



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr V Ogunlaja

SBC Systems (UK) Limited

Heard at: London Central

On: 13 February 2020

Before: Employment Judge Stout

Representations

For the claimant: Mr L Ogilvy

For the respondent: Mr B Jones (Counsel)

JUDGMENT ON STRIKE OUT AND COSTS

The judgment of the Tribunal is that:

1. The claim stands no reasonable prospect of success and is struck out under Rule 37(1)(a).
2. The Respondent's application for costs is dismissed.

REASONS

1. The Claimant was employed by the Respondent from 16 October 2017 to 23 August 2019 as a Senior Consultant – IT Services. The Respondent is a small technology company. The Respondent contends that it dismissed the Claimant for poor performance.

2. Following a period of ACAS Early Conciliation between 12 and 27 September 2019, the Claimant submitted a claim to the Tribunal on 13 October 2019.
3. The claim was filed by solicitors on the Claimant's behalf. Boxes were ticked for 'claiming a redundancy payment', 'holiday pay' and 'other payments' and in the 'another type of claim' box it stated 'wrongful dismissal, breach of contract, victimisation, harassment and bullying'. The accompanying particulars of claim were consistent with these boxes and raised no additional grounds. In particular, they identified no factual basis for any cause of action under the Equality Act 2010. They concluded with an assertion that the termination of the Claimant's employment was 'contrary to the company's performance, grievance and disciplinary and dismissal policies which I considered to be a breach, wrong and grossly inappropriate'.
4. The Claimant does not have the requisite two-year qualifying period of service under s 108(1) of the Employment Rights Act 1996 (ERA 1996) to claim unfair dismissal.
5. The Tribunal has no jurisdiction over 'freestanding' harassment and victimisation claims. They must either be brought under the Equality Act 2010 or not at all. There is no pleaded claim capable of falling under the Equality Act 2010 in this case.
6. The Claimant accepts that he was on dismissal paid in lieu of the one month's notice period to which he was entitled under his contract, and paid in lieu of accrued but outstanding annual leave.
7. Mr Ogilvy on his behalf in this hearing sought to argue that the Claimant was contractually entitled to a performance review prior to dismissal, but there is nothing in the contract to link any requirement to carry out a performance to any limitation on the Respondent's right to terminate the contract. The putative argument that a duty to that effect might be derived from the implied term of trust and confidence stands in my judgment no prospect of success, having regard in particular to the line of authority beginning with *Johnson v Unisys* [2001] UKHL 13.
8. There is therefore no pleaded claim falling within the Tribunal's jurisdiction that stands any reasonable prospect of success and I strike the claim out in its entirety under Rule 37(1)(a).
9. The Respondent applied for its costs of today's hearing (Counsel's brief fee in the sum of £1,000+ VAT). I refused that application. Although the claim stood from the outset no reasonable prospect of success, it does not follow that costs should be awarded. I have a discretion. The Claimant was alerted in the Response to the Respondent's position as to the merits of his claim and intention to seek costs if the claim was pursued, but the Claimant was represented by solicitors when he commenced proceedings, and had the benefit of Mr Ogilvy's assistance today. No doubt he relied on the legal advice he had received in pursuing his claim to today's hearing and there is no

unreasonable conduct by him in that respect. In those circumstances, I am not prepared to award costs against the Claimant.

Employment Judge Stout

Date 13 February 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 February 2020

FOR THE TRIBUNAL OFFICE