



# EMPLOYMENT TRIBUNALS

## at an Open Attended Preliminary Hearing

**Claimant:** Mr R Harding  
**Respondent:** The Valuation Office Agency  
**Heard at:** Lincoln  
**On:** 26 June 2019  
**Before:** Employment Judge Evans (sitting alone)

### Representation

**Claimant:** In person  
**Respondent:** Mr Lyons of Counsel

**JUDGMENT** having been sent to the parties on 13 July 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## JUDGMENT

The Claimant's claim is struck out because it has no reasonable prospect of success.

## REASONS

1. These reasons were give extempore at the conclusion of the Hearing on 26 June 2019.

### The Claim

2. The Claimant presented the Claim to the Tribunal on 14 December 2018. He ticked none of the boxes at section 8.1 of the ET1 form but, in the box for freeform text entry in section 8.1, when that box is read with 8.2, he included information from which it was clear that his factual complaint was:

2.1. During a reorganisation of the Respondent he was forced into a role which he considered not to be suitable alternative employment;

2.2. He considered that a grievance he had raised about this was dealt with unfairly;

2.3. He should in fact have been made redundant.

3. In box 9 of the ET1 form he indicated that he believed that appropriate compensation would be a statutory redundancy payment. As at the date of the Hearing before me, the Claimant's employment continues. He has not been dismissed and he has not resigned. He has in fact been off work as a result of sickness for a number of months.

### **The Response**

4. In summary, in its Response the Respondent contended that:

- 4.1. Section 159 of the Employment Rights Act 1996 ("the 1996 Act") meant that the Claimant had no entitlement to a statutory redundancy payment because he was a civil servant, and
- 4.2. Further and separately, in any event the Claimant had not been dismissed and therefore had no right to a redundancy payment of any kind.

### **The notice of hearing**

5. The Tribunal issued a notice of hearing on 14 May 2019. The notice said that the final hearing due to take place on 26 June 2019 would be converted into a preliminary hearing to determine:
- 5.1. Whether the Claimant's claim should be struck out or, alternatively
- 5.2. Whether a deposit order should be made.

### **Documents for the Hearing and attendance**

6. At the Hearing before me on 26 June 2019, the Claimant represented himself. The Respondent was represented by Mr Lyons of Counsel. In addition from the Respondent there was also a Ms Tessa Branscombe (Employee Relations Manager). She had produced a statement for the purposes of the Hearing. It was agreed that the statement was for the purpose of this Hearing relevant to one issue: whether the Claimant was in fact still employed. The Claimant accepted that he was still employed and so it was not necessary for Ms Branscombe to give live evidence.
7. The following additional documents were provided to me on the day of the Hearing. An email dated 22 March 2018 from Ms Gemma Harding to the Claimant and, also, a document which showed that employees of the Valuation Office Agency came within the Civil Service Scheme for the purpose of redundancy payments.

**Discussion of the claims**

8. There was a discussion of the claims and issues at the beginning of the Hearing. The Claimant accepted that, because he was a civil servant, he had no right to a statutory redundancy payment under section 159 of the 1996 Act. The Respondent stated that any entitlement which the Claimant might have had to a redundancy payment would have been under the Civil Service Scheme.
9. In initial discussions, the Respondent appeared to accept that the Tribunal would have jurisdiction to consider a complaint made by reference to the Civil Service Scheme under section 177 of the 1996 Act. However, in his submissions, Mr Lyons made clear that no such concession was in fact made. However, I have assumed for the purpose of the Hearing today that I would have jurisdiction to consider a complaint under the Civil Service Scheme.
10. I asked the Claimant what he believed the Tribunal should or would be able to do in response to the claim that he had lodged, given that his employment had not been terminated, and given that he accepted that he was not entitled to a redundancy payment by virtue of having been dismissed (because he accepted that he had not been).
11. The Claimant said in effect that his claim was that he believed that:
  - 11.1. the Tribunal could adjudicate on whether the employment offered was suitable alternative employment;
  - 11.2. the Tribunal could adjudicate on the fairness of the grievance procedure that had been followed;
  - 11.3. the Tribunal should be able to award compensation for the work related stress absence suffered by him as a result of him being forced into (in his view) unsuitable alternative employment and the resultant loss of income (his sick pay by the Hearing having been reduced to 50% of normal pay); and
  - 11.4. the Tribunal should be able to adjudicate on whether in fact the Claimant *should have* been dismissed by reason of redundancy because the employment offered him was not suitable alternative employment.
12. The Claimant did not identify any statutory provisions which would have enabled the Tribunal to consider these issues. For example the Claimant did not argue that there had been discrimination by reference to any protected characteristic in breach of the Equality Act 2010. Nor was he able to identify any contractual or other provision by virtue of which the Respondent's actions could be said to be unlawful and which the Tribunal could have considered by virtue of section 177 of the 1996 Act.
13. It should be noted that during the course of the Hearing a copy of the Civil Service Compensation Scheme was made available to the Claimant by the Respondent's representative.

## The Law

14. Section 37(1) of the Employment Tribunal's Rules contained in Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provides that an Employment Judge may strike out all or part of a Claim or Response on various grounds, including that the claim has no reasonable prospect of success.
15. In ***Balls v Downham Market High School & College [2011] IRLR 217 EAT***, Lady Smith explained the nature of the test to be applied as follows at paragraph 6:

*" ... the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word "no" because it shows that the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects."*
16. I have therefore considered not only the documents which the Respondent and Claimant made express reference to today, but also those contained in the Tribunal's file.
17. Further, a claim should not be struck out on this basis where the central facts are in dispute, unless there are exceptional circumstances. This was not, however, a case in which the central facts were in dispute.

## Conclusions

18. The reality of the situation which has led the Claimant to pursue this claim is that he would have preferred to have been made redundant in the summer of 2018 rather than face the challenges of the role into which he was redeployed. However:
  - 18.1. There is no dispute that the Claimant was not dismissed and has not resigned;
  - 18.2. There is no dispute that the Claimant is not entitled either to a statutory redundancy payment or to a redundancy payment under the Civil Service Scheme by virtue of having been dismissed (because he has not been);
  - 18.3. The Claimant has been unable to identify any statutory or other provision by virtue of which the Respondent might be found to have acted unlawfully.
19. In short the Claimant has been unable to identify any claim which I would have jurisdiction to hear and I do not believe that his form ET1 includes any such

claim. In these circumstances, I conclude that the Claim has no reasonable prospect of success. That is to say the Claimant has no reasonable prospect of persuading an Employment Tribunal at a final hearing that the Respondent acted unlawfully by offering him the alternative employment which it offered to him rather than dismissing him and paying him a redundancy payment as he would have preferred. For the same reason his arguments as set out above in relation to the grievance and the work related stress he says he has suffered also do not have any reasonable prospect of success.

20. I therefore strike out the Claim on the grounds that it has no reasonable prospect of success.

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Employment Judge Evans

Date: 4 September 2019  
JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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