



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**v**

**Ms N Gurses**

**Androulla Bullock  
T/A 77 The Hair  
Salon**

## OPEN PRELIMINARY HEARING

**Heard at: London South Employment Tribunal**

**On: 12 March 2018**

**Before: EJ Webster**

### **Appearances**

**For the Claimant:**

Mr H Kerouki (Lay representative)

**For the Respondent:**

Ms C Anderson (representative from respondent's solicitors)

## JUDGMENT

1. The respondent's application for the claims in their entirety to be struck out is refused.
2. The respondent applied for the claims to be struck out for three reasons:
  - (i) The claimant did not have the requisite 2 year's continuous service required to bring an unfair dismissal claim.
  - (ii) The claimant had not actively pursued the claim in that she had not responded to a request for information by the tribunal by the requisite date.
  - (iii) The claims had no reasonable prospects of success.
3. I considered whether the unfair dismissal claim should be struck out because the claimant had less than 2 years' service. Conflicting information was provided by the parties demonstrating that there were significant factual disagreements between the parties around the claimant's start date. The claimant asserted that she had payslips with the employer's name on them dating back to 2015. The respondent said that her salon had only opened on 12

January 2017 but agreed that she had employed the claimant under a different legal entity prior to that date. As neither party, nor the tribunal had an opportunity to consider the documentary evidence regarding this matter, it was not possible to make a decision on this today. This will now be an issue for the tribunal to decide at the full hearing.

4. The respondent also applied for the remainder of the claimant's claims to be struck out on the basis that she had not complied with a tribunal order to confirm whether she had 2 years' continuous service before 30 January 2018 and because the claims had no prospects of success.
5. On examining the file it is clear that the claimant did respond to the tribunal on 27 January. It is possible that this correspondence was not copied to the respondent however the claimant has responded in a timely manner to orders provided to the tribunal so this application ground should fail.
6. The respondent also stated that the claims had no reasonable prospect of success and that they were without any foundation. However, it was impossible for me to determine the potential merits of the claims based on the evidence presented to me today.
7. The provisions relating to striking out a claim are contained in Rule 37 of the Employment (Constitution and Rules of Procedures) Regulations 2013. Rule 37 provides:

“At any stage of the proceedings either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the followings grounds –

  - (a) That it is scandalous or vexatious or has no responsible prospect of success.”
8. The principal authority is Ezsias v North Glamorgan NHS Trust [2007] IRLR 603, CA. The Court of Appeal held:

“It would only be in an exceptional case that an application to an Employment Tribunal be struck out as having no reasonable prospects of success when the central facts are in dispute.”
9. Regarding discrimination claims specifically the leading case is Anyanwu and Ors v South Bank Students' union and Ors [2001] IRLR 305 where the House of Lords held:

“Discrimination claims should not be struck out as an abuse of process except in the most obvious and plainest cases. Discrimination cases are generally fact sensitive and their proper determination is vital in a pluralistic society. In the discrimination field perhaps more than other the bias in favour of a claim being examined on the merits of demerits of its particular facts is a matter of high public interest.”
10. In conclusion, there were clearly many varied factual disagreements in this claim which will need to be properly considered and determined by a tribunal at a full merits hearing. This is clearly a fact sensitive case and no evidence was

provided to the tribunal today to determine any of those factual disputes. This was not an 'exceptional case' as set out in Eszias and given that this is a discrimination claim the guidance in Anyanwu must be considered.

11. For these reasons the claimant's claims are not struck out and the matter is to be listed for a full hearing. The case management discussion and orders are recorded in a separate document.

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Employment Judge Webster  
Date: 13 March 2018