



EMPLOYMENT TRIBUNALS

Claimant
Miss R Hazel

v

Respondent
Stripe Payments UK Ltd (Stripe)

OPEN PRELIMINARY HEARING

Heard at: Central London Employment Tribunal

On: 16 October 2019

Before: Employment Judge Brown

Appearances

For the Claimant:

In person

For the Respondents:

Mr Brown, Solicitor

JUDGMENT

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

This Hearing

1. By a claim form presented on 5 June 2019, the Claimant brought a complaint of unfair dismissal the Respondent. The Claimant did not give the dates of her employment in her ET1 claim form. The Claimant had contacted ACAS on 30 May 2019 and an ACAS EC certificate had been issued on 3 June 2019. The nature of the Claimant's claim was not clear from the ET1 Claim form.
2. On 29 August 2019 the Tribunal wrote to the Claimant, saying that her claim had been accepted but that the Tribunal might not have jurisdiction to hear it, either because the claim was filed out of time, or because the Claimant did not have 2 years' service to bring an unfair dismissal claim, or because the Tribunal did not have jurisdiction over the claim or the power to award the compensation the Claimant was seeking.
3. On the same day, the Tribunal sent the claim to the Respondent and a Notice of Preliminary Hearing (Case Management) on 16 October 2019 to the parties.

4. On 24 September 2019 the Respondent wrote to the Claimant and the Tribunal, applying for the Claimant's claim to be struck out on the grounds that it had no reasonable prospects of success. The Respondent said that it had never been the Claimant's employer. It said that Stripe is a technology company which provides software for other companies to accept payments and manage their businesses online and that the Claimant had registered an account with Stripe as a merchant in the UK.
5. On 27 September 2019 the Claimant responded, saying that Stripe Payments UK were indeed a payroll company and were not the Claimant's employer, "... however they were the company who prevented me from being able to remain and be employed by my employer, Tidy Choice."
6. On 3 October 2019 the Tribunal wrote again to the parties, saying that the Preliminary Hearing listed for 16 October 2019 had been converted to an Open Preliminary Hearing at which the Tribunal would decide whether to strike out the claim because it had no reasonable prospects of success.
7. The Respondent presented its Response to the Tribunal on 24 September 2019. The Response also stated, briefly, that the Claimant had not been its employee, but had been a merchant which had registered an account with it.
8. The Response was not sent to the Claimant by the Tribunal until 15 October 2019. On that day the Tribunal also wrote to the parties apologizing for the delay in sending the ET3 Response to the Claimant. It asked whether the Respondent had already sent a copy of the Response to the Claimant. It said that, if the Claimant had not already received a copy of the Response, the Hearing on 16 October 2019 would have to be postponed.
9. The Claimant did not respond to that letter. The Respondent did reply, saying that the Claimant had received its application for strike out dated 24 September 2019, which said much the same as the ET3 Response. The Respondent therefore said that the Preliminary Hearing should go ahead as listed.
10. The Claimant attended the Hearing today and confirmed that she wished the Hearing to go ahead.

The Facts

11. The Claimant agreed that she was not an employee of the Respondent. She agreed that the Respondent only provided payroll services. She agreed that her employer was an entirely different company. Her complaint is that the Respondent did not accept the Claimant as a client of their services - and that her employer would not continue to give the Claimant work unless she was signed up with a payroll company through which it could process payments to her.

The Law

12. By s94 Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his employer. This right not to be unfairly dismissal only applies to employees.

13. An Employment Judge has power to strike out a claim on the ground that it has no reasonable prospect of success under Employment Tribunal Rules of Procedure 2013, Rule 37(1). The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances, **Teeside Public Transport Company Limited (T/a Travel Dundee) v Riley [2012] CSIH 46**, at 30 and **Balls v Downham Market High School & College [2011] IRLR 217 EAT**. In that case Lady Smith said:

“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 recensions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospect”.

14. A case should not be struck out on the grounds of having no reasonable prospect of success where there are relevant issues of fact to be determined, *A v B [2011] EWCA Civ 1378*, *North Glamorgan NHS Trust v Ezsias*, [2007] ICR 1126 ; *Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly [2012] CSIH 46*.

Decision

15. In this case, there was no dispute of fact. The Claimant was not an employee of the Respondent. She was not in any type of employment relationship with the Respondent.
16. The Claimant could only bring a claim of unfair dismissal against the Respondent if she had been an employee of the Respondent. She had not been. Her claim of unfair dismissal had no reasonable prospects of success.
17. I therefore struck out the Claimant’s claim.

Dated: 16 October 2019

Employment Judge Brown

SENT TO THE PARTIES ON

18 October 2019

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FOR THE TRIBUNAL OFFICE