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EMPLOYMENT TRIBUNALS

Claimant: **Mr S Anthony**

Respondent: **Dyson Limited**

Heard at: **East London Hearing Centre**

On: **Monday 3rd September 2018**

Before: **Employment Judge Prichard**

Representation

Claimant: In Person

Respondent: Mr N Davies, solicitor Bristol also in attendance Ms C Blunsdon the Regional Service Manager and Mr B Loxton, Global Head of Employment

JUDGMENT

It is the judgment of this tribunal that the claim has to be struck out as having no prospect of success under Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013.

REASONS

1 I have apologised to the parties for the fact that the tribunal has not previously grasped the nettle here. This claim was self evidently one for which this tribunal has no jurisdiction, and which was always bound to fail. The way an ET1 claim form works is that there is a tick box for most mainstream jurisdictions. The claimant correctly avoided ticking any of those. He ticked "I am making another type of claim" box, stating: "conspiracy, breach of employment contract constructive dismissal".

2 I have explained today in some detail that the tribunal cannot consider a claim of conspiracy. This has already been stated by the tribunal and by the respondent.

3 There can be a claim for breach of contract. However, this is not a claim of constructive dismissal because the claimant was expressly dismissed. It is not a resignation in circumstances where a resignation is construed as a dismissal (i.e.

constructive dismissal).

4 The claimant worked in the John Lewis store in Chelmsford as a Dyson expert. He failed to pass his 3-month probation period, and he was dismissed. The notice pay he was then entitled (one week) was paid in lieu, as the respondent is entitled to do under the contract of employment.

5 What the claimant now brings before the tribunal is that he was not supported during his probation. That does not seem to be a valid claim under the contract. Under the heading "Performance Management", the contract reads:

> "You are expected to achieve a satisfactory level of performance in your role and this will be monitored regularly. Dyson will ensure you are provided with all the support and training you required to do your job effectively. However, if you fail to meet these standards for any reason (my emphasis) you may be subject to performance management in accordance within the Dyson poor performance policy. This policy can be found …"

And under the heading "Periods of Notice" it reads:

> "The first three months of your employment is a probationary period. During this time the notice required to terminate the employment is one week. Once you have successfully completed your probationary period you will be notified in writing."

6 The claimant was dismissed within that period as he acknowledges. The words in the contract "for any reason seem" to cover this situation. The claimant states that he was not given the necessary support and training. This is completely denied by the respondent. I am not deciding that dispute today. I do not consider I have to, as the breach of contract claim cannot possibly succeed.

7 I cannot conceive how the claimant would get any more than the notice pay he was entitled to, and has been, paid. There are countless case of authorities on how one cannot effectively circumvent the minimum period of employment to qualify for unfair dismissal rights, by means of a contractual claim. This appears to be an attempt to do that. I can cite one clear authority which is directly on point, decided since *Johnson v Unisys.* It is *Harper v Virgin Net Ltd* [2004] IRLR, 390, CA.

8 I consider it is unnecessary to hold a full hearing. It is regrettable that the claimant did not seek a second opinion on the validity of this claim and the respondent has had to go to the trouble of compiling a witness statement. The claimant, Ms Blunsdon and Mr McCullen the claimant's line manager have been put to the trouble of attending.

9 Judge Gilbert, by her letter of 16 August 2018 ascertained that the claimant had been paid the one week's notice that he was entitled to - an important fact. Judge Warren might possibly have been too cautious in his letter of 21 August 2018, not acceding to an application to strike out the claim, however, restrictions under Rule 54 of the Employment Tribunals Rules of Procedure 2013 (the 14-day rule) might account for that.

10 The claimant was sent a letter warning him about his unfair dismissal claim being struck out as it did not appear he had two years service but that was unnecessary because the claimant never brought an unfair dismissal claim. The claimant knew

perfectly well that he did not have the qualifying service, as Judge Warren also acknowledged in his letter of 21/08/2018.

11 As was clear from the conversation I had with Mr Anthony, the claimant, he wanted to get some decision from the tribunal, at a hearing, which any litigant is entitled to. In the event he has a reasoned judgment striking out his claim.

12 The case today was listed for a one-hour final hearing. In the event I have exercised my power under Rule 48 of the 2013 Rules to convert the hearing to a preliminary hearing. I consider there was no prejudice to the claimant as his claim could never have succeeded.

Employment Judge Prichard

19 November 2018