



EMPLOYMENT TRIBUNALS

Claimant: Mr K D Edgecombe

Respondent: AAH Pharmaceuticals Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Exeter **On:** 6 and 7 July 2022

Before: Employment Judge Smail

Appearances

For the Claimant: Mr N Gilman, Lay Representative

For the Respondent: Ms A Fadipe, Counsel

PRELIMINARY HEARING JUDGMENT

1. The Claimant was a disabled person within the meaning of the Equality Act 2010 with effect from 1 August 2020.
2. The Respondent's application to strike the Claimant's claims out as having no reasonable prospects of success is dismissed.
3. The Employment Judge is of the view that the following three contentions of the Claimant have little reasonable prospects and he must pay a deposit of £10 for each allegation he wishes to pursue in accordance with the separate deposit order, that is to say £30 in total if all are pursued:
 - 3.1 Failing to await the outcome of the ET on the question of companion before progressing the grievance;
 - 3.2 On 26 October 2020 appointing Helen Tilsley as grievance investigator when at the same time she was leading on a redundancy consultation;
 - 3.3 Failing to progress the redundancy consultation after 22 December 2020.

REASONS FOR THE JUDGMENT ON THE STRIKE OUT/DEPOSIT APPLICATIONS

1. Central to the Claimant's claims is the contention that by way of reasonable adjustment the Respondent should have made provision to allow him a companion of his choice at the various meetings. That is an arguable matter which requires consideration through evidence and submission. Save for identifying arguability, I make no other pre-judgment on strength or weakness.
2. Several of the other issues raised by the Claimant are consequential on his position in respect of representation. They likewise require consideration through evidence and submission. Again, I make no other pre-judgment on strength or weakness.
3. Whilst strike out without evidence is an unattractive option in respect of any of the issues, it does seem to me that the following contentions in the issues are weak, with little reasonable prospects of success:

3.1 Failing to await the outcome of the ET on the question of companion before progressing the grievance;

3.2 On 26 October 2020 appointing Helen Tilsley as grievance investigator when at the same time she was leading on a redundancy consultation;

3.3 Failing to progress the redundancy consultation after 22 December 2020;

I have been shown the relevant correspondence in the course of Ms Fadipe's helpful submissions to be able to arrive at that view

4. The other issues require consideration with evidence and submission. Again, I make no other pre-judgment on strength or weakness in respect of them.
5. It seems unlikely that the Respondent should await the outcome of the ET before progressing the grievance. The timescales involved in claims before the ET do not sit with timely resolution of internal grievances. This case illustrates this point. The timescales in this case are typical of the position, generally.
6. Given that the Claimant had raised matters of his grievances in the redundancy consultation, it does not seem unreasonable that the same manager be seised

with both issues. In any event, there will be a finite no. of managers sensibly available to resolve issues.

7. On the face of it, failure to progress the redundancy cannot be regarded as a detriment. I am informed the Claimant is no longer at risk of redundancy. That is a good thing as far as it goes. The issue going forward will be capability.
8. The Claimant is on benefits, so I have to take into account means. I considered £1 a contention; but that seems to belittle the points fairly made by the Respondent. £10 a contention seems fairer. If the Claimant insists on pursuing these weak arguments, he must pay £10 for the privilege for each one. That's a total of £30. Pursuing them would expose the Claimant to costs risk at the conclusion of the full merits hearing, also. Costs awards have to take means into account, too.

**Employment Judge Smail
3 August 2022**

Sent to the parties on:
.....9 August 2022.....

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For the Tribunal Office