EMPLOYMENT TRIBUNALS

Claimant: Mr C Mallon

Respondent: Surface Transforms PLC

Heard at: Liverpool (By Video) **On:** 7 October 2024

Before: Employment Judge Buzzard
Mrs M Legg
Ms C Smith

REPRESENTATION:

Claimant: In Person
Respondent: Mr P Singh (Solicitor)

JUDGMENT

The claimant's claims of discrimination by failure to make reasonable adjustments and disability related harassment both fail and are dismissed.

REASONS

1. **Claims and Issues**

1.1. This is an unusual Employment Tribunal claim. The parties were agreed that all communication between them (prior to these proceedings) was written and sent via email. This was without any exception. Accordingly, there is no factual dispute about any of the relevant interactions between the parties.

1.2. The claimant in this case makes two claims:

1.2.1. unlawful disability related harassment; and

1.2.2. discrimination by failure to make reasonable adjustments.

1.3. *Harassment Claims*

1.3.1. At the start of this hearing the three connected acts of harassment the claims related to were confirmed by the claimant.

1.3.2. The claimant complains about an email of 27 September 2023 sent to him by Ms Hooper. In that email he was told, in summary, that his repeated asking of the same questions would be considered a nuisance, and if it continued, his application would be discontinued and he would be sent a '*cease and desist'* letter.

1.3.3. This was repeated to the claimant on two further occasions in emails sent to him shortly thereafter when the claimant continued to ask the same questions.

1.4. *Discrimination By Failure To Make Reasonable Adjustments Claims*

1.4.1. The claimant had identified two alleged failures to make reasonable adjustments. These related to two different provision, criterion or practices ("PCPs").

1.4.2. The claimant had identified two PCPs as follows:

1.4.3. ***PCP 1***

1.4.3.1. This related to an alleged refusal to allow the claimant to use a speakerphone if there was a phone conversation at any point. The claimant was invited to identify in the documents where he intended to say this PCP was communicated to him, inferred to him or implied by the respondent. This is in the context where all relevant interactions between the parties were by email. The claimant was given several hours whilst the Employment Tribunal was reading documentary evidence before the hearing started to do this. Despite this time, the claimant was not able to identify anything in any email that could be suggested in any way to give that impression.

1.4.3.2. The claimant then suggested that the fact he was told that he would not be provided with a recording of any telephone call, and that he should not seek to record it himself, implied he was not allowed to use a speakerphone if a conversation occurred.

1.4.3.3. It is not clear to the Employment Tribunal how this logically follows in any way. Regardless, in the absence of any evidence that the

claimant could point to that could establish that this PCP existed or was applied to him, the claimant withdrew this claim and it was dismissed.

1.4.4. ***PCP 2***

1.4.4.1. The claimant's second PCP related to the issue of recording. The PCP had been identified at a case management discussion and confirmed in the written orders that followed that hearing as being: *'that the oral application could not be recorded and the candidate given an opportunity afterwards to supply further information.*

2. **Relevant Law - Reasonable Adjustments claim**

2.1. The relevant provision relating to the duty to make reasonable adjustments is to be found in section 20 of the Act which sets out that where:

> *"a provision, criterion or practice applied by or on behalf of an employee places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled it is the duty of the employer to take such steps as is reasonable in all the circumstances of the case, for him to have to take in order to prevent the provision, criteria or practice, or feature, having that effect."*

2.2. In determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular:

> *"to the extent in which taking the step would prevent the effect in relation to which the duty is imposed."*

2.3. This means that a reasonable adjustment must prevent, or at least reduce, the disadvantage that the PCP causes. It is an issue of fact for the Employment Tribunal to determine, by consideration of evidence, whether any adjustment made achieved such a removal of the substantial disadvantage identified, and if not whether a different reasonable adjustment could have done so.

3. **Relevant Law – Harassment**

3.1. Harassment is defined by s26 of the Equality Act as:

> *"(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."

3.2. Accordingly, the claimant has to identify alleged acts or omissions that were unwanted conduct. In this case that was comments made in an email to the claimant of 27 September 2023, and repeated in two more emails shortly thereafter.

3.3. For those comments to amount to disability related harassment, the comments have to have related to the claimant's disability. This is a question of fact for the Employment Tribunal to determine.

3.4. Finally, unwanted conduct related to disability has to be of a nature that meets the definition of harassment. It is a matter for the Tribunal to determine if the conduct actually violated the claimant's dignity or created the required environment, or in the alternative whether such was the purpose of the conduct. In doing this, the subjective perception of the claimant is relevant, however it must also be reasonable for the conduct to have had the effect the claimant alleges. Therefore, there is an objective element to this test.

3.5. When undertaking this consideration, the Employment Tribunal was mindful of the guidance given by the senior courts about the definition of harassment. In particular, the following comments of Elias LJ in **Grant v HM Land registry [2011]** EWCA Civ 769, referring to the words "*violating dignity*", *"intimidating, hostile, degrading, humiliating*" and "*offensive*" contained in the relevant provisions of the Equality Act 2010, and describing these words as significant he stated:

> *"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment."*

3.6. Mr Justice Langstaff in **Betsi Cadwaladr University Health Board v Mrs A Hughes and others [2014]** UKEAT/0179/13 commented:

> *"the word 'violating' is a strong word. Offending against dignity, hurting, is insufficient. 'Violating' is a word the strength of which is sometimes overlooked. The same might be said of the words 'intimidating' etc. All look for effects which are serious and marked, and not those which are, though real, truly of a lesser consequence."*

4. **Relevant Law - The Burden of Proof**

4.1. Considering the claimant's claim for discrimination the burden of proof is determined by s136 of the Equality Act. The relevant parts of this section state:

> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

4.2. This in effect reverses the traditional burden of proof in legal claims, so that the claimant does not have to prove discrimination has occurred which can be very difficult. Section 136(1) expressly provides that this reversal of the burden applies to *'any proceedings relating to a contravention of this [Equality] Act'*. Accordingly, it applies to all the claimant's claims.

4.3. This is commonly referred to as the reversed burden of proof, and has 2 stages.

4.3.1. Firstly, has the claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination? This is more than simply showing the respondent could have committed an act of discrimination.

4.3.2. If the claimant passes the first stage then the respondent has to show that they have not discriminated against the claimant. This is often by explanation of the reason for the conduct alleged to be discriminatory, and that the reason is not connected to the relevant protected characteristic. If the respondent fails to establish this then the Tribunal

must find in favour of the claimant. With reference to the respondent's explanation, the Tribunal can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case.

4.4. It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages. The court of Appeal in **Madarassy v Nomura International plc** [2007] EWCA Civ 33 gave useful guidance that despite the two stages of the test all evidence should be heard at once before a two-stage analysis of that evidence is applied.

5. Evidence

5.1. As noted, this case was unusual. All contact between the claimant and the respondent was in written form. The Employment Tribunal were provided with a bundle that contained all this written communication, in the form of emails. The Employment Tribunal took the time to read this in full before hearing any further evidence.

5.2. Oral evidence was given by the claimant on his own behalf. For the respondent oral evidence was given by a Miss R Hooper, head of HR at the respondent.

5.3. In addition to the bundle of documents, the parties sent in a number of additional and supplementary documents. These were considered by the Employment Tribunal to the extent that the parties directed the Employment Tribunal to them either during evidence or in submissions.

5.4. The respondent prepared written submissions, and the claimant sent an emailed response to those submissions. These were all before the Employment Tribunal and read prior to the parties additional oral submissions.

6. The Claimant's Evidence

6.1. The Employment Tribunal found the claimant's evidence to be concerning in its inconsistency, evasion, significant internal contradictions at times, and at key points so lacking in credibility that the Employment Tribunal struggled to conclude it was anything other than dishonest. Some examples of the basis for this concern are explained below.

6.2. *The claimant's IT ability:*

6.2.1. In relation to the discrimination by failure to make reasonable adjustments claim that was not withdrawn, the respondent states that reasonable

adjustments were made. Specifically, the claimant was sent the questions he would need to answer and offered the facility to record his answers, re-recording them until he was content, and then upload or submit that recording.

6.2.2. The claimant initially stated, very emphatically, that he did not have the IT skills to do this and accordingly it was not a reasonable adjustment.

6.2.3. The claimant was cross examined regarding his IT skills, and the following relevant points were conceded by the claimant during that cross examination:

6.2.3.1. he has a you-tube channel and has uploaded videos to that;

6.2.3.2. the claimant is familiar with and had used zoom software;

6.2.3.3. the claimant utilises AI to assist him with preparing documents and summarising multiple documents etc;

6.2.3.4. the claimant has MS Word software and could have used the inbuilt dictate to text function *"if he had thought of that"*;

6.2.3.5. The claimant runs an online retail company that has a turnover of £70,000 per year and that has a website, although the claimant stated he received assistance with creating the website;

6.2.3.6. the claimant estimated he applies for 2000 jobs per year, all done entirely online in the first instance;

6.2.3.7. the claimant has submitted an unspecified *'a lot'* of Employment Tribunal claims, all online; and

6.2.3.8. the claimant confirmed to the tribunal that if he did not know how to perform an IT task, he had in the past, taught himself how to, by watching YouTube video guides.

6.2.4. In addition to these points, the Employment Tribunal notes the claimant's CV contained within the bundle of documents. This records he has the following qualifications:

6.2.4.1. a PhD in Chemical Engineering;

6.2.4.2. a Masters degree in analytical science; and

6.2.4.3. a BSc in Chemistry.

These are all advanced academic qualifications in STEM subjects. Any suggestion that such subjects could be studied to such a level without considerable use of IT, even when the claimant studied them, is wholly lacking in any credibility.

6.2.5. There was no evidence before the Employment Tribunal that the claimant ever made any attempt to engage with the process of uploading recordings of his answers to questions. The claimant did not suggest this, having stated that he lacked the IT skills needed to do this.

6.2.6. The Employment Tribunal do not find it even remotely credible that the claimant was being honest when he stated in evidence that he lacked the IT skills to be able to record his answers to questions and then upload those answers. The claimant's insistence at the time that he '*struggled with technology'* is found to have been a deliberately misleading statement. The Employment Tribunal find that the claimant refused to engage with this option because he did not want the reasonable adjustment that this represented, because it would undermine the potential to make this claim. That is found to be the sole reason why the claimant stated he could not utilise the offered adjustment.

6.3. *The reason for repeatedly asking the respondent the same questions*

6.3.1. This is closely related to the claimant's harassment claim.

6.3.2. The claimant was asked in cross examination why he had asked the respondent the same question over and over again, and then continued to do so even after being asked to stop and if it continued it would be considered a nuisance. The claimant gave a clear and cogent answer, kept repeatedly asking the same questions because he *"wanted the respondent to understand his difficulties*". There was no equivocation about this answer. He wanted to make a point to the respondent.

6.3.3. When it was later put to the claimant that wanting to make a point to the respondent was not something that arose from his disability, the claimant changed his evidence. He then stated that his repeated asking of questions was not intentional. It was not actually because he wanted to make a point. It was because he could not help himself.

6.3.4. These are clearly different answers. One is that he made a choice to do it to get his point across. The second is that his neurodiversity was the reason he did it.

6.3.5. The Employment Tribunal asked the claimant to confirm which reason for this approach the claimant wanted to record as his evidence. The claimant, after some consideration, confirmed that it was the latter. He stated that he did not *'want'* to ask the questions but could not control himself because of his neurodiversity.

6.3.6. The Employment Tribunal find the claimant in this regard to have been inconsistent in a concerning way. It was a potentially significant point going to whether any comments about his repeated demands were related to his disability, rather than his choice to make a point. It was only after the cross examination made this clear that the claimant shifted his evidence, to an account that did not carry the same risk of fatally undermining his harassment claim.

6.4. **Evasive responses**

6.4.1. A recurrent theme in the claimant's evidence was that his answers to questions put to him would become evasive.

6.4.2. The Employment Tribunal have considered this point carefully. It is noted that this evasiveness only occurred when the answer to the question was something that undermined the claimant's claims. At these points he would make statements related to other issues, make generic assertions about people without his disability and avoid responding to the question.

6.4.3. The Employment Tribunal had to, on multiple occasions, ask the claimant to answer the question put, despite the cross examination of the claimant being relatively short, limited to just over an hour in total.

6.4.4. Taking into account the fact that the claimant is neurodiverse and thus may be unintentionally evasive under cross examination, the Employment Tribunal find the claimant's evidence to have been *selectively* evasive. It is the fact that evasive answers were only provided at the points where the answer was damaging to his claims that the Employment Tribunal found concerning. This selectiveness suggests that the evasion was deliberate and strategic.

6.5. The conclusion of the Employment Tribunal is that the evidence before it shows that the claimant's evidence not to be reliable, or honest, at repeated points. Given that, coupled with the existence of a full record of all communication

between the parties in the documents, the Employment Tribunal finds that the content of the emails is the reliable source of relevant evidence in this case, not the limited unreliable oral evidence presented by the claimant.

7. Evidence about whether the claimant had the essential experience required for the job he applied for

7.1. A key dispute in this case related to whether the claimant had the required essential experience for the job he applied for. If he did not, then it is difficult to see what disadvantage could have flowed from not being given a chance to explain his experience. His application would have been rejected in any event.

7.2. The respondent has, from almost the very start of the claimant's application process and throughout these proceedings, clearly maintained that the claimant did not have this experience.

7.3. The claimant has supplied a copy of his '*generic*' CV as part of the bundle for this hearing. On its face that cannot be read as even suggesting that the claimant has the required experience.

7.4. The claimant has included no evidence in the documents for this hearing that shows he has the required essential experience.

7.5. The Employment Tribunal were directed to a finding of fact made in another claim (1403362/2020) the claimant has made against a different respondent in similar circumstances:

> *"other than a substantial period of time working in tax including submitting tax claims relating to innovation and research and development, his roles have in the main been short-term and the claimant exaggerates the experience he obtained during these roles. For example: he currently sells car treatment sachets and scratch cloths primarily via ebay as confirmed by Ms Newport but sought to categorise this as experience in nanotechnology and link this to the wider sectors where this technology may be of use."*

7.6. In this hearing it was highlighted to the claimant by the Employment Tribunal that he had produced no evidence at all that he had the required minimum experience for the role, neither to the respondent, nor as part of these proceedings. The emails sent to the claimant show that he has been repeatedly asked to explain his relevant experience and never gave any more information than repeating things included in his generic CV and stating, *"I have it*".

7.7. The Employment Tribunal observed to the parties that had such evidence been produced to the respondent during the application process, he would have been permitted to rely on that evidence in these proceedings, because the respondent had advance knowledge of it.

7.8. The claimant then sought to introduce oral evidence listing a series of technical sounding descriptions of various roles. The claimant was informed that this evidence would not be permitted to be introduced at that point. It is not in his statement, and if permitted the Employment Tribunal would have needed to adjourn the hearing to allow the respondent's representative to consider the evidence, take instructions and present their own evidence on the point. Such a further delay to proceedings would not have been proportionate.

7.9. The claimant by his own admission has made over 100 Employment Tribunal claims. The claimant must be aware of the need to include relevant evidence in the bundle of documents and in his statement.

7.10. The claimant did not raise any objection when he was informed that he would not be permitted to introduce this previously undisclosed evidence part way through the final hearing.

8. Background Facts

8.1. The claimant in this case made an application for a job with the respondent. The claimant accepts that the application was supported by his generic CV, the same CV he uses for the thousands of applications for work he makes each year, regardless of the specialism of the role he is applying for, or the company he is applying to.

8.2. The claimant's CV states that he is disabled, in large bold font on the first page. It goes on to state that the CV is generic, that he cannot tailor his CV to the specific job he is applying for, and that he requires a chance to explain how he meets any essential or desirable criteria for the job orally. In the claimant's words, he is better at expressing himself in verbal format.

8.3. The respondent in this case rejected the claimant's application. No reason was initially given for this, but the claimant was informed that due to the number of applications received individual feedback was not possible.

8.4. The claimant then contacted the respondent asking if they had read his CV, and the statements that he needed to be allowed to make an oral application.

8.5. There followed an exchange of emails which the Employment Tribunal has read in full. The entire exchange is not set out here, but the following points are highlighted:

8.5.1. The claimant was told his CV did not show the required experience, the claimant was given repeated chances to explain how he does have the required experience and never did so. The closest the claimant came to this was an email sent which merely stated "*Yes I have this*", and a second occasion when he referred back to the fact he was awarded a Chemical Engineering PhD in 2006

8.5.2. The claimant stated he needed to explain things orally. The respondent sent the claimant the questions that needed to be answered and informed the claimant that he could record oral answers to these questions and upload them to the respondent's recruitment tool for the respondent to listen to. The claimant was told this could be an audio only recording if he preferred. The claimant refused to do this and demanded a telephone discussion, and that the respondent record the telephone discussion and send him the recording. The claimant was informed that no recording of telephone discussions would be made or permitted.

8.5.3. The claimant repeatedly asked the respondent to provide information about other candidates and restated his demand for a telephone discussion recorded by the respondent. The respondent set out its position in relation to both points clearly and repeatedly. The claimant continued to ask the same questions, whereupon the respondent stated to the claimant in an email:

> *"I would like to take this opportunity to explicitly request that you **CEASE** requesting details of any candidate progression or for any part of the application to be recorded. Should you continue to do this, this will be treated as a nuisance request and your application will be terminated at that point and will be followed up by a cease and desist letter."*

8.6. The claimant continued to ask the same questions. The above was repeated to the claimant twice more in response to repeated requests, before the claimant's application was terminated. The claimant was not sent any '*cease and desist*' letter.

9. <u>Discrimination By Failure to Make Reasonable Adjustments Claim Findings</u>

9.1. *What the claimant says needed to be adjusted?*

9.1.1. The claimant states that he needed an adjustment to the normal process of a written application because his disabilities make it difficult for him to express himself in written form and to remember all the points he would want to make. The adjustment the claimant sought was to allow an oral application to be pursued. This is as stated on his generic CV.

9.2. *What was the Substantial Disadvantage?*

9.2.1. To establish this claim the claimant would need to establish that the PCP was applied to him and caused him a substantial disadvantage. In this case, in effect, the claimant says did not get a fair chance to be considered for the job he applied for, which if correct could be a substantial disadvantage.

9.2.2. That being noted, the respondent's position is that the claimant has never provided any evidence that he meets the essential minimum criteria to be eligible for the job. The respondent states that the claimant simply does not have the required experience. On this basis the respondent argues that there was no disadvantage to the claimant, the rejection of his application was inevitable.

9.2.3. The claimant has not properly produced evidence that he has the required essential experience. He included nothing in his written statement and nothing in the extensive bundle of evidence. At no point did he provide this information to the respondent before these proceedings such that the Employment Tribunal could conclude the respondent was already aware of the experience he relied on.

9.2.4. The claimant did, when this was pointed out to him by the Employment Tribunal, seek to describe using technical terms and language how the jobs set out in his CV did in fact include that experience. As explained above, the claimant was not permitted to rely on such evidence not disclosed in advance, as in all cases it should have been. It was complex and technical evidence, much of which appeared to be of a nature that could be checked and verified by the respondent if they had been given any advance warning the evidence might be given or relied on.

9.2.5. It is further noted that the claimant in his statement sought to expand the claims he makes to include, amongst other things, a claim of indirect discrimination. Whist this was not permitted at this stage of proceedings, it is relevant to consider what the claimant's statement included. The potential claim of indirect discrimination was, in part, predicated in the claimant's statement on an assertion that the respondent's requirement to have 5 years' experience indirectly discriminated against the claimant. This

would only be possible if that requirement was something the claimant did not meet, such that he was put at a particular disadvantage by the requirement. This could never be consistent with his unsubstantiated assertions at this hearing that he fully met this requirement.

9.2.6. Accordingly, the Employment Tribunal find that there is no properly disclosed evidence that tends to show that the claimant had any chance whatsoever of securing the position he applied for, regardless of the application process followed. For this reason, it is found that the claimant has not established any substantial disadvantage to him of not being allowed his preferred application process.

9.3. *Was an Adjustment made anyway?*

9.3.1. The respondent agreed to make an adjustment for the claimant. The adjustment was to send the claimant the questions he would be asked, and then allow the claimant to prepare recordings of his answers to those questions and upload the recordings. This would mean the claimant was permitted to submit this information in oral format, and that he would be able to re-record what he uploaded, as many times as he liked, until he was content with the recording and the points covered, before he uploaded it.

9.3.2. The claimant sought to suggest that he was not technically capable of this, and as such this adjustment did not remove any disadvantage. The Employment Tribunal find the claimant's evidence regarding this to have been dishonest and completely lacking in credibility. The reasons for this conclusion were set out above in the discussion of the claimant's credibility.

9.3.3. Accordingly, the adjustment that the respondent put in place is found to have been reasonable in that it would have eliminated the disadvantage the claimant identifies.

9.3.4. It was clear from the email exchange the claimant had with the respondent that the claimant is under the impression that, when there is a duty to make reasonable adjustments, an employer is obliged to make whatever adjustments the claimant demands. For example, the claimant stated in emails to the respondent:

"So when can I get the format that suits me best?" and

"do you believe that me asking to use a phone is unreasonable?"

9.3.5. Whether an adjustment that the claimant prefers is, or is not, reasonable is not the point. The duty is no more than to make an adjustment that eliminates the claimed substantial disadvantage. The respondent put in place such an adjustment in this case. That adjustment was that the claimant was sent questions and could upload audio recordings of his answers to those questions to address his difficulty with providing written answers. To ensure any difficulty with memory was adjusted for, the claimant was able to record and re-record his answer until he was content that he had accurately included in the recording all the information he wished to include. He was also informed he would be permitted to provide further supplementary information after uploading the recordings if needed. This was not the adjustment the claimant states he wanted, and he refused to engage with it.

9.3.6. The claimant came to these proceedings and dishonestly sought to suggest he lacked the IT skills to be able to engage with the offered adjustment. It is clear to the Employment Tribunal that he had the technical skills to record and upload his answers to questions, and as such the claimed disadvantages identified would clearly have been mitigated had the claimant engaged with that process.

9.3.7. Any duty to make adjustments was therefore fully met. Adjustments were offered that, if they had not been unreasonably rejected by the claimant, would have addressed his claimed difficulties with a written application process.

10. *Harassment Claim Findings*

10.1. The claimant claims, in summary, that being told that if he did not continue to keep asking the same questions repeatedly, despite the respondent having given a clear final answer, his application would be considered a nuisance application and terminated, amounted to harassment.

10.2. *Did it occur?*

10.2.1. There is no dispute this was stated to the claimant. It was in three emails the Employment Tribunal has seen.

10.3. *Was it unwanted conduct?*

10.3.1. The respondent submitted that this statement was not unwanted conduct.

10.3.2. The Employment Tribunal do not agree. There is no evidence before the Employment Tribunal that suggests that this statement was not unwanted by the claimant.

10.4. *Was it related to disability?*

10.4.1. The Claimant's evidence about the reasons why he kept asking the same questions repeatedly, despite having been told to stop, were inconsistent and are found to be unreliable.

10.4.2. His first response, until it became apparent that the reason had to be related to his disability, was that he was positively seeking to make a point, to *"make the respondent understand his difficulties".*

10.4.3. When the difficulty this might cause his harassment claim was pointed out, he changed his evidence to state that he could not control this as a result of his disability.

10.4.4. The Employment Tribunal find his later revised evidence to be unlikely to be correct. The initial, clear and definite answer given is found by the Employment Tribunal to be more likely to be the truth and correctly reflect the reason why the claimant persisted with asking the same questions over and over again.

10.4.5. Accordingly, the Employment Tribunal do not find that the instruction to stop asking the same questions was related to the claimant's disability. It is found, as the claimant initially stated, to have been no more than the claimant's desire to forcefully make a point.

10.5. *Was the purpose or effect to harass the claimant?*

10.5.1. Harassment can occur if conduct has the purpose or effect of creating any of the proscribed effects in s26 Equality Act 2010.

10.5.2. The claimant at no point in his evidence sought to describe the effects of this alleged harassment. It is noteworthy that the claimant did not mention his claim of harassment at all in his statement.

10.5.3. Without any evidence that the comments complained about had any particular effect, the Employment Tribunal cannot find that they did have such effect.

10.5.4. On a similar basis, the claimant offered no evidence, or submission, to the effect that he invited the Employment Tribunal to find that the comments

had the purpose of harassing him. The comments referred to appear to the Employment Tribunal to themselves clearly identify their purpose, to get the claimant to stop asking the same question repeatedly in a way that could be described as harassment of the respondent.

10.5.5. In the absence of any evidence that could support such a conclusion, the Employment Tribunal find it did not have such a purpose.

10.6. *Was what was done capable of being harassment anyway?*

10.6.1. The Employment Tribunal have considered carefully the words used in this case. Unusually, all words used were at all times written, so there is no consideration required of the manner in which the words were spoken or the tone of voice used when the words were spoken.

10.6.2. Having undertaken this consideration, the Employment Tribunal concludes that there does not appear to be any basis upon which, even if the claimant had given evidence of effects on him that fell within the definition of harassment, the Employment Tribunal could have found such effects were reasonable.

10.6.3. The respondent has politely, firmly and clearly asked the claimant to stop emailing the same question to them repeatedly. Nothing about the way that was done appears to this Employment Tribunal to be capable of, to use the words of Elias LJ, "*attracting the epithets required to constitute harassment*".

10.6.4. Accordingly, regardless of the earlier findings that mean the claimant's claim of harassment cannot succeed, the claimant's claim of harassment would have failed to meet this legal test and would have been dismissed in any event.

Employment Judge Neil Buzzard
25 October 2024

Judgment sent to the parties on:

30 October 2024

For the Tribunal:

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/