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EMPLOYMENT TRIBUNALS

Claimant: Mr V Baltavar

Respondent: YUM! III (UK) Ltd

Heard at: East London Hearing Centre **On:** 13 February 2017

Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: In person (Ms K Foweler, Hungarian Interpreter)

Respondent: Ms Clarke (Solicitor)

JUDGMENT ON OPEN PRELIMINARY HEARING

The Claimant's claims are struck out as having no reasonable prospects of success.

REASONS

Background

1 Mr Baltavar issued a claim form on 24 September 2016. On the claim form at section 8.1 he did not tick any of the boxes to identify what type of claim he was bringing. He ticked the box for making another type of claim and in the narrative he wrote: "*I was not belong for any band of the workplace, therefore they are started work against me.*" At page 7 he gave a narrative from which it is not possible to discern what type of claim he was bringing and what precisely it was that he was complaining about. His narrative was, with the greatest of respect unintelligible. The claim had been issued against Pizza Hut and also against YUM! III (UK) Ltd.

2 A response was filed separately by both Respondents as a result of which, the claim against Pizza Hut was struck out by Employment Judge Ferris on 11 November 2016. The claim proceeded against YUM (UK).

3 The matter came before Regional Employment Judge Taylor for a preliminary

hearing on 19 December 2016. In that hearing, at which Mr Baltavar also had the assistance of a court appointed interpreter, the Regional Employment Judge explored with him what type of claim and what the details of his claim were. She was unable to identify what his claim was. She recommended that he take legal advice.

4 Mr Baltavar was provided with a leaflet giving sources of legal advice in the area and an order was made that he provide further and better particulars of his claim by no later than 27 January 2017.

5 The Regional Employment Judge arranged for the matter to be listed for a further preliminary hearing today, at which was to be considered whether the claim should be struck out as having no reasonable prospects of success or whether a deposit order should be made.

6 Further and better particulars were not received by 27 January 2017 as required. The Tribunal received a letter on 8 January, in which Mr Baltavar asked the Tribunal to appoint a lawyer to act for him, asking for ideas in respect of his ET1 and asking the Tribunal to give a statement if it has seen anything in the way of suspicious activity on the part of the Respondent.

7 A letter was written back to Mr Baltavar explaining that neither the Tribunal Judges nor the staff are permitted to give advice and recommending that he seek legal advice. Reference was also made for guidance, to the Presidential Guidance on the Tribunal's website.

8 On 27 January 2017, Mr Baltavar wrote in asking for the case to be delayed six months as he had not been able to obtain legal advice.

9 The Respondent's solicitors wrote in on 1 February 2017, objecting to that request and on the basis that no further and better particulars had been provided, asked the Tribunal to strike out the claims for breach of its order, so as to avoid the necessity of attending today. That request in fact came before me and I refused it.

10 In the meantime, on 2 February 2017, Mr Baltavar wrote in purporting to provide further and better particulars. What he wrote was, "*I was discriminated against my religion or belief as I am not eat meat.*" Today I have been able to discern that what he meant by that was that he was discriminated against because he is a vegetarian.

11 On Saturday 11 February 2017, Mr Baltavar sent an email to the Respondent's solicitors and to the Tribunal. This was brought into me during the course of the hearing. Here, he says that he was shouted at by somebody on 19 December 2016. That is an event which occurred since the issue of these proceedings. He attached a series of photographs. These appear to relate to health and safety matters. Breach of health and safety regulations are not matters which the Employment Tribunal has the power to deal with. The Employment Tribunal's power is simply to deal with disputes between an employer and an employee that come within certain defined categories. There are, bizarrely, photographs of a couple of motorcars that appear to have been in an accident, of a police officer, some reference in one caption to, "lazy police officers". There is some reference in the annotations to stealing pocket money and harassment, but I am unable to understand what that is about or how it relates to something the

Tribunal has jurisdiction to deal with. I can also see attached a photograph of a grievance outcome, but this does not assist me in identifying what the employment or discrimination case is that Mr Baltavar wanted to bring.

12 During the course of today's hearing, Mr Baltavar referred to a further email he had sent, timed at 0:34hrs on 13 February. It has attached to it an employment contract, which has no apparent bearing. The email makes reference to somebody called Michel Cornish being dead, possibly of hyperthermia, possibly caused in the workplace. Again, if that is referring to some health and safety issue, it is not a matter for the Employment Tribunal.

The Law

13 Employment Tribunals Rules of Procedure, rule 37 provides that:

- (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.*

14 In Morgan v Royal Mencap Society [2016] IRLR 428 the President of the EAT, Mrs Justice Simler, reminds us that the threshold for a strike out is high, (paragraph 13). She acknowledges at paragraph 14 that there are cases where, if one takes the claimant's case at its highest, it cannot succeed on the legal basis on which it is advanced and in those circumstances, it will be appropriate to strike out.

15 In exercising discretion, a Tribunal should have regard to the overriding objective. Rule 2 sets out the Overriding Objective as follows:

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*

(c) *avoiding unnecessary formality and seeking flexibility in the proceedings;*

(d) *avoiding delay, so far as compatible with proper consideration of the issues; and*

(e) *saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

16 In exercising discretion, one must balance the relative prejudice to the parties.

Conclusions

17 The case as currently brought has no reasonable prospects of success, because it simply cannot be understood. Mr Baltavar has had plenty of opportunity to remedy this, certainly between the Respondent's ET3, from which it would have been apparent that the Claimant's claim was not understood. Giving him the benefit of the doubt there and assuming he has no access to assistance from someone who speaks and reads English, he would certainly have understood from the 19 December when he came before the Regional Employment Judge, that the Tribunal and the Respondent was unable to understand what his complaints were, in the context of a legal claim that can be dealt with by the Employment Tribunal. He was given access to information about where he might access legal advice; he was given more than a month to access that advice. I acknowledge that the Christmas holiday period was in the meantime, but I would imagine that is why the Employment Judge made sure that it was more than a month before the further and better particulars had to be provided.

18 The information provided by Mr Baltavar remains unintelligible. The prejudice to the Respondent is that it is expected to answer a case that cannot be understood, causing expense. Any prejudice to the Claimant in striking out his claim is ameliorated by the lengths that have been gone to in order to ensure that he has had every opportunity to present his case intelligibly.

19 It is not in accordance with the overriding objective to allow the matter to proceed. The claim is struck out.

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Employment Judge M Warren

22 March 2017