory questions. She goes on to explain that she reported how she was being treated to Ben Davies. It is clear from the documentation that she reported the questions that she was asked. I am satisfied that this was a protected act, as it involved making an allegation that another person had contravened the Equality Act.

17. The claimant goes on to describe how she did not anticipate being retaliated against and did not believe that she should be penalised for reporting that the law was broken. She was then informed that they were ending the process and that her role was being eliminated altogether. I am satisfied that this represents a detriment to which the claimant alleges she was subjected because of the protected act.

**Strike out**

18. The respondent has sought a deposit order in respect of all the claims that are before me and strike out of the harassment and direct discrimination claims. Rule 37 of the Employment Tribunals Rules of Procedure 2013 sets out the circumstances in which a claim may be struck out and provides as follows:-

- (1) 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 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;
  - (c) for non-compliance with any of these Rules or with an order of the Tribunal;
  - (d) that it has not been actively pursued;
  - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
- (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
- (3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above
19. In determining this application, I am taking the claimant's case at its highest. The claimant states that she was asked seven questions, which she describes as the main focus of the interview, which relate to the language she spoke when growing up, whether she was Hispanic, whether she was American, how long she had lived here and other questions regarding when she graduated and where she lived now and before. Individually, each question, other than the second question asking whether she is Hispanic, could be a reasonable and entirely innocuous question to ask. However, I have to consider the questions asked cumulatively. In discrimination claims, context is extremely important. It is suggested by the respondent that Ms Hungerford has no recollection of asking claimant whether she was Hispanic. There is therefore no explanation given for this remark. It is not at all clear to me why someone would have thought it necessary to ask this question, along with the other questions, unless race or ethnic or national origin was something that they considered to be important. I consider there could well be sufficient here to enable a tribunal to conclude that, in the absence of any other explanation, that the claimant was discriminated against. I have set out above why I consider there is a valid basis for pursuing claims for both harassment and victimisation. I am not satisfied at this stage that those claims have no reasonable prospects of success. I therefore do not consider it is appropriate to strike out any of the claims.

### **Deposit order**

20. Rule 39 of the Employment Tribunals Rules of Procedure 2013 sets out the circumstances in which a deposit order may be made and provides as follows:-
- (1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.
  - (2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

- (3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.
  - (4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.
  - (5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—
    - (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and
    - (b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.
  - (6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.
21. I have also considered whether it is appropriate to grant a deposit order. I am not satisfied that it is appropriate to grant a deposit order as I do not consider, taking the claimant's claims at their highest, that any of the claims have little reasonable prospects of success. As I have indicated above, context is extremely important in discrimination claims. I therefore refuse the requests for a deposit order.

**Tribunal Judge McGrade**

**Date 25 May 2023**

**JUDGMENT SENT TO THE PARTIES  
ON: 25/05/2023**

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