



Case Number: 2301954.2016

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr Z M Koudou

and

**Respondent**

South London & Maudsley NHS  
Foundation Trust.

Held at Ashford on 30 March 2017

**Representation**

**Claimant:**

Mr O Onibokun, Solicitor

**Respondent:**

Mrs H Freeman, Counsel

**Employment Judge** Kurrein

## JUDGMENT

### FOLLOWING AN OPEN PRELIMINARY HEARING

The Claimant's claim alleging unfair dismissal is struck out pursuant to Rule 37(1)(a) Employment Tribunals Rules of Procedure 2013 because it has no reasonable prospect of success.

## REASONS

- 1 The Claimant was employed by the Respondent as a Band 5 Mental Health Nurse. In that capacity he worked with vulnerable adults with complex needs.
- 2 At the same time he was, to the knowledge of the Respondent, the Registered Manager of a licensed Mental Health Rehabilitation Home he operated from rented premises known as St Edward's, in Thornton Heath.
- 3 Having heard the submissions of the parties and considered the pleadings I came to the conclusion that it was almost inconceivable that the Respondent would not establish that:-
  - 3.1 The Claimant was aware:-
    - 3.1.1 that he had a duty to report to the Respondent any concerns raised with him by the CQC or the police; and
    - 3.1.2 that as a consequences of the CQC's inspections of St Edwards on 1 and 9 February 2016, his knowledge of those premises and the questions put to him by the CQC at that time, he was in serious breach of multiple relevant Regulations; and
    - 3.1.3 he had been arrested on 21 March 2016 for being in possession of child pornography contained on a laptop computer he had taken for repair.

- 3.2 The Claimant failed to report those matters to the Respondent before the Respondent learned of them on about 17 February 2016, from the CQC, and on 29 March 2016, from the Police.
- 3.3 Those matters reasonably led it to the conclusion that it had lost trust and confidence in the Claimant, which was some other substantial reason to render the dismissal fair.
- 4 I thought the issues I identified in the course of the hearing as being the basis on which the Claimant contended his dismissal was unfair to be so thin as to almost be at the point of disappearing:-
- 4.1 The fact that the chair of the disciplinary panel was the same person who had previously heard a disciplinary case concerning him, and found it proved, was not something he had raised at the time, and was not pleaded in the very extensively revised and amended particulars of his claim.
- 4.2 The Claimant's case that he had only known of the CQC's concerns when he received its letter dated 2 March 2016 did not stand examination:-
- 4.2.1 The CQC found that St Edward's was "completely filthy", lacked medication policies and that controlled drugs were in an unlocked cupboard.
- 4.2.2 It had only one resident, a recovering drug and alcohol addict with particularly severe, multiple complex needs who was confined to a wheelchair and whose only washing facilities were a bucket. The shower did not work.
- 4.2.3 On the second, unannounced, visit the only staff member present was a "volunteer" cleaner, who was not the subject of an enhanced DBS check and who had no qualifications or training.
- 4.2.4 When questioned the Claimant had admitted the resident had been medicated without him supervising or being present.
- I think it inconceivable that the Claimant would not have known of most, if not all, of these deficiencies even before the first CQC inspections, and would have been well aware that he was in serious trouble immediately after both visits.
- 4.3 The Claimant was quite unable to identify to me the matters he alleged the appeal had failed to deal with.
- 4.4 The "inconsistency" argument to the effect that the Claimant had been treated more harshly than members of the Respondent's staff who may have been found wanting in a recent CQC inspect of the Respondent, to be hopeless. The Claimant was not comparing like with like.
- 4.5 I could see nothing wrong in the Respondent having regard to the Claimant's poor disciplinary record in considering the Claimant's employment history, length of service and mitigation.

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- 5 I finally came to the conclusion that a Tribunal would almost inevitably find that this was, in all the circumstance of a case, a fair dismissal. There was no reasonable prospect of the Claimant's claim succeeding. It was fanciful to think there was.

Employment Judge Kurrein

5 April 2017