



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		V	RESPONDENT	
Mr L McAtamney			XPO Logistics	
Heard at:	London South Employment Tribunal		On:	12 August 2019
Before:	Employment Judge Hyams-Parish (sitting alone)			
Representation:				
For the Claimant:	Mr McAtamney (representing himself)			
For the Respondent:	Mr C McNaughton (Solicitor)			

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 37

1. The claim is struck out as it has no reasonable prospects of success.

REASONS

Claim

1. By a claim form presented to the tribunal on 11 April 2018 the Claimant brings a complaint of constructive unfair dismissal against the Respondent.
2. On his claim form he stated that he commenced employment on 29 July 2017, which ended with his resignation on 16 May 2018. He therefore, on the face of the claim form at least, had less than the necessary two years' service to claim constructive unfair dismissal.

History

3. The claim was originally listed for a hearing to be held on Monday 1 April 2019. By a letter from the tribunal dated 19 February 2019, Employment Judge Sage converted the hearing to a preliminary hearing with a time

estimate of one hour to identify what the claims were and to make any necessary orders and directions.

4. At the hearing on 1 April 2019 before Employment Judge Morton, little progress was made on identifying the claims being brought by the Claimant. The Claimant was told by EJ Morton to seek advice and ordered to set out his case (by re-pleading it and giving specific details) within 28 days.
5. By a notice from the Employment Tribunal dated 17 April 2019 the parties were informed that the case was to be listed for a preliminary hearing on 12 August 2019 to consider whether a strike out order should be made, or in the alternative, a deposit order made.

Hearing

6. During the hearing today, the tribunal asked questions of the Claimant to establish the legal basis for his unfair dismissal claim, bearing in mind he had less than two years' service. The Claimant today suggested that his employment started at Gnewt Cargo in 2010 and that his employment transferred to the Respondent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. This point was not included in his claim form.
7. The tribunal then went on to ask the Claimant what breaches of his contract he would be relying on. The Claimant told the tribunal that he had no complaint about the Respondent. He referred to others he had complaints about, but they were not employees of the Respondent. Even those complaints about others did not appear to be ones that he could easily categorise as breaches of contract.
8. The tribunal reiterated that if he had no complaint with the Respondent and could not point to actions by them that represented a breach of contract, it was difficult to see how he could bring a claim constructive unfair dismissal. However, he maintained his position that he had no complaint about the Respondent.
9. When the Claimant was asked whether he had provided further particulars as ordered by EJ Morton at the last hearing, he presented the tribunal with a document which, upon inspection, appeared to take his case no further forward and didn't provide the particulars or clarity to the Claimant's case that had been intended by the order. Although the Claimant said that he had sent this document to the tribunal, there was no record of this on the tribunal file and the Respondent had not received a copy. The tribunal finds that the document was not sent and that he did not comply with the order by EJ Morton.

Relevant law

10. The power of the Employment Tribunal to strike out is provided under Rule

37 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237** which states:

37. Striking out

(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;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(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.

11. The power to order a deposit is provided by rule 39 which states:

39.— Deposit orders

(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

12. The EAT in **Hasan v Tesco Stores Ltd UKEAT/0098/16** said that when considering whether to strike out, a tribunal must (a) consider whether any of the grounds set out in rule 37(1)(a) to (e) have been established (first stage); and (b) having identified any established ground(s), the tribunal must then decide whether to exercise its discretion to strike out, given the permissive nature of the rule (second stage).

Analysis and conclusions

13. The tribunal is aware that strike out is a draconian measure that must be exercised sparingly. The Tribunal is also mindful of the need to exercise particular care with litigants in person because they may present a poorly pleaded claim or response and this can cause their case to appear to have little or no reasonable prospects of success.
14. For this reason, the tribunal questioned the Claimant today in an attempt to

better understand his case, or certainly as much as the Claimant allowed, given that he became resistant to answering basic questions about his case and at times was aggressive.

15. The tribunal had been minded to accept the Claimant's dates of employment and his statement that his employment had TUPE transferred, as a reason to avoid striking out on the grounds of insufficient service. But when the tribunal started to question him about what exactly his employer had done which resulted in his resignation and what they had done to breach his contract, the Claimant could not criticize the Respondent or point to their behaviour as being the reason for his resignation.
16. Considering this matter carefully the tribunal concluded that there were grounds for making a strike out order. These were:
 - a. failing to comply with tribunal orders (Rule 37(1)(c)); and
 - b. the claim having no reasonable prospects of success (Rule 37(1)(a))
17. The tribunal then considered, notwithstanding the above, whether it should exercise its discretion in favour of a strike out and it concluded, weighing everything in the balance, that strike out was appropriate in these circumstances.

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Employment Judge Hyams-Parish
12 August 2019

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