



EMPLOYMENT TRIBUNALS

Claimant: Mr R Wilson
Respondent: Maria Mallaband Care Group Limited

Heard at: Leeds **On:** 1st February 2018
Before: Employment Judge Lancaster

Representation
Claimant: In person
Respondent: Ms F Mewies, solicitor

JUDGMENT

1. The preliminary hearing is converted to a final hearing in respect of the claim for unauthorised deduction from wages (non payment of Statutory Sick Pay from 16th June to 2nd July 2017).
2. The claim of unauthorised deduction from wages (non payment of Statutory Sick Pay from 16th June to 2nd July 2017) is struck out.
3. The claim of discrimination because of something arising in consequence of disability is dismissed upon withdrawal.
4. The Claimant's application to amend the claim in accordance with his email of 4th December 2017 is refused.
5. The claims that will continue to final hearing are for breach of contract (wrongful dismissal) and/or unauthorised deduction from wages (non payment of salary during the 1 week notice period from 2nd July 2017). A separate case management order is attached.

REASONS

1. The Respondent disputes the Claimant's entitlement to SSP.
2. In those circumstances the Employment Tribunal has no jurisdiction to determine the issue, it must be dealt with by HMRC: Taylor Gordon & Co. Ltd v Timmons [2004] IRLR 180.
3. In those circumstances there is no material prejudice to either party in treating this as a final hearing in respect of that claim so that it might be struck out, as it inevitably must

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be, at this earliest opportunity: rule 48 Employment Tribunals Rules of Procedure 2013.

4. The Claimant indicated at the start of this hearing that he no longer intended to pursue the claim of “disability related discrimination” under section 15 Equality Act 2010 because he now believes that the real reason for his treatment by the Respondent has nothing to do with his disability.
5. He had therefore elected not to seek to comply with the directions for disclosure of medical records or further information in respect of his alleged disability (ADHD). In the absence of this information it would not now have been possible for the final hearing on this matter to have proceeded as listed next Thursday (8th February 2018) and the Respondent has an outstanding application to strike out for non-compliance with directions/no reasonable prospect of success.
6. After being given time for deliberation the Claimant confirmed that he was withdrawing this complaint. It is therefore dismissed under rule 52 Employment Tribunals Rules of Procedure 2013.
7. The Claimant has intimated that he will seek to pursue a claim of personal injury in the County Court.
8. The application to amend of 4th December 2017 has not been further particularised in writing as directed in the notice of this hearing dated 22nd December 2017.
9. The Claimant has failed in discussion to identify any proper legal basis for the proposed substituted claim.
10. The actions he complains of on the part of Susan Harbridge post-date the date of termination and cannot therefore constitute any breach of the contract of employment.
11. Whilst it is clear from his email of 2nd July 2017 that the principal reason for the Claimant resigning was the failure to acknowledge a grievance dated 20th June 2017 which had allegedly resulted in the destruction of trust and confidence this does not give rise to any claim for constructive unfair dismissal. The Claimant does not have 2 years’ qualifying service and the reason for the alleged breach is not one that would remove this requirement because it is automatically unfair.
12. There is no jurisdiction to deal with a general complaint of “bullying and harassment” and the Claimant accepts that he is not alleging that this had anything to do with a protected characteristic (disability)

EMPLOYMENT JUDGE LANCASTER

DATE 1st February 2018