



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Osunde

**Respondent:** Milton Pubs and Taverns Ltd

**HELD AT:** Manchester

**ON:** 22 November 2018

**BEFORE:** Employment Judge Slater

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss L Kaye, counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. The application to strike out complaints as having no reasonable prospect of success is refused.
2. The application that the claimant be ordered to pay a deposit as a condition of continuing with certain complaints is refused.

# REASONS

## My decision on the strike out/deposit applications

1. I consider this in relation to the complaints of discrimination which were already part of the claim or which I gave leave to add by way of amendment. My reserved decision on the amendment application and reasons for that decision are contained in a separate document setting out case management orders.

*An allegation that a trainee chef called the claimant a nigger, in or around September 2017 – an allegation of harassment related to race.*

2. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*Michael, the head chef, asking the claimant to remove his wedding ring when he did not ask women involved in food preparation to remove their wedding rings – an allegation of direct sex discrimination.*

3. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that the claimant was given more cleaning work than others, rather than working to prep food and meals because he was black – an allegation of direct race discrimination.*

4. On the basis of what the claimant has said, it appears possible that the explanation is that the claimant did a good job cleaning and did not complain about being given cleaning tasks as others did. However, it is possible that the evidence may shed some other light on the allocation of tasks. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca tried to get the claimant to go on a date or have a drink with her – an allegation of harassment related to sex.*

5. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca hugged the claimant on more than 10 occasions, although the claimant made it clear that he did not like this (the claimant clarified that the reference to rubbing up against him in the claim form was the same as hugging) – an allegation of harassment related to sex.*

6. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca changed in her instructions about taking out the trash, which she now required immediately, rather than when the claimant would have fitted it in with other duties, and scrubbing floors, requiring the claimant to clean more*

*of the kitchen, not just the claimant's area, because the claimant rebuffed her sexual advances – a claim of s.26(3) harassment.*

7. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca asked about the claimant's wife (who was in America), when she was coming back and saying "you are very strong waiting for her for that long" – an allegation of harassment related to sex or conduct of a sexual nature.*

8. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca asked about the claimant's wife (who was in America), when she was coming back and saying "you are very strong waiting for her for that long" – an allegation of harassment related to sex or conduct of a sexual nature.*

9. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*An allegation that Rebecca commented on the claimant's muscles and put her hand on his arm to demonstrate – an allegation of harassment related to sex or conduct of a sexual nature.*

10. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable or little prospect of success. I, therefore, refuse the application to strike out the complaint or order the payment of a deposit.

*Allegations that the claimant's dismissal was direct race discrimination, direct age discrimination and s.26(3) harassment (being alleged to be because he rebuffed Rebecca's sexual advances).*

11. I consider that the evidence needs to be heard at the final hearing; I cannot conclude on the material available that there is no reasonable prospect of success. I also conclude, in relation to the complaint of direct race discrimination and s.26(3) harassment that I cannot conclude, without hearing all the evidence, that there is little reasonable prospect of success and, therefore, would not order the payment of a deposit in relation to these complaints.

12. On the basis of what the claimant has said about the age discrimination complaint, I consider there to be little reasonable prospect of success. I could, therefore, order the payment of a deposit as a condition of proceeding with this allegation. However, I exercise my discretion against ordering a deposit. The respondent will be dealing, in any event, with the reasons for dismissal because of

the other complaints about dismissal. The claimant's evidence on financial means, which indicates that he has no disposable income after essential expenses and no savings or assets of substantial value, also persuades me that he does not have the means to pay any deposit.

13. I, therefore, refuse the application to strike out the complaints relating to dismissal or order the payment of a deposit.

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Employment Judge Slater

Date: 3 December 2018

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON

6 December 2018

FOR THE TRIBUNAL OFFICE

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