



EMPLOYMENT TRIBUNALS

Claimant: Mr A Bickers

Respondent: Mears Limited

JUDGMENT

The complaints of breach of s44 ERA 1996
are struck out.

REASONS

1. The issues were considered at the preliminary hearing which took place on 16 August 2018 and Judge Bartlett determined that the above complaints had no reasonable prospects of success.

2. I asked Mr Martins on what basis it was claimed that the appellant fell within section 44(1) ERA. Mr Martins initially said that the claimant fell within section 44(1)(c)(ii) on the basis that the claimant had made complaints to his manager about his health at work but his manager did nothing. I asked Mr Martin if the manager was the health and safety representative and Mr Martin did not know. He then stated that the claimant relied on section 44(1)(c)(i) and (ii) in the alternative. However Mr Martin was unable to state if there was a health and safety representative in the company and if the claimant had made a disclosure to him. Given that the events complained of occurred in 2016, that the first tribunal claim was lodged by the claimant in May 2017 and that there had been numerous preliminary hearings since the initiation of the claim including orders for further and better particulars, I found it most unsatisfactory that Mr Martin could not provide a firm position on whether the claimant satisfied the most basic gateway criteria of section 44.

Ms Howitt's application for strike out was on the basis that the detriments complained of were out of time as they all took place in 2016. Mr Martin asserted that the detriments were a series of continuing acts and therefore they were not out of time. I found Mr Martins' argument unpersuasive as the concept of a continuing course of discriminatory behaviour is difficult to apply to individual acts of detriment.

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Further, the first claim in the Scott schedule relating to section 44 ERA could not be construed as a detriment.

For all of these reasons, I determined that all of the claimant's claims under section 44 ERA had no reasonable prospects of success. I order that they are struck out.

3.

Employment Judge **Bartlett**
16 August 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE