

EMPLOYMENT TRIBUNALS

Claimant: Mr U Anyanwu

Respondent: G T Promotions Limited

Heard at: Ashford, Kent

On: 1 November 2017

Before: Employment Judge Wallis

Representation

Claimant: Did not attend

Respondent: Mr D Bansal, solicitor

JUDGMENT

The judgment of the Tribunal is that the claims are struck out for the reasons set out below.

REASONS

1. Oral reasons were given at the end of the hearing. As the Claimant and his representative did not attend, written Reasons have been produced.

Issues

2. By a claim form presented on 26 June 2017 the Claimant claimed unfair dismissal, race discrimination, notice pay, holiday pay and other payments. The claim form was not easy to understand, comprising a full page of densely typed narrative.
3. At a telephone case management discussion held on 2 October 2017, an Order was made that the Claimant provide a schedule setting out in chronological order the factual events relied upon for his claims of race discrimination. A sample of the schedule required was set out in that Order. The Order also said that the matter would be listed for a

Preliminary Hearing, on a date to be fixed, to consider (i) whether to strike out the claim if it has no reasonable prospect of success; (ii) whether to order the Claimant to pay a deposit if a claim has little reasonable prospect of success; (iii) whether to strike out a claim if there is no jurisdiction because it is out of time.

The relevant law

4. Rule 30 of the Employment Tribunal Rules of Procedure 2013 provides that a claim may be struck out on the grounds that it has no reasonable prospect of success.
5. Rule 37 provides that if a Tribunal considers that an allegation or argument put forward by any party in relation to a matter required to be determined by a Tribunal has little reasonable prospect of success, then a deposit order may be made as a condition of continuing to pursue that allegation or argument.
6. Such an order can only be made where reasonable steps have been taken to ascertain the ability of the party to comply with that order.
7. It is recognised that striking out a claim is a draconian measure which must not be taken lightly. Even if a case has no reasonable prospect of success, it does not necessarily follow that an order to strike out should be made.
8. In general, a discrimination case should not be struck out except in the very clearest of cases. However, in *Community Law Clinic Solicitors Ltd & Others v Methuen EAT / 0024 / 11*, it was emphasised that the House of Lords' decision in *Anyanwu v South Bank University and South Bank Student Union* [2001] ICR 391, despite "having almost iconic status", did not impose an absolute bar on the striking out of discrimination cases. It was emphasised that the power to strike out must be exercised with caution. However, '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'.
9. This principle was echoed in *ABN Amro v Hogben EAT/0266/09*; 'if a case has indeed no reasonable prospect of success it ought to be struck out'.
10. Section 123 of the Act provides that proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
11. For the purposes of this section, conduct extending over a period is to be treated as done at the end of the period.

Documents and Evidence

12. The Respondent produced a small bundle of documents comprising the pleadings in the matter and copies of notifications from the employer checking service (ECS) of the Home Office UK Visas and Immigration Department dated 21 March 2017, 8 May 2017 and 24 July 2017, and a copy of the Claimant's passport.
13. The hearing was listed for 2pm. When the Claimant and his representative had not arrived, the tribunal clerk telephoned the representative. She said that she had not received the notice of hearing and would not be attending.
14. I noted that the notice of hearing had been sent to the parties on 17 October 2017 by email. The email address used for the Claimant's representative was the one that she had used in other correspondence. The Respondent had received that notice. I decided to proceed with the Hearing.
15. The Respondent's application was that the claims should be struck out on the grounds that they had no reasonable prospect of success. This was on the basis that it was either an illegal contract, because the Claimant had no right to work in the UK, and/or that many of the claims were presented outside the time limit, and that the dismissal could not be unlawful as continuing to employ the Claimant in the case of the ECS Notification that it would be illegal to do so was not feasible.
16. I adjourned to consider once again the claim form, the response form and the particulars supplied by the Claimant in response to the case management Order. In the schedule the Claimant had set out twenty one matters upon which he sought to rely, dating back to October 2013. Although the claim form had suggested his claims were made under Section 13 and Section 26, this was extended in the schedule to include claims of indirect discrimination, victimisation, harassment and "whistleblowing".

Decision & Reasons

17. I decided to strike out the claim of unfair dismissal on the grounds that it had no reasonable prospect of success. It was clear from the ECS documentation produced that the Respondent had taken steps to check the Claimant's right to work in the UK and had received clear advice that the Claimant did not have that right. I considered that they had no option but to dismiss him in the face of that Notification. It was difficult therefore to see how, ultimately, the dismissal could be unfair.
18. Turning to the claims of race discrimination, I noted firstly that the

Claimant's schedule of claims went well beyond the scope of the claim form and I had regard to the guidance given about that in the case of *Chandhok v Tirkey* EAT/0190/14.

19. Items 1-14 of the schedule were presented outside the time limit and there appeared to be no apparent link between the matters raised, neither was it clear how the incidents described amounted to discrimination. I decided to strike out those claims on the basis that the Tribunal had no jurisdiction to hear them because they were presented outside the time limit and no grounds had been put forward for extending the time limit, and because they had no reasonable prospect of success in their current form. I noted that the Claimant had been advised by his solicitor at the time that he made his claim and when he supplied the schedule.
20. I considered items 15-21 in detail as they had been presented within the time limit.
21. Item 15 referred to an incident in February 2017. It was said that Mr Davitt had requested the Claimant's original passport to check his right to work in the UK. It was not clear to me why such a request would amount to direct discrimination, victimisation and harassment as set out in the schedule. This was struck out on the grounds that it had no reasonable prospect of success.
22. Item 16 related to an incident in April 2017, although it also referred to promotion opportunities in 2014 and 2015 (not in the claim form), so it was not clear what was actually being complained about here. I struck out that claim as it had no reasonable prospect of success.
23. Item 17 was an incident in March 2017 when it was said that Mr Davitt wrongly carried out an ECS check and then dismissed the Claimant. It was unclear to me why making a check with the ECS amounted to direct discrimination and victimisation as suggested. I had already dealt with the unfair dismissal claim. That was struck out on the grounds that it had no reasonable prospect of success.
24. Item 18 apparently occurred on 3 April 2017 when the Claimant suggested that Mr Davitt asked him to use a different name at work. This was apparently after he had been dismissed. It was unclear to me why that would amount to discrimination. Such a request, if made, might have had some unlawful purpose, but it was difficult to characterise it as less favourable treatment, harassment or victimisation as suggested. There was no mention of a protected act or any detriment. It was not in the claim form. It was struck out on the grounds that it had no reasonable prospect of success.
25. Item 19 was an incident on 5 April 2017 when the Claimant received a message to say he was not required at work that night. This apparently

occurred after he had been dismissed, so it was not clear how this was part of the claim, neither was it clear why it was harassment, victimisation or discrimination. This was not in the claim form. It had no reasonable prospect of success and it was struck out.

26. Item 20 referred to what appeared to be a dismissal letter on 7 April 2017, which was quoted apparently in full. It was not clear to me why the letter was said to be harassment, direct discrimination, whistleblowing, victimisation and unfair dismissal. Having been dismissed for making a protected disclosure was not pleaded in the claim form. There was no information provided about the alleged protected disclosure or the detriment. This claim had no reasonable prospect of success and was struck out.
27. Item 21 was said to be a letter from the Respondent's solicitor of 30 May 2017 in which they sought possession of the Respondent's property above the workplace in which the Claimant was living. This was said to be harassment and victimisation. By 30 May 2017 I noted that the Claimant had been dismissed for over two months. I considered that it was likely that the Respondent wanted access to that living accommodation and that would be the reason for the giving of notice rather than any harassment or victimisation. In any event, there was no information about a protected act. That claim was struck out on the grounds that it had no reasonable prospect of success.
28. I should add that where the claims were not contained within the claim form, but were put in the schedule, I could see no grounds for granting any application to amend the claim; further, I noted that no such application had been made.
29. With regard to the claims for notice pay and holiday pay, those remained unclear. There appeared to be a claim for wages buried in one of the narratives in the schedule, but that related to December 2016 and was out of time. Those claims were struck out on the grounds that they had no reasonable prospect of success, being completely unclear and unquantified.
30. Consequently, all claims were struck out. I acknowledged that this was a draconian step and was not done lightly. I took into account that the Claimant had been represented throughout the Tribunal proceedings, including at the presentation of his claim form, and he had had the opportunity to clarify his claims both at a telephone case management discussion (at which his representative was late and therefore missed that opportunity) and in a schedule. He had failed to make use of that opportunity. The balance of prejudice weighed in favour of the Respondent not to be put to any further expense in a matter which had no reasonable prospect of success.

Employment Judge Wallis

Date 7 November 2017