



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Jones

**Respondent:** Tesco Stores Limited

**HELD AT:** Manchester

**ON:**

11 July 2017

**BEFORE:** Employment Judge Franey  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss A Smith, Counsel

# JUDGMENT

1. The title of the respondent in these proceedings is amended to Tesco Stores Limited.
2. The case is struck out because it has no reasonable prospect of success. The hearing listed on 15 August 2017 is cancelled.

# REASONS

## Introduction

1. These proceedings began with a claim form presented on 31 March 2017. The sole complaint was unfair dismissal. The claimant was dismissed from her role as a customer service assistant on 28 November 2016 following an incident on 8 November 2016 during which she struck a colleague. Her claim form made clear her case that she had been placed under extreme provocation during the meeting on 8 November because her colleague was shouting and swearing at her and invading

her personal space, and that the circumstances had not been taken into account when the dismissal decision was taken.

2. The response form of 16 May 2017 resisted the complaint, arguing that it was a fair dismissal for gross misconduct because the claimant had punched her colleague in the face.

3. The case was listed for a final hearing on 15 August 2017 and standard case Management Orders made.

4. On 26 May 2017 the claimant sent an email to the Tribunal in which she said she wanted to complain of discrimination. Her email did not identify any of the protected characteristics covered by the Equality Act 2010. In a subsequent email of 31 May 2017 she provided more information about the additional details she wanted to add to her claim. Again there was no mention of any of the protected characteristics found in the Equality Act 2010. The case was listed for a preliminary hearing to determine the application to amend the claim.

### **Amendment Application**

5. I explained to the claimant the difference between an unfair dismissal complaint and a discrimination complaint under the Equality Act 2010. She confirmed that she was not alleging discrimination related to any of the protected characteristics. It became apparent that her email was simply more information about the basis on which she said the dismissal was unfair. Miss Smith accepted on behalf of the respondent that it could be treated as voluntary further particulars of the claim form. These were all matters which would have been within the ambit of the unfair dismissal complaint in any event.

### **Title of Respondent**

6. I amended the title of the respondent to reflect the proper corporate title of the claimant's employer according to the response form.

### **Prospects of Success**

7. In the course of the hearing the claimant said that she accepted that the dismissal had been fair and that she should have been sacked. Her complaint was in truth a different one: that the meeting on 8 November had not been handled properly by the manager and should never have been allowed to escalate to the point at which the claimant struck the colleague. If it had been handled properly the incident would never have happened and she would still be employed.

8. Nevertheless, she accepted that it was fair to dismiss someone who assaulted a colleague. Any procedural criticisms were criticisms of the way the meeting on 8 November was handled, not of the disciplinary procedure.

9. I indicated to the claimant that I was considering striking out her claim under rule 37(1)(a) on the basis that it had no reasonable prospect of success. That rule reads as follows:

“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...”

10. Although cases which are fact sensitive should not normally be struck out, this case was one where the key facts were admitted. I explained that the legal issue for the Tribunal was the fairness of the dismissal, not whether the meeting on 8 November had been handled well by managers. That was relevant only in so far as it went to the fairness of the dismissal decision.

11. I gave the claimant an opportunity to make representations as to why the case should not be struck out. She said that she felt very aggrieved that she had lost her job over this incident whereas Tesco had not suffered at all, and what she wanted to achieve was an apology for the way the meeting on 8 November 2017 had been conducted. However, she was not looking for compensation. She accepted again that it was a fair dismissal.

12. Miss Smith confirmed that the manager who dismissed the claimant, Mr Barry, recognised that there were lessons to be learned from the way the meeting had been conducted.

### **Decision**

13. Having heard from the claimant I decided that there was no reasonable prospect of success in the unfair dismissal complaint. The argument that the physical assault would not have occurred had the meeting been handled properly had no prospect of persuading a Tribunal that it was an unfair dismissal. The case was concerned with the fairness of the dismissal, not with the fairness of how a particular meeting had been managed. The view that verbal provocation did not excuse physical violence was inevitably within the band of reasonable responses in a retail environment. The remedy the claimant seeks is not a remedy to which this complaint can lead. I therefore struck out the complaint of unfair dismissal because it had no reasonable prospect of success. The hearing on 15 August 2017 is cancelled.

Employment Judge Franey

11 July 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
17 July 2017-07-17

FOR THE TRIBUNAL OFFICE