

JERSEY / JUDGMENT

Feroz Talukder v S And I Limited

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL BETWEEN FEROZ TALUKDER CLAIMANT AND S AND I LIMITED RESPONDENT APPLICATION FOR LEAVE TO APPEAL
JUDGMENT Reference: [2023] TRE 209 Before: Advocate C E Whelan, Deputy Chair DECISION
The Applicant's application for leave to appeal is rejected.

REASONS

1. By a claim form presented on 15 November 2023 the Applicant brought the following claims:
i) Unfair Dismissal; ii) Discrimination on the grounds of disability (unspecified on the claim form)
2. By a judgment dated 21 March 2024 the tribunal acceded to an application made by the Respondent and struck out the claims on the basis sought, namely that they had no reasonable prospect of success. Article 24 (1) (a) of the Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016 refers.
3. The tribunal reached that decision by concluding that even on the baseless supposition that a contract of employment had come into existence between the Applicant and the Respondent, it had lasted at most for a matter of days. Therefore the Applicant would anyway have insufficient service to provide access to the unfair dismissal protections of the governing statute, the Employment (Jersey) Law 2003 ('the Law'). His only route to the shelter of those protections would be to show that he had been the victim of 'automatic unfair dismissal'. No qualifying period is needed before shelter from unfair dismissal is provided in such a case. (Art.73 (2) of the Law). The most familiar form of automatic unfair dismissal is likely to be if the reason or principal reason for the dismissal constitutes an act of discrimination against the employee forbidden by the Discrimination (Jersey) Law, 2013. That is the route chosen by the Applicant. His claim form speaks of discrimination on the grounds of disability but provides no detail.
4. It follows that the Applicant's ability or otherwise to show discrimination by the Respondent on the grounds of disability was determinative of both claims brought by him.
5. In the premises of the strike out judgment of 21 March 2024 the tribunal held that there was no evidence of disability discrimination in the case. Both claims were struck out accordingly.

6. The application for leave to appeal appears to made on the following bases and are met by the emboldened points made in square brackets: that the Respondent (named in the notice of appeal as Mr Tito Kahn) did not appear at the hearing. [the Respondent was not Mr Tito Kahn; it was the company shown in the title to the action. The company was properly represented by Mr Ronnie Kahn and the Applicant made no attempt to require the presence of Mr Tito Khan] ; Mr Tito Khan, at interview, did not mention the need for the Applicant to be registered for work [that is contrary to the evidence given and in any event is irrelevant to both claims]; that the claimant made a mistake on his claim form in this action as regards his entitlement to work [this is irrelevant to the matter of an appeal, or indeed to the finding at first instance]; that there was a payment into the Applicant's bank account asserted by him to be a part payment of wages [even supposing this to be demonstrable, it would have no impact on the key finding of the judgment below that there was no evidence of discrimination in the case.] 7. By virtue of Article 94 (1) of the Employment (Jersey) Law, 2003 an appeal in this matter is available on a question of law only. I can identify no such question.
8. For these reasons, I have rejected the application for leave to appeal. Advocate C E Whelan, Deputy Chairman Dated: 16 April 2024

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