



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Oliver Head

v

Recol Limited

Heard at: Huntingdon

On: 1 December 2022

Before: Employment Judge Ord

Appearances

For the Claimants: In person

For the Respondent: Mr A Crammond, Counsel

JUDGMENT on PRELIMINARY ISSUES

1. The Claimant has not established that he was at the material times a disabled person within the meaning of Section 6 of the Equality Act 2010 and his complaint of discrimination on the protected characteristic of disability is struck out.
2. The Claimant's ethical and philosophical belief that he would not put into his system known carcinogenics, is a belief qualifying for protection under Section 10 of the Equality Act 2010.

REASONS

1. This matter comes before me following the direction of Employment Judge Tynan on 14 May 2022, indicating two questions for a Preliminary Hearing. The first was whether the Claimant was at the material time disabled within the meaning of s.6 of the Equality Act 2010 ("EqA") and second, in his words and the words of the direction,

"whether the Claimant's objection to undergo lateral tests is a philosophical belief qualifying for protection under the Equality Act 2010."

2. With respect to that learned Judge, the appropriate question is whether the Claimant's objection to undergo lateral flow tests was due to a philosophical belief qualifying for protection. The belief was not to avoid

lateral flow tests, but to avoid a carcinogenic substance which he says was part of the lateral flow test system.

3. I have heard evidence from the Claimant and he has been cross examined by Mr Crammond on behalf of the Respondent I have heard submissions from both sides and references have been made to a bundle of documents supplemented by two letters from Oxford University Hospitals NHS Trust, submitted by the Claimant today.
4. The Claimant suffered a significant injury in 2016. He required reconstructive surgery to his face, in particular to his nose and eyes. I have no doubt at all that the Claimant suffered a traumatic experience at that time and that it has had, as he told me, a significant impact on his approach to life.
5. The most recent medical information which has been presented to me about this, however, is from late 2016. The Claimant had an operation (open reduction and internal fixation and orbital reconstruction) on 2 December 2016. On 13 December 2016, the Consultant Surgeon at the Trust referred to the Claimant settling well, but suffering headaches related to double vision. There is no evidence before me that that double vision or those headaches had persisted. In fact, the Claimant has sought no medical assistance or advice since 2016 and he has not identified any ongoing physical issues regarding his condition, other than to say that he is unable to put anything up his nose (that being relevant to taking a lateral flow test).
6. This contention, however, is not supported by any medical evidence at all. While the Claimant was under investigation and disciplinary action from the Respondent, he copied part of what is said to be advice from his General Practitioner to say that in relation to the lateral flow tests,

“If you cannot do it in the nostril, then the sample from the back of the throat should be adequate.”
7. This is a piece of conditional advice. IF the Claimant could not, rather than advice not to, or a statement that he should or could not do it in the nostril. This is the only physical condition about which the Claimant complains.
8. Leaving aside the question of whether or not inserting materials into a nasal cavity is something which has a significant detrimental impact on the claimant’s ability to carry out normal day to day activities the simple fact is that the Claimant has not established that he has, or had at the material time, any impairment which prevents such activity.
9. The Claimant today put forward a contention that he has a mental impairment, in particular PTSD. He says he is unwilling to relive the experiences of what befell him in 2016. Again, there is no medical evidence in support of this broad contention and no evidence before me of how any such condition impacts on the Claimant’s day to day activities.

10. On the basis of the information presented to me, the Claimant has not established that he falls within the definition of a disabled person, as set out in s.6 Equality Act 2010.
11. In relation to the Claimant's stated philosophical belief, the Respondent says that the belief the Claimant is relying on was unclear. The Respondent has not, somewhat surprisingly, sought by way a request for further information or further particulars information from the Claimant as to how he defines that belief. This is notwithstanding the fact that the claim was issued in early 2022 and has been in the Respondent's possession for at least nine months.
12. In answer to my question today, about this belief and asking the Claimant to state in a sentence or so, how he would describe his belief, he was able to do so. He said he believed that we were facing what he described as an "*epidemic*" of cancer with one half of the male population and one third of the female population suffering from cancer during their lifetimes. He said that he sought to avoid what he called,

"harsh nasty products being put into [his] system"
13. He referred to his care when shopping not to buy any product with carcinogenic additives and to his own ethical product business. He has defused air in his home. Having regard to the guidance in Grainger Plc v Nicholson [2010] IRLR4, and the words of Langstaff J in Harron v Chief Constable of Dorset Police [2016] IRLR481, I am satisfied that this is a genuine belief held by the Claimant and not a mere opinion.
14. The Claimant's steadfast belief, following his 'prevention is better than cure' philosophy, is to avoid the ingestion of carcinogenic products which will help prevent the onset of cancer and perhaps other diseases. He wishes to remain as healthy as he can. He now does not drink tap water, only bottled water because of the materials used in the water purification process. He has stopped smoking, stopped drinking alcohol and stopped using cannabis; all of which are potentially carcinogenic products. It is clearly a matter of weight and substance as to human life and behaviour. The belief is a cogent one. It touches on something which is both important and worthy of respect. It has no conflict with the rights of others and is not incompatible with human dignity.
15. Mindful that Langstaff J referred to the plea in Grainger "*not to set the bar too high*" I am satisfied that the Claimant's belief that, in the face of what he calls an epidemic of cancer and his unchallenged evidence as to the incidence of cancer in the population, that seeking to avoid in his words "*putting known carcinogenics into one's system*" to reduce as far as possible the risk of contracting cancer or other disease, is a belief worthy of protection under s.10 of the Equality Act 2010.

16. To be clear, that is not to say that that belief was the true reason why the Claimant refused to take a lateral flow test for Covid-19, or that the Respondent was acting in a discriminatory way when it disciplined or dismissed the Claimant for so refusing. The only question for me today is to whether the belief is a protected one under s.10 EqA 2010 and I find that it is.
17. Accordingly, the case proceeds on the question of discrimination and on the ground of that belief only and on no other ground and orders have been made designed to assist the parties and prepare for the Final Hearing of this case.

17 January 2023

Employment Judge M Ord

Sent to the parties on: 19/1/2023

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For the Tribunal Office