3314731/2021 (part of a number of cases case managed together with the lead case being 1303637/2021)

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Dr C Mallon	Cranfield Aerospace Solutions Ltd

RESERVED JUDGEMENT AND REASONS MADE FOLLOWING A PRELIMINARY HEARING BY CVP

Heard at: Birmingham (by CVP) **On:** 5 February 2024
Before: Employment Judge Hughes

Representation
For the Claimant: In person
For the Respondent: Mr R Bhatt of Counsel plus instructing solicitor

JUDGMENT

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

REASONS

Background and issues

1 On 22 May 2021, the claimant applied to the respondent for the position of Chief Integration Engineer for Hydrogen Fuel Cell Systems ("CIE"). It is common ground that the position was advertised on line. The advertisement set out the essential and desirable criteria for the role [50-51]. It was not possible to apply without reading the advert because the application link was at the bottom of it. The applicant had to fill in personal details and provide a CV. It is the respondent's case that the applications were screened by a senior member of staff who determined the claimant did not meet the essential requirements of the role, which was very technical and specialised. On 5 July 2021, the claimant's

application was rejected. He was offered the opportunity to apply for roles requiring less experience and offered a telephone interview on two occasions. He declined and his case is that this was because he had lost faith in the respondent. The dispute in this case is essentially about the unsuccessful application for the CIE role.

2 The claimant presented a claim on 23 August 2023, having complied with the Early Conciliation Requirements. It was very brief. It stated that his proposed reasonable adjustments were listed very clearly at the beginning of his CV; that when he complained of being rejected at the application stage, he was offered an oral application but did not trust the respondent; and that he believed he was rejected "because his disability (autism, dyspraxia and ADHD) and reasonable adjustments were listed on his CV".

3 A case management discussion took place before Employment Judge Woffenden in September 2022. This concerned 19 ongoing cases all of which have been brought by this claimant and were consolidated to be heard together [75-6]. Some of the cases had been transferred to be heard in this region. The case management order ran to 47 pages [77-123] and amongst other things included directions for this claim (case reference number 331473/21).

4 The respondent accepted the claimant was disabled but argued he was not placed at substantial disadvantage. During the case management discussion, it was recorded that the claim was limited to reasonable adjustments and to rely on a PCP relating to online applications i.e. it was not put as an auxiliary aids claim. The respondent made it clear that there was to be an application for a strike out/deposit order, and was given to 25 October 2022 to do so.

5 By that date, the respondent confirmed that no amendment was required, served an amended response, and applied for a hearing on the question of strike out/deposit [42-51]. The grounds are covered in the respondent's submissions for this hearing and will be summarised later. Unfortunately the application was not dealt with until the respondent chased it up.

6 The claimant made two amendment applications on 25 July and 1 August 2023 [52-53 and 54]. The timing suggest they were prompted by the respondent seeking to progress the strike out application. In summary, he applied to "label" his claims as: direct discrimination; "discrimination arising from disability"; failure to make reasonable adjustments; and indirect disability discrimination. The claimant clarified that he contended that as well as failing to make a reasonable adjustment to the PCP involving online applications, the respondent failed to provide an auxiliary aid or service (an alternative form of applying). He said he was diagnosed with ADHD in mid-2022, and was applying at this point because he had no legal training and had not applied the correct legal labels. He said he only heard of section 15 EA10 recently. The respondent opposed the

amendment application and said the claimant had his opportunity to clarify his allegations during the hearing before Judge Woffenden.

6 The claimant provided objections to the strike out application on the 29th of September 2023 and cited a number of cases [55-63]. I have treated this as part of his legal submissions for this hearing.

7 The purpose of this hearing is to determine the strike out/deposit application and, if the claim is not struck out, to decide the amendment application.

Documents and other evidence

8 I was provided with a bundle of documents produced by the respondent. This contained some documents which had been supplied by email by the claimant just before the hearing. References in square brackets are to pages in the bundle. The respondent also provided written legal submissions which are summarised below, and a bundle of authorities. The authorities bundle included decisions in six other Employment Tribunal claims which the claimant has brought in the last few years.

9 The claimant sent a document described as “words to share in case” which I read and took into account because it appeared to be his submissions relating to this case. He sent a further email on 1 February 2024 setting out his position on applying for jobs and attaching the CV which he used to apply for the job of CIE with the respondent in 2021 [172-177].

10 The claimant also provided emails attaching various documents. I read these and took them into account, to the extent they were relevant. Some related to other cases. Some were not relevant to the issues I had to decide. For completeness, the additional documents concerned: collaboration in producing online resources for a project providing support for autistic adults (31 January 2024); a potential role of “content creator”; his CV library; and feedback from an A.I. concerning how he had scored in an interview he had taken with it. The claimant also sent a Word document from Ms Sara Heath, who described herself as an expert witness for an organisation called Autonomy+. It stated she had given evidence in a different Employment Tribunal claim (case 1403362/2020 Mallon v Electus Recruitment Ltd). It set out her recollection of her involvement in that claim, the evidence she gave, and her view that the claimant is genuinely seeking work.

11 As well as reading all of the above documents I heard oral submissions. I was mindful that the claimant says he explains things better orally because of his disability. He confirmed he had addressed me on the key points for him.

12 The claimant gave oral evidence on oath about his ability to pay a deposit, from which it became clear he has limited means. He is married, and has a son. He gave evidence about household income and expenses. He and his wife own a house which they live in which is mortgaged. They also own two flats in Aberdeen, which are mortgaged. They lease them to tenants (one flat was rented out at the time of the hearing). The claimant told me he has debts of £3,500. The claimant provided two screenshots for a company he has set up, showing net sales in January 2024, which was about £1400 (email dated 4 February 2024). I was given no information about money he has received from settling claims. On the limited information available, I concluded that the claimant was able to pay a modest deposit if I decided to order one.

The legal principles

Strike out

13 In Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("The Rules") there is the power to strike out a claim. It states 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; …"

14 There is a two-stage test. Firstly, it is necessary to consider whether any of the grounds set out in Rule 37(1)(a) – (d) have been established. If so, it is necessary to decide whether to exercise the discretion to strike out.

15 If the grounds are not met there is no power to strike out. If any of the grounds are met, the higher courts have repeatedly emphasised that striking out is a draconian measure because cases are fact sensitive. The key case is Anyanwu v South Bank Student Union [2001] ICR 391 HL - see paragraph 24 (Lord Steyn). However, in the same case, Lord Hope said: "Nevertheless I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to be taken up by having to hear evidence in cases that are bound to fail."

16 As to the latter, in ABN Amro v Hogben (UKEAT/0266/09/DM) the EAT overturned a Tribunal Judge's decision not to strike out a complaint of age discrimination. The representative for ABN submitted that it is not legitimate to

allow an apparently hopeless case to proceed to trial in the hope that "something may turn up" during cross-examination. This was approved by the (then) President of the EAT, Underhill P, who said, "If the case has indeed no reasonable prospect of success it ought to be struck out."

17 Tribunals are not prohibited from striking out cases which involve disputes of fact. In Ahir v British Airways Plc [2017] EWCA Civ 1392 it was held that: "Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context…".

18 Another ground to strike out is that the bringing, or conduct of, the proceedings is vexatious. The term 'vexatious' was described as follows by Lord Bingham in Attorney General v Barker [2000] EWHC 453 as follows: "The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

19 In HM Attorney General v Kuttappan (UKEAT/0478/05/RN) the EAT made the following observations in respect of vexatious litigants in the employment law field: "Cases of allegedly vexatious litigants in ordinary civil litigation usually concern repeated claims or applications against the same defendant or defendants in respect of a particular matter by which the litigant has become obsessed. In the employment law field, what is more commonly seen is the making of repeated tribunal applications of a like type against different respondents, the claims often following an unsuccessful job application".

Deposit

20 Rule 39 of the Rules contains the power to make deposit orders. It states 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."

21 In Garcia v The Leadership Factor [2022] EAT 19, the EAT made some general observations about deposit orders (paragraph 58). In summary, these were: (1) given the stage at which a deposit order is usually made and the need to avoid conducting a lengthy and unnecessary mini-trial, it is inevitable that a tribunal's assessment will be impressionistic; (2) in determining that a claim or an allegation has little reasonable prospect of success, a tribunal is assessing the likelihood of success at the subsequent full hearing; and (3) in most cases at least, a tribunal's reasons for making a deposit order can be expressed relatively concisely.

Amendment

22 When considering applications to amend Tribunals must carry out a balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. The leading case is Selkent Bus Co Ltd v Moore [1996] ICR 835 EAT in which Mummery J (as he then was) explained the relevant factors to be taken into account as being: the nature of the amendment; the applicability of time limits, and the timing and manner of the application. Case law draws a distinction between relabelling amendments i.e. adding a new label to facts already pleaded, and amendments which are more extensive, and go beyond what is pleaded.

23 The Employment Tribunal must take into account all the relevant circumstances and balance the injustice and hardship of granting the amendment against injustice and hardship of refusing it ("the balance of hardship test").

Submissions

24 As will be apparent from the above, I received a large volume of written documentation pertaining to submissions, much of which related to other Tribunal

claims. I also heard fairly lengthy oral submissions. I took all of these into account (to the extent they were relevant) when reaching my decision. I shall briefly summarise the key points made by each party.

Claimant's submissions

25 In the written submissions in the email the claimant said: "My goal is to secure an opportunity to utilise my skills with adapted recruitment practise practices for neurodivergent applicants. This claim is part of my efforts to promote inclusive, accessible application procedures, not pursue monetary compensation."

26 In oral submissions, he told me he has succeeded in one case and that he is not a vexatious litigant – he genuinely wants to work.

27 In his written submissions (the words in case document referred to above), the claimant said that he had asked for the information in a way that suited him, and was not allowed an oral application which would have suited him better. He said that when the respondent offered him an oral application it appeared to be for a different role, and was too late because he had already lost trust in the respondent.

28 The claimant said he applied because he wanted the role and had experience of working with fuel cells twice in the past and had done a PhD about them. He said that in a full hearing, the Employment Tribunal would hear all the evidence and be able to gauge his percentage chance of success if reasonable adjustments had been made to the interview process.

29 In oral submissions, the claimant accepted that his CV and written application did not show that he met the essential criteria. He said that if he had been allowed to make an oral application, he would have been able to show he met the criteria. In fact, as he eventually accepted, he did not met the essential criteria.

30 The claimant said that he was applying to amend because it was difficult for him as a neurodiverse person to understand legal labels, and that because he is not legally trained he just puts what happened on the application form. He said that in the case management hearing he was confused and not able to properly identify the way he was putting his disability discrimination claim.

Respondent's submissions

31 The respondent's representative summarised the applicable case law. It is the respondent's case that the claimant is a serial and experienced litigant in the Employment Tribunals who has made over 100 claims and been the subject of

adverse costs orders in at least three cases, including an adverse cost order in the sum of £18,000 in Mallon v Electus Recruitment Solutions Ltd ET/1403362/2020. In that case, the Tribunal stated that the claimant had a system of applying for roles without assessing whether he met the requirements; of not paying deposits in claims where a deposit order was made; of not complying with unless orders, so the claim would be dismissed; and that this way of operating was now the claimant's chosen career.

32 The respondent also referred to a number of other first instance decisions in support of the proposition that the claimant is a vexatious litigant. Examples given included Mallon v Ginger Recruitment Services Ltd (ET/2410801/18), a similar claim to this, which was withdrawn and resulted on a £2000 costs order against the claimant. In Mallon v ela8 Ltd (2206437/18) costs were awarded on the basis that the claim had been brought to get a settlement offer. That case did involve an oral interview and was argued as direct disability discrimination or discrimination arising from disability. A further example was Mallon v Vector Recruitment Ltd ET Case No 3304951/2022, where the claimant brought a reasonable adjustments claim similar to that brought in the present case. In that case, the Tribunal concluded that the PCP of not offering the claimant an oral initial discussion to discuss the essential criteria did not put him at a substantial disadvantage because he had provided a detailed CV, and someone without his disability could not have expressed themselves any better. The conclusion was that the reason why the claimant was unsuccessful in his applications was because he was unrealistic about the jobs he was applying for.

33 The respondent submitted that for the same reasons, the claim had no reasonable prospect of success. In the alternative, it was argued that the claimant should be ordered to pay a deposit because this claim had little reasonable prospect of success.

34 The respondent opposed the application to amend because of the timing of it. The respondent argued that the claimant had failed to clarify his claims properly in the hearing before Judge Woffenden. It was submitted that allowing the application would cause great difficulties and hardship for the respondent because it would expand the scope of this claim considerably beyond the case set out in the claim form and clarified in the case management order.

Conclusions

No reasonable prospect of success

35 I shall start with this question although the respondent's starting point was the question of whether the claimant is a vexatious litigant.

36 This is a claim for loss of an opportunity to gain employment. The claimant did not retain the job advert. He retained the CV he submitted with the job application form because he tweaks his CV depending on the position he is applying for and keeps a copy in his CV library. The claimant completed the on-line application form and sent his CV to the respondent. In order to apply, he must have read the advert, which contained the essential criteria. It was necessary to scroll through the whole advert to click the “make application” box [49-51].

37 The version of the claimant’s CV sent to the respondent with the application contained the following statement at the beginning.

> “I have been diagnosed with both Dyspraxia and Autism. Due to my disability, I request a reasonable adjustment in the form of making an oral application. This would be a ten minute phone call to talk through my relevant experience. I also need the essential criteria in advance so I can prepare. Arrangements for these adjustments should be made directly with me via email or telephone. Due to issues arising from my disability I cannot update my CV for each role, hence having a CV that’s longer than average.”

38 In an email containing some of the submissions for this hearing, the claimant stated:

> "Due to my disability, I request reasonable adjustments of an oral application and essential criteria in advance to prepare." Specifically, I asked for:
>
> The essential criteria in advance to prepare
> A 10-minute phone call to orally discuss my relevant experience instead of relying solely on my written CV
>
> I have dyspraxia, affecting my ability to tailor written applications, and autism, making verbal communication preferable. Research shows adjustments like oral applications are often reasonable for autistic applicants.”

39 The essential requirements of the job were set out in the job advert and the claimant must have seen them to apply [50].

40 One essential criterion was five years’ relevant experience. The essential criteria were set out clearly in the advert. The criterion was:

> "Extensive experience (5+ years) in the design and development of practical hydrogen fuel cell systems (including fuel cell stack(s) and balance of plant) ideally for aerospace/transport/defence applications".

41 In the hearing before me, the claimant argued orally that he could show 4.5 years relevant experience. This was in dispute because the respondent's case is that the CV and/or application did not show any relevant experience because it made no reference to Hydrogen Fuel Cells at all (which is correct).

42 This was a very specialist technical role. The claimant explained that because he applies for a lot of jobs, he tweaks his CV to tailor it to specific roles, but does not entirely re-write it. The claimant had the opportunity to tailor his composite CV to provide evidence to demonstrate he met the essential criteria for this position. The claimant accepted the CV he submitted as part of the on-line application did not show that he met the essential criterion relating to relevant experience which was clearly stated in the advert. His case is that because his verbal skills are better than his written skills, a ten minute oral application gives him the best opportunity to explain why he can meet the essential requirements of the role concerned. However, when he made oral submissions to me, he was not able to show that he had the requisite five years' experience, and eventually accepted that. He did argue he had 4.5 years' relevant experience – a proposition which was roundly rejected by the respondent.

43 Taking his case at its very highest, and therefore assuming the claimant could establish that he had 4.5 years relevant experience, he still did not meet that essential requirement. In fact, I think it very unlikely that he would be able to satisfy a Tribunal that his relevant experience for this post amounted to anything approaching five years.

44 The respondent also relied on the fact that an oral discussion was offered (not, as I understand it, in relation to the post in question but to one requiring lower skills). Mr Mallon declined that offer and said this was because he had lost faith in the respondent. The respondent's representative argued this went to the merits of the claim, and to the question of whether the claimant was a genuine or vexatious litigant. In my view, the competing explanations for the claimant's refusal of an oral interview for a different post, did not really assist.

45 I accept that an oral interview or discussion would be an important reasonable adjustment in some instances, but I think it highly unlikely that a Tribunal would conclude such a step was reasonable in this case. That is because the claimant did not have five years or more relevant experience, and nothing he could say orally would change that. Therefore, viewed objectively, an oral application would have been futile.

46 The other allegation of failure to make reasonable adjustments was that the respondent did not provide the essential criteria for the job. That is factually incorrect, and is bound to fail.

47 In the circumstances, I am satisfied that this is one of the rare cases where it can properly be concluded that the allegations are without merit and bound to fail. Therefore the claim has no reasonable prospect of success.

Vexatious

48 I find this question more difficult because, at least in part, I was being asked to reach a conclusion that the claimant is a vexatious litigant because of a pattern of bringing repeated claims, and because of a selection of negative findings made by other Employment Tribunals (which are not binding on me). That is a difficult task in a three-hour preliminary hearing, because the information about those claims is, of necessity, limited in scope. For that reason, I thought it better to focus on the merits of this claim first, because those findings can (and do) feed into my conclusions on the question of whether the claim is vexatious.

49 Having given the question very careful consideration, I concluded that there are a number of factors which point towards the possibility that the claimant is a vexatious litigant, whether intentionally or because of lack of proper thought. I shall list these and then look at the picture as a whole.

50 Firstly, the claimant has undoubtedly brought a large number of claims in the recent past, many of which are ongoing. From what he tells me, this will continue until he secures employment.

51 Secondly, the claimant told me he does not retain the details of jobs he has applied for or copies of his applications. The respondent's case is that this demonstrates the applications are not genuine. The claimant maintains that they are, but says that he cannot store that much information because of the number of job applications he makes. I see force in the respondent's point which is in part supported by the claimant's explanation for not keeping the information.

52 Next, I think it is pertinent to consider the consequence of that failure. If a job application is unsuccessful, the claimant is largely reliant on the respondent to provide the ammunition to bring or progress a claim in the Employment Tribunal. This is what happened in this case. There is an important distinction between information which a litigant or prospective litigant does not have and can only obtain from their opponent through disclosure, and information which they once had but failed to retain for reasons which are unconvincing.

53 A further point is that when the claimant has received the information from a respondent, it is clear that he does not undertake a proper evaluation of the strengths and weaknesses of his claim before deciding whether to commence or continue with a claim. Instead, there is a pattern of bringing a claim and continuing with it, until the case settles or an Employment Tribunal makes a finding as to the merits usually at a preliminary stage. There are examples of cases where unless orders have been made, which the claimant does not comply with, resulting in automatic strike out. If the claimant is ordered to pay a deposit, his practice is not do so, which brings the claim to an end. The claimant says he does not pay deposits because he is a risk of costs if he does. On one analysis, that is an objectively sensible decision – the purpose of a deposit order is to make a litigant think long and hard before proceeding. On another analysis, it is relinquishing all responsibility to evaluate the merits to a judicial body, which is unreasonable. The claimant is undoubtedly an intelligent person, and should be more than capable of taking a realistic view of prospects of success himself. He does not do so, which inevitably leads to unnecessary use of court time and additional costs for respondents. It is fair to say that this could be characterised as misusing the Employment Tribunal system. This is unfair to other users of the Employment Tribunal and is not a good use of the limited resources available. To put this in context, there is a backlog of claims nationally, which means many people have to wait for at least a year before their case can be heard. Any unnecessary demands on the system have serious consequences for the effective administration of justice.

54 The claimant clearly sees himself as a campaigner for greater accessibility in appointment processes. He told me: “It would be better if there was [a body like] the CPS for disabled people so they can follow it up. There is only me to tell people”. I fully accept that a campaigner can make genuine job applications, and has every right to complain if they are discriminated against by the way the applications are dealt with. It is to be expected that any such claims would be arguable, otherwise there is a risk that the cause being championed will be damaged rather than assisted. Sadly, I think it is probable that the claimant’s approach in bringing multiple claims, without properly considering the merits, actually undermines his stated aim. I hope he will reflect on this.

55 Set against the above, is the fact that the claimant vehemently asserts that he is a genuine job applicant and that other people (such as Ms Heath and job coaches) will say the same.

56 In summary, the picture as a whole is that the claimant brings multiple claims in respect of a very wide range of job applications. It is evident that he has a list of allegations for use in most of his claims e.g. not providing the essential and desirable criteria in writing, and not allowing him to have an oral application. As already noted, the allegations in this case appear to have brought without any thought to whether the facts support them.

57 I am mindful that I must exercise great caution before concluding the claimant is a vexatious litigant. With reluctance, I have reached that conclusion. For the avoidance of doubt, I have not concluded that the claimant is cynically bringing to generate income. I have given him the benefit of the doubt on that. However, I do think the way the claimant approaches bringing and pursuing claims is can properly be categorised as vexatious as well as unreasonable.

58 Having decided that the case meets the grounds for striking out in two respects (unreasonable and vexatious), I must then decide whether to exercise my discretion to strike it out. My conclusion is that I should. This case is very unlikely to succeed. It has already taken up considerable time and resources. It is a misuse of the court process. Consequently, it should be struck out.

Alternative findings

59 In view of my decision to strike out the claim, it is not strictly necessary for me to make findings on whether to order a deposit, or whether to allow the amendment application. I am including my alternative findings because I have heard arguments about these points.

Deposit Order

60 If I had not decided that the claim should be struck out, I would have ordered the claimant to pay a deposit of £1000 as a condition of continuing with this claim. That is because the claim is very unlikely to succeed for the reasons already stated. I am satisfied from the limited information available that the claimant could pay that sum if he felt strongly about continuing with this case.

61 Ironically, if I had ordered a deposit, it would have brought these proceedings to an end assuming the claimant would have followed his usual practice of not paying it; whereas my decision may potentially cause further litigation.

Amendment application

62 I shall first deal with the application to amend to put the reasonable adjustments claims as being in respect of failing to provide an auxiliary aid. The respondent pointed out that in Mallon v AECOM Ltd EAT/175/20 which was handed down on February 2021, Judge Tayler said: “It is important in considering reasonable adjustment claims, to consider the possibility that the case is about physical features (which includes furniture) or auxiliary aids (which include services). No consideration was given to whether this case should be analysed as an auxiliary service claim.” Given that Judge Tayler’s decision concerned a claim brought by Dr Mallon, the respondent argued that the claimant could have

framed the allegation that way during the hearing before Judge Woffenden. The claimant said that during the case management hearing he was confused and had not recalled the EAT's finding. On the face of it, that is a very surprising proposition – I imagine most litigants would remember a finding by the EAT which relates to their own case. I think it probable that the claimant was seeking to mislead me about that. If not, then failing to remember Judge Tayler's important observation about reasonable adjustments claims, would be consistent with my observations about the way the claimant does not properly engage with his own assessment of the merits of his allegations or give any thought to how to frame them. Despite that, I would have allowed this amendment because the proposed adjustment was clear, and because it was a straightforward relabelling exercise to simply add a label which appears to be more apt. It would require no additional evidence or witnesses.

63 I also thought that adding direct disability discrimination was in reality a labelling amendment. The claim form stated the claimant believed he was rejected "because his disability (autism, dyspraxia and ADHD) and reasonable adjustments were listed on [his] CV". I would have allowed the claimant to add a claim of direct disability discrimination but only in respect of whether the reason the application was rejected was the fact the claimant was disabled and/or the fact he asked for reasonable adjustments. It goes without saying that it should have been identified by the claimant at the case management discussion. However, allowing the amendment would require no additional evidence or witnesses to meet that claim.

64 I would not have permitted the other amendments for a number of reasons. Firstly, the detail of them was not set out – simply the legal labels the claimant wanted to attach. Much more detail would be required for the respondent and the Employment Tribunal to understand how the allegations of indirect discrimination and of discrimination because of something arising in consequence of disability are put. Secondly, the timing of the amendment application suggests it was only prompted by the respondent chasing up progress on the listing of its strike out application. Thirdly, it is a matter of record that the claimant has previously made a claim alleging discrimination 'arising from' disability, so it cannot be correct for him to say he has only recently become aware this is a possible type of claim. I am unclear if he has claimed indirect disability discrimination before, but in this case it adds nothing and just serves to further complicate and expand what should be a relatively straightforward claim. Finally, although there is no proper detail of the proposed amendments, I am satisfied that allowing the claimant to add allegations of indirect disability discrimination and discrimination because of something arising in consequence of disability, would widen the scope of the claim considerably. The balance of hardship is firmly in favour of the respondent as regards those amendments.

Summary

65 Having decided to strike out this claim, it think it appropriate to remind the claimant of Judge Tayler's words in the EAT judgment in the case of Mallon v AECOM Ltd EAT/175/20. He said:

> "The claimant told me that he is focused on obtaining work. His chances of obtaining work will increase if he explains to any prospective employers the nature of his disability and the effects it has on his ability to complete online forms; and co-operates with them to find effective means for him to make his applications. The claimant told me that his applications are for jobs that he genuinely wants. Were that not the case, and were it to be established that multiple applications were being made for jobs that he does not want, with the aim of bringing claims, possibly to achieve settlements, that is a matter that could result in strike out and costs." [My emphasis added].

66 It is unfortunate that the claimant does not appear to have taken the words of Judge Tayler on board. I imagine that anything I say will not count for much, but I think it important to try. Dr Mallon makes numerous applications for employment, some of which (like this case), have very little or no prospect of obtaining the job concerned. The genuineness of such applications will continue to be called into question if he fails to retain information about the role, and/or if he takes no responsibility for making his own realistic and objective evaluation of the prospects of success before commencing or continuing with legal proceedings.

Signed by Employment Judge Hughes
11 October 2024