



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Fidina

**Respondent:** KMS

## JUDGMENT

**The claim is struck out in its entirety for the reasons set out in the respondent's application of 11 June 2021 (the relevant parts of which are set out in the reasons below).**

## REASONS

1. The respondent made an application to strike out the claim dated 11 June 2021 and followed this up with a chasing email of 19 July 2021; both were copied into the claimant and the respondent notified the claimant that any objection to the application from the claimant should be sent to the tribunal and the respondent as soon as possible. Nothing was heard from the claimant.
2. On 20 July 2021, the tribunal sought comments on the application from the claimant. No response was received.
3. On 19 January 2022, the respondent chased the tribunal for an outcome to its application, particularly in view of the upcoming 2 day full merits hearing on 2-3 February 2022.
4. At no point has the claimant responded to the application.
5. The claimant's claim is for unfair dismissal and (possibly) unlawful deduction of wages. The application sets out good grounds for striking these complaints out (as set out below). The claimant has been given multiple opportunities to respond and oppose the application and has not done so. I therefore consider it appropriate to exercise my discretion to strike out the complaints under Rule 37 and 12 as set out below and I also strike them out on the basis that the tribunal has no jurisdiction to hear them as they were presented out of time and it was practicable to have presented them in time (no explanation having been put forward as to why they were presented 3 years out of time).

6. The relevant sections of the application of 11 June 2021 are as follows:

**“APPLICATION UNDER RULE 37 (1)(A) FOR AN ORDER STRIKING OUT THE CLAIMANT’S CLAIM OR IN THE ALTERNATIVE AN APPLICATION UNDER RULE 12 (1) (A) AND 12 (1) (B) TO REJECT THE CLAIM UNDER THE EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2013**

Dear Sir or Madam,

**TRIBUNAL CASE NUMBER: 2201941/2021**  
**Snezhanka Fidina -v- KMS (UK) Ltd**

We represent Respondent in the above matter.

We respectfully apply to have the Claimant’s Claim struck out under Rule 37 (1) (a) The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that it has no reasonable prospect of success and/or that the claim should be rejected under Rule 12 (1) (a) and 12 (1) (b) on the grounds that it cannot be reasonably responded to and because the tribunal do not have jurisdiction to hear it. The specific grounds for this application are as follows:

**Insufficient qualifying service**

- I. ·The Claimant has brought a claim of ordinary unfair dismissal. Her employment commenced on 12 July 2016 until 7 January 2018 (please see contract of employment and P54 attached). The Claimant has therefore only been employed for 1 year 6 months. Consequently, the Respondent asserts that the Tribunal does not have jurisdiction to hear the Claimant’s claim for ordinary unfair dismissal as the Claimant was continuously employed for a period which was less than 2 years contrary to section 108 (1) Employment Rights Act 1996 (“ERA”). The claim should therefore be struck out on the grounds of it having no reasonable prospect of success. The Claimant has not pleaded any facts upon which could give rise to an automatic unfair dismissal claim. This claim should also be rejected in accordance with ETR Rule 12 (1) (a) and 12 (1) (b) as the tribunal do not have jurisdiction to hear such claim for the latter reasons.

**Time-barred**

- II. ·The Claimant’s allegations, namely for alleged act of unfair dismissal which occurred on 7 January 2018 and for alleged ‘Other Pay’, were not presented to ACAS within three months of the alleged acts or omissions relied upon and instead have been **brought over 3 years out of time** (please see attached). The Claimant entered into ACAS EC on 26 April 2021 and the certificate was issued on the same day (please see ACAS Certificate attached). The Claimant has not argued why it was not reasonably practicable for her to bring these claims over 3 years ago and within the relevant time. With this, the Claimant’s claims were not presented to the Tribunal within three months of the alleged acts or omissions relied upon. Therefore, the Respondent submits that as the Tribunal does not have jurisdiction to hear it, should be rejected accordingly in accordance ETR 12 (1) (a) and (1) (b). Alternatively, the claim should therefore be struck out on the grounds of it having no reasonable prospect of success.

**Cannot be sensibly responded to**

- III. ·The Respondent is unable to provide a substantive response to the Claimant’s claim for Other Payments and unfair dismissal. The Respondent submits that the Claimant has only ticked the box at part 8.1 of the ET1 form and has not expanded upon the claims at all. She has not provided any basis for her claim. The Claimant clearly understood that part 8.2 gives her the opportunity to explain and clarify the details of her claim which he has failed to do. Part 8.2 of the ET1 form states *“Please set out the background and details of your claim in the space below. The details of your claim should include the date(s) when the event(s) you are complaining about happened. Please use the blank sheet at the end of the form if needed.”* Therefore, it is the Respondent’s position that the ET1 Claim for unfair dismissal and other payments cannot be sensibly respond to in accordance with Rule 12 (2) , it should be rejected for the reasons set out in Rule 12 (1) (a) and 12 (1) (b). Alternatively, the claim should therefore be struck out on the grounds of it having no reasonable prospect of success.”

21 January 2022  
Employment Judge Baty

JUDGMENT SENT TO THE PARTIES ON

24/01/2022.

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FOR THE TRIBUNAL OFFICE