



EMPLOYMENT TRIBUNALS

Claimant: Mr C Stewart

Respondent: Concentrix CVG Intelligent Contact Limited

Heard at: Manchester **On:** 2 March 2021

Before: Employment Judge Ainscough (sitting alone)

Representation

Claimant: In person

Respondent: Mr Russell (Solicitor)

JUDGMENT

(1) The respondent's application to strike out the claims is refused.

(2) The respondent's application for a deposit order is refused.

REASONS

- (1) The respondent applied to strike out the claimant's race discrimination claim and in the alternative, a deposit order.
- (2) Rule 37 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 provides:

“(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;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.”

(3) Rule 39 of the Regulations provides:

“(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.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b)the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”

- (4) The respondent’s representative provided written submissions. The respondent contends that the claim for race discrimination has no reasonable prospect of success and should be struck out. In the alternative the respondent contends that the claim for race discrimination has little prospect of success and the claimant should be ordered to pay a deposit to continue with the claim.
- (5) The respondent submits that the claimant has made no reference to his race in the claim form. In addition, the respondent submits that the security guard, who the claimant identifies as the protagonist, is not employed by the respondent. The respondent also submits that any attempt by the claimant to label his complaints as race discrimination are out of time.
- (6) I heard submissions from the claimant. The claimant clarified his complaint of race discrimination as follows:
 - February 2019 - a security guard who worked for the respondent, albeit who was not employed by the respondent, made an allegation about the claimant; the claimant submits this was done on the grounds of the claimant’s race because white colleagues were acting in the same way.
 - February 2019 - the respondent’s decision to investigate the claimant was on the grounds of the claimant’s race because the respondent accepted the complaint, despite being aware that white colleagues had also acted in the same way.
 - February 2020 – the respondent resurrected the complaint and investigation after the claimant complained about the security guard, and issued the claimant with a final written warning.
 - October 2020 – the respondent dismissed the claimant because of his previous disciplinary record.
- (7) I considered the case of **Anyanwu v South Bank Student Union (2001) ICR 391** before reaching my decision. In this case, the House of Lords determined that discrimination claims should only be struck out in the most obvious of cases because they are fact sensitive and require a full examination of the facts before a determination can be reached.
- (8) Discrimination cases often require Tribunals to draw inferences from the facts. The claimant does not complain that he was subject to racist name calling. However, the claimant does complain that the security guard and the

respondent subjected him to less favourable treatment than his white colleagues, because of his race.

- (9) The claimant can ask the Tribunal to draw inferences from facts, but this can only be done after the Tribunal has heard the evidence. I am not convinced there is no such evidence of less favourable treatment and the claimant is able to name a white comparator. I do not agree that the claim for race discrimination has no reasonable prospect of success.
- (10) I am equally not convinced that there is little prospect of success. Much of the submissions that have been made by the respondent relate to the burden of proof. The Tribunal can only make a finding on the burden of proof in this claim once the evidence has been heard.
- (11) Following clarification of the claim, I have taken the claim at its highest, and believe there are prospects of success for this claim and the evidence must be heard.

Employment Judge Ainscough
Date 12 March 2021

JUDGMENT SENT TO THE PARTIES ON
16 March 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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