

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mrs F Begyinah

and

Central and North West
London NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central

ON: 24 April 2019

EMPLOYMENT JUDGE: Ms N Walker

Appearances

For the Claimant: Did not attend

For the Respondent: Mr G Baker of Counsel

JUDGMENT

The Claimant's claim is struck out.

REASONS

1. The Claimant lodged her ET1 on 30 July 2018 claiming, at section 8.1, unfair dismissal and race discrimination and indicating she had another type of claim that the Tribunal could deal with, being victimisation.
2. At section 8.2 which asks for details of her claim, the Claimant had merely entered "Background information and dates will be uploaded separated". No other document was attached and so, on 18 September 2018, the Tribunal contacted the Claimant and asked her to provide particulars. She said to send her an email and that she would reply to that address. Nothing was received despite the email sent to her the same day and on 28 September 2018, a further call was made asking for particulars. The notes made by the Tribunal staff show the Claimant said she would send it that weekend.
3. As nothing had been received, on 12 December 2018, the Tribunal sent the Claimant an email explaining that if particulars were not provided by 19 December Employment Judge Taylor would consider rejection of the claims for race discrimination and victimisation on the basis that they cannot be sensibly responded to. Again, nothing was received from the Claimant.

4. By a letter dated 25 January 2019 the Tribunal accepted part of the claim being the unfair dismissal claim only. As that was the only part of the claim accepted, this strike out application relates to that claim.
5. Thereafter the Respondent entered a Response with Grounds of Resistance which stated that the Claimant had resigned and was not dismissed. If her claim was for constructive dismissal, she would have to prove that she had been dismissed. The Respondent was unable to sensibly answer the claim as it did not know what her case was in relation to that and what breach of contract she relied on. The Respondent also wrote to the Tribunal and copied the Claimant in on their letter dated 18 February 2019. That letter requested that the Tribunal strike out the Claimant's claim in its entirety.
6. The Tribunal listed this Preliminary Hearing in order to consider the Respondent's application that the claim should be struck out on the grounds that it has no reasonable prospects of success and thereafter case management directions would happen if necessary. The Claimant also received a letter from the Tribunal in which she was told that Judge Glennie had suspended the case management orders pending the Preliminary Hearing and that letter said if the Claimant intends to proceed with her Unfair dismissal complaint, she would be well advised to address the matters raised in the Grounds of Resistance.
7. Nothing further was received from the Claimant and she did not attend today.
8. The Respondent made submissions about the matter and argued that the Claim as set out in the ET1 required the Claimant to prove that there had been a repudiatory breach of contract by the Respondent and she had advanced no facts in her claim form, from which she could make such an assertion. The Tribunal was referred to the case of Chandok v Tirkey [2015] IRLR 195. The Tribunal was shown a copy of the Claimant's resignation email dated 11 December 2017. It is clear that the Claimant's employment ended by reason of that resignation.
9. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that

Striking out

37.—(1) 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 following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

10. It is a necessary aspect of a claim for unfair dismissal that there has been a dismissal. Section 95 of the Employment Rights Act 1996 (1)(c) provides for this to include a constructive dismissal stating that a dismissal for the purposes of a claim for unfair dismissal arises if the employee terminates the contract under

which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

11. The claim form gives no information whatsoever that indicates the circumstances or the conduct of the Respondent and shows that there might have been a dismissal within the meaning of section 95(1) (c). The Claimant's employment clearly did not end by reason of notice of dismissal given by the Respondent. If the Claimant were to seek leave to amend her claim to introduce information indicating a constructive dismissal, the Tribunal would consider whether to allow her permission to amend and the Selkent principles. Importantly, the Claimant would have to explain why she had not provided the details requested so many times by the Tribunal. As it is, the claim has no reasonable prospects of success.
11. I have decided to strike out the claim in its entirety. The Claimant has had many opportunities to provide the details and has not chosen to do so and the claim form in its present form has simply no information indicating any basis for an unfair dismissal claim.

EMPLOYMENT JUDGE WALKER

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
25 April 2019**

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**JUDGMENT SENT TO THE PARTIES ON
26 Apr. 19
FOR SECRETARY OF THE TRIBUNALS**