Case No: 1403236/2019

EMPLOYMENT TRIBUNALS

Claimant: **Mr Papa Dialla Gueye Dit Cissoko**

Respondent: **Rio Tinto Mining and Exploration Ltd**

Heard at: **Bristol (by telephone)** **On:** **28 April 2020**

Before: **Employment Judge Livesey**

Representation:
Claimant: In person
Respondent: Mr Milsom, counsel

JUDGMENT

The Claimant's claims are dismissed under rule 37 as they have no reasonable prospect of success.

REASONS

Procedural background

1. The Claimant's Claim Form was issued on 2 August 2019. In it, he raised complaints of unfair dismissal and discrimination on the grounds of race. He also indicated another type of claim within box 8.1 of the Form; he alleged that two employees, Mr Burley and Mr Stevenin, had robbed him of cash in the sum of US$20,000. In the body of his claim form (box 8.2) he summarised his complaints as follows;

   "*Basically my complaint relates on* [sic] *a case of theft of the original copy of my Power of Attorney and 20,000 US dollars by Adam Burley geologist and Luc Stevenin logistician both employed in Rio Tinto's project in Mali.*"

   A 23 page 'Memorandum' was attached to the Form which contained many emails and other correspondence which were cut and pasted in. Neither the Form nor the Memorandum contained an explanation of the complaints of discrimination.

2. The Claimant claimed to have commenced employment with the Respondent in October 2005 but, although he complained of unfair dismissal, he alleged that his employment was still continuing within box 5.1 of the Form. He did, however, refer to his 'dismissal' in other parts of form (paragraph 4 within box 8.2, for example and paragraph 12.1). He identified the Respondent's address

as being in Bristol. He did not suggest that he had worked at any different address (see boxes 2.2 and 2.4).

3. Employment Judge Harper, who saw the Claim Form upon its receipt, raised various questions of the Claimant relating to the location of his employment and whether it had been terminated. The Claimant's reply of 17 August suggested that Mr Burley had dismissed him, although it was not clear upon what date. The Claimant also clarified that he was living in Senegal. The Claim was then served by the Tribunal.

4. No response was received from the Respondent initially and it turned out that its registered address with Companies House was different from that provided by the Claimant in his Claim Form. It was therefore re-served upon its registered offices in London. After a short extension of time was provided to the Respondent, its response was received on 20 December 2019. Issues of territorial jurisdiction and time were raised within it. It was also alleged that the Claimant lacked sufficient service for the purposes of his complaint of unfair dismissal. The Response was accompanied by a request for an open preliminary hearing to determine an application to strike the claim out as being vexatious and/or having no reasonable prospect of success. The Respondent also sought the transfer of proceedings to the tribunal most convenient to its offices, that of Central London.

5. On 20 January 2020, the Tribunal directed that a preliminary hearing would take place by telephone in order to determine;
   (i) The Respondent's application to strike out the complaints under rule 37;
   (ii) The Respondent's application to transfer proceedings to the Central London Employment Tribunal;
   (iii) Such further case management as may be necessary.

6. On 18 February 2020, the Respondent helpfully clarified the basis of its application under rule 37 and, in the alternative, it alleged that deposit orders ought to have been made under rule 39. The Notice of Hearing was therefore broadened on 27 March 2020 to include a consideration of rule 39.

<u>The hearing</u>

7. The Respondent had provided a bundle of documents for the hearing (R1), in 3 parts;

   (i) Preliminary Hearing Bundle Vol. I;

   (ii) Preliminary Hearing Bundle Vol. II;

(iii) Additional Documents (comprising documents submitted by the Claimant with his submissions of 21 January 2020).

Any page numbers cited within these Reasons have given in square brackets and include a reference to which bundle the document can be found in ('I', 'II' or 'AD').

8. Mr Milsom had supplied a Skeleton Argument and the Claimant had provided lengthy written representations.

9. In correspondence before the hearing, the Respondent had suggested that the Claimant may have needed a translator for it. The Claimant had not himself indicated that an interpreter was required and he confirmed by email that he had a sufficient level of understanding of English to conduct the hearing himself. The Judge ensured that the Claimant understood what was being said, some of which had to be repeated for that purpose. The Claimant made himself understood well.

10. The Claimant had received Mr Milsom's Skeleton Argument before the hearing, which he briefly supplemented orally. The Claimant was given an opportunity to make oral submissions on the issues which the Respondent had raised.

11. Before the hearing, the Claimant had submitted an application for a witness order in respect of 6 people (on 13 April 2020). Employment Judge Midgley had indicated that the application was to have been dealt with at the hearing. The Claimant did not raise the issue. Since no evidence was heard, the issue would only have become relevant if further case management had been necessary beyond the applications under rules 37 and 39.

Relevant legal tests

Rules 37 and 39

12. Under rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, a tribunal could strike a claim out if it appeared to have been scandalous, vexatious or had no reasonable prospect of success (rule 37 (1(a)). It was a two-stage process; even if the test under the rule was met, a judge also had to be satisfied that his or her discretion ought to have been exercised in favour of applying such a sanction.

13. Alternatively, where a tribunal considered that any specific allegation, argument or claim had little reasonable prospect of success, it could make a deposit order (rule 39). If there was a serious conflict on the facts disclosed on the face of the claim and response forms, it may have been difficult to judge what the prospects of success truly were (*Sharma-v-New College Nottingham* [2011] UKEAT/0287/11/LA). Nevertheless, a judge could take into account the likely credibility of the facts asserted, the likelihood that they might be established at a hearing (*Spring-v-First Capital East Ltd* [2011] UKEAT/0567/11/LA) and/or whether they appeared inherently implausible (*Ahir-v-British Airways* [2017] EWCA Civ 1392).

14. The importance of not striking out discrimination cases, save in only the clearest situations, had been reinforced in a number of cases, particularly *Anyanwu-v-South Bank Students Union* [2001] UKHL 14 and, more recently, in *Balls-v-Downham Market School* [2011] IRLR, Lady Justice Smith made it clear that "no" in rule 37 meant "no". It was a high test. In *Ezsias-v-North Glamorgan NHS Trust* [2007] EWCA Civ 330 the Court of Appeal stated that it would only be in exceptional cases that a claim might be struck out on this ground where there was a dispute between the parties on the central facts. But, in the context of a discrimination case, it was not sufficient for a claimant to demonstrate that there was a difference in treatment and suggest that that alone could have been because of his protected characteristic.

<u>Territorial jurisdiction</u>

15. As to the issue of territorial jurisdiction and the claim of unfair dismissal, the Claimant's rights were statutory in nature and were derived from the Employment Rights Act 1996. Section 244 of the Act stated that the Act "*extends to England and Wales and Scotland but not to Northern Ireland*".

16. The territorial scope of the Act was considered by the House of Lords in the case of *Lawson-v-Serco* [2006] IRLR 289 which concerned an employee working at the RAF base on Ascension Island. The House shied away from prescribing a hard and fast formula for resolving issues relating to territorial jurisdiction, but it nevertheless provided principles that were designed to have been applied in such circumstances. Those principles were re-visited most recently in the case of *British Council-v-Geoffrey and Green-v-SIG Trading Ltd* [2018] EWCA Civ 2253.

17. As Lord Hoffman stated in *Lawson*, the mere fact that an employer was based in Great Britain would not have been sufficient to have conferred jurisdiction upon a British tribunal. Even the fact that an employee was British or had been recruited in Britain would have been insufficient. '*Something more was necessary.*'

18. Lord Hoffman referred to three broad types of situation, which have subsequently been referred to as '*gateways*'. The first gateway was said to apply to employees working within Great Britain at the time of dismissal, referred to as the 'standard case' but which was not the situation here. The second gateway was said to apply to peripatetic employees, such as airline pilots and international management consultants. In such cases, the 'base test' was said to have applied. Again, that was not the position here.

19. The third gateway was said to relate to expatriate employees and was recognised to have been the most problematic to determine. In such circumstances, an employee would not have been able to pursue a complaint of unfair dismissal in the absence of 'exceptional circumstances'. Although hesitant to set hard principles, Lord Hoffman identified two possibilities. First, where an employer was based in Great Britain, but that alone would probably not have been sufficient (paragraph 37). Secondly, where the employee worked overseas in what was effectively an extra-territorial British enclave. That included the position of Mr Lawson who had worked on an RAF base on Ascension Island. It was subsequently decided, however, that it did not include a British national working for the British Embassy in Rome (*Bryant-v-*

Foreign and Commonwealth Office [2002] UKEAT/174/02). The enclave situation has sometimes been referred to as the 'fourth gateway'.

20. In *Duncombe-v-Department of Education and Skills (No. 2)* [2011] UKSC 36, the Court concluded that the test approved in *Lawson* was whether the employment had a closer connection with Great Britain than with any foreign jurisdiction.

21. Although the place where the employee had discharged his duties was highly significant, it was not always determinative or "*absolute*" (*Ravat-v-Halliburton Manufacturing and Services Ltd* [2012] ICR 389 at paragraph 27, per Lord Hope). There must have been an "*especially strong*" connection with British employment law before an employee, who lived and worked abroad, fell under the scope of British jurisdiction. It was said that exceptions can be made in cases where the connection between Great Britain and the employment relationship is sufficiently strong such that it can be presumed that, although working abroad, Parliament must have intended that the Act should have applied (paragraph 28). Other relevant factors were said to have included the employee's nationality, the place of recruitment and the location of the employer. In every case, it was said, that it would be a question of fact and degree as to whether the case was sufficiently exceptional such that it should fall outside the general rule (paragraph 29).

22. When considering whether this case was an exceptional one within the meaning of *Lawson*, therefore, one would need to consider all of the relevant facts including the location of the Respondent's business, the Claimant's nationality, where and how he was recruited, where he lived during his employment, where he was based as a result of his employment, whether he commuted to and from Great Britain, where he was taxed, whether any representations were made as to the protection that he would be afforded and whether the contract was designed to afford him the benefits which were made the subject of British jurisdiction or otherwise.

23. As to the complaint of discrimination, the territorial test was identical for claims pursued under the Equality Act (*R (Hottak)-v-Secretary of State for Foreign and Commonwealth Affairs* [2016] 1 WLR 3791). However, as Mr Milsom pointed out, the factual matters raised in the Claim Form occurred before the Equality Act had been brought into force. Section 8 of the Race Relations Act 1976 still had effect. The Act covered discrimination within employment at an establishment in Great Britain which was defined as follows;

    "*(1) For the purposes of this Part…, employment is to be regarded as being at an establishment in Great Britain if the employee –*
    (a) does his work wholly or partly in Great Britain; or
    (b) does his work wholly outside Great Britain and subsection (1A) applies.

    (1A) This subsection applies if, in a case involving discrimination on the grounds of race or ethnic or national origins, or harassment –
    (a) the employer has a place of business as an establishment in Great Britain;
    (b) the work is for the purposes of the business carried on at that establishment; and

(c) the employee is ordinarily resident in Great Britain –
(i) at the time when he applies for or is offered the employment, or
(ii) at any time during the course of the employment.”

Jurisdiction (time)

24. A complaint of unfair dismissal had to be presented in accordance with s. 111 of the Act;

“*Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal-*

(a) *before the end of the period of three months beginning with the effective date of termination, or*

(b) *within such a further period as the tribunal considers reasonable in a case where it is satisfied that he was not reasonably practicable for the complaint to be presented before the end of that period of three months.*”

25. The legal test was therefore a hard one to meet on the face of the wording of the Act. It required a judge to consider whether it had been reasonably feasible for the claim to have been issued in time. A judge was entitled to take a liberal approach (*Marks & Spencer-v-Williams-Ryan* [2005] EWCA Civ 470 and *Northamptonshire County Council-v-Entwhistle* [2010] IRLR 740), but the wording of the statute nevertheless had to be applied to the facts.

26. The question of what was or was not reasonably practicable was essentially one of fact for the employment tribunal to decide. The leading authority as to the test to have been applied was the decision of the Court of Appeal in *Palmer and Saunders-v-Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA. May LJ undertook a comprehensive review of the authorities, and proposed was a test of '*reasonable feasibility*'.

"[W]e think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done…… Perhaps to read the word "practicable" as the equivalent of "feasible"…… and to ask colloquially and untrammelled by too much legal logic - "was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?" - is the best approach to the correct application of the relevant subsection."

27. The possible factors were many and various, and as May LJ stated, could not have been exhaustively described, for they would depend upon the circumstances of each case. He nevertheless listed a number of considerations which might have been investigated (at [1984] IRLR at 125 and [1984] ICR at 385). These included the manner of, and reason for, the dismissal; whether the employer's conciliatory appeals machinery had been used; the substantial cause of the claimant's failure to comply with the time limit; whether there was any physical impediment preventing compliance, such as illness, or a postal strike; whether, and if so when, the claimant knew of his rights; whether the employer had misrepresented any relevant matter to the employee; whether the claimant had been advised by anyone, and the

nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time. When considering whether or not a particular step was reasonably practicable or feasible, it was necessary for the tribunal (as the Court of Appeal said in *Schultz-v-Esso Petroleum Ltd* [1999] 3 All ER 338, [1999] IRLR 488) to answer the question 'against the background of the surrounding circumstances and the aim to be achieved'. This was what the 'injection of the qualification of reasonableness required'.

28. It would not have been reasonably practicable for a claimant to have issued a claim until they were aware of the facts giving him or her grounds to have applied. It was not usually an excuse, however, for a claimant to argue that they were not aware of their right to have brought a claim. The reasonableness of their state of knowledge would have to be considered. There was an obligation upon a claimant to take reasonable steps to seek information and advice about the enforcement of their rights.

29. In relation to the complaint of discrimination, under section 123 of the Equality Act 2010, such a complaint may not have been brought after the end of the period of three months starting with the date of the act to which the complaint related (s. 123 (1)(a)). For the purposes of interpreting this section, conduct extending over a period was to have been treated as done at the end of the period (s. 123 (3)(a)).

30. Should a claim have been brought outside the three month period, it was nevertheless possible for a claimant to pursue it if the tribunal considered that it was just and equitable to extend time (s. 123 (1)(b)). There was no presumption in favour of an extension. The onus remained on a claimant to prove that it was just and equitable to extend time. Time limits were not just targets, they were 'limits'. Tribunals had been encouraged to consider the factors listed within s. 33 of the Limitation Act 1980. The touchstone, however, was the issue of prejudice and, critically, a tribunal had to consider whether and to what extent the delay had caused prejudice to either side.

Unfair dismissal and length of service

31. In relation to the issue of service, an employee could only bring a complaint of unfair dismissal if he had been employed for the necessary period of continuous employment on the effective date of termination. In 2006, the requirement was a period of continuous employment of at least one year (s. 108 of the Employment Rights Act). The requirement is now, and was when the Claim Form was issued, two years' service.

Relevant factual issues

32. The following facts were evident, either because they were confirmed by the available documentation or because they were agreed by the Claimant during the hearing;

- The Respondent is a British Company, registered at Companies House, No. 01305702, having been incorporated in 1977;

- The Claimant, who has joint Malian and Senegalese nationality, had been recruited in Mali and was employed by the Respondent as an administrative manager in relation to its mining exploration activities there;

- During his employment, he lived and worked in Mali;

- The Claimant's contract of employment [I; 81-91], which was in French, referred to him having been recruited in Bamako, the capital of Mali, in order to work there. He was paid in West African Francs, with tax and social security contributions deducted at source (see the payslip [AD; 216]). It was stipulated that disputes in relation to his contract were to have been submitted to the Factory Inspector for conciliation and, in the event of failure, the Bamoko Labour Court was to have been the last recourse. The contract was signed by the Claimant and Mr Sims on behalf of the Respondent;

- The Respondent granted the Claimant a Power of Attorney ('POA') on 31 October 2005 which entitled him to represent the Company in relation to its dealings with the Department National of Geology and Mines, the Ministry of Mines and any other government departments. The POA contained an expiry date of 31 December 2008. The POA was governed by the law of England and Wales [II; 93];

- The Claimant was not paid beyond April 2006 by the Respondent (see below);

- The Claimant had accepted that he was dismissed on 13 April 2006 in his Claim Form [I; 40] and that the POA came to an end on 31 December 2009, if not before [I; 41];

- The Claimant had raised a complaint with the Factory Inspector in Mali regarding the alleged termination of his employment. That complaint ultimately became the subject of proceedings before the Labour Court and then the Court of Appeal in Mali, at which the Claimant was represented by counsel. The Claimant was ultimately successful and he was awarded compensation in respect of holiday pay, notice pay, attendance pay, damages and interest by a Judgment dated 11 January 2011 [II; 99-103].

33. In further oral submissions, the Claimant contended that;

- He had not been dismissed. He contended that the manner in which the Respondent had *purported* to terminate his employment had been unlawful and was therefore ineffective. He accepted that he was not paid beyond April 2006 and that he was 'put out of his office'. Because of those events, he said, he was entitled to bring a complaint of unfair dismissal;

- He contended that, because the Respondent was not registered in Mali at the time when he is contract was signed and started, it was invalid. What gave his work validity was the POA. Although the Claimant had asserted that the POA had come to an end in December 2009 in the

Claim Form (see above), he accepted that it had concluded in December 2008 at the hearing;

- In relation to the litigation in Mali, the Claimant asserted that the compensation which was paid by the Respondent was received by his lawyer and is still held there for him. He has not yet received it himself;

- In relation to the time which elapsed between the end of his employment and the bringing of these proceedings, the Claimant explained the delay on two bases. First, he asserted that he was not able to commence his claim until he had the necessary evidence. The evidence was on his computer, including the POA. When he was thrown out of his office by the Respondent he lost all of the data on his computer. It was only in May 2019 that a technician was able to restore the data to the hard drive. He then had what he needed to launch his case. Secondly, he contended that, because the Respondent had been negligent in failing to provide him with a valid contract of employment after it was properly registered as an employer in Mali, its negligence had caused or contributed to the delay;

- In relation to the Claimant's apparent lack of service, he again contended that he had not been validly dismissed;

- Finally, in relation to his complaint of discrimination, he described the following acts which he contended had occurred because of his race;

    (i) The Respondent's failure to provide him with a valid contract of employment;

    (ii) Its failure to act upon his complaints of wrongdoing on the part of Mr Burley and/or Mr Stevenin;

    (iii) Harassment by way of emails from the UK to him and his referees;

    (iv) the Respondent's accusation of theft, without proof.

34. The Respondent relied upon the written contract of employment. It alleged that relations between it and the Claimant had broken down fairly quickly; he was issued with a written warning on 17 February 2006 as result of his alleged use of physical violence and he was subsequently dismissed on 24 May 2006 for alleged gross misconduct and insubordination. The Respondent denied having employed and/or paid the Claimant since.

35. Mr Milsom asserted that the contract and the POA were mutually exclusive. The POA conferred representation rights upon the Claimant which enabled him to perform his duties in Mali. He pointed to the Claimant's subsequent work for other employers in Mali for which the POA had not been used [II; 270].

Conclusions

36. The Respondent's application did not require a final determination of anything more than the tests under rules 37 and/or 39. The hearing had not been listed to determine the preliminary issues of territorial jurisdiction, time or sufficiency of service. Obviously, the strengths or weaknesses of the Claimant's case in relation to those issues fed into an analysis of the tests under rules 37 and 39.

Territorial jurisdiction

37. The Claimant has Malian and Senegalese nationality. He was recruited in Mali and he lived and worked in Mali. He was paid in the local currency and it appeared that deductions were made in accordance with Malian tax and social security law. He did not pay any UK tax or national insurance contributions. The contract of employment was in French (the official language of Mali) and matters of dispute were to have been determined locally (by the relevant Factory Inspector and the Labour Court).

38. The only connections that the Claimant's work had with Great Britain was the fact that the Respondent was registered here and that the POA was to have been determined in accordance with English law. The Respondent's domicile was undoubtedly a point which stood in the Claimant's favour to some extent. The jurisdiction conferred by the POA, however, was not such a strong point; powers of attorney rarely accompanied contracts of employment and many existed in the absence of any employment relationship. It appeared to have been little more than a means of facilitating the Claimant's work, to enable him to act as the Respondent's agent in his dealings with the relevant parts of the Malian government.

39. The Claimant's argument that the POA was, in effect, the only contract which governed his employment, was not a good one. There was nothing produced by him which demonstrated that the Respondent's registration in Mali post-dated the signing of the contract of employment. It was difficult to see what validity such arguments would have had in a tribunal in Great Britain in any event since, with or without a written contract, there had clearly been an agreement for the Claimant to undertake work for the Respondent for valuable consideration in 2005.

40. The Respondent's arguments here were strong. There was very little which served to tie the employment relationship and/or the nature of the Claimant's work to Great Britain. The vast weight of the evidence pointed to a relationship which was firmly rooted in Mali. Indeed, the Claimant implicitly accepted as much through his involvement in proceedings which were concluded in his favour there, in accordance with the terms of the contract.

41. Whether under *Lawson* (by virtue of *Hottak)* or under s. 8 of the Race Relations Act, the complaints of discrimination, whatever they were, were in no better position than that of unfair dismissal. There was no '*especially strong*' link to Great Britain beyond the Respondent's domicile and it seemed highly unlikely that Parliament could have intended the situation to have been covered by the tribunal's jurisdiction.

Jurisdiction (time)

42. The claim was issued in 2019, over 13 years after the end of the Claimant's employment.

43. He argued that the termination of his POA ought to have been regarded as the end of his employment, but the POA was not a contract of employment and existed independently from it, as stated above. In any event, he accepted that it had expired in 2008, 11 years before the claim was commenced.

44. The Claimant's case was inconsistent. On one hand, he claimed that he was not out of time because his contract had not been validly terminated. If it could truly have been said that he had not yet been dismissed, he had no jurisdiction to bring a complaint of unfair dismissal. On the other hand, however, he appeared to accept that he had been dismissed in 2006, in which case he was substantially out of time.

45. His primary reason for the delay was his inability to retrieve evidence from his computer's hard drive. He did not assert that he had not *known* of the evidence, just that he had not been in a position to present it until 2019. He nevertheless had knowledge of the relevant facts which would have supported his claim many years earlier. His second argument, in relation to the Respondent's wrongdoing and/or negligence, did not explain the delay at all.

46. In relation to the complaints of discrimination, whatever they were, although a different test applied, the claim was nevertheless extremely stale. Mr Milsom argued that, since the complaints identified at the hearing were not pleaded in the Claim Form, they would need to have been added by amendment. Limitation will not have started.

47. In relation to both complaints, therefore, the Respondent was faced with the further, significant hurdles of persuading a tribunal that it had not been practicable for him to have issued the claim earlier and/or that it would have been just and equitable to proceed now.

Lack of service (unfair dismissal)

48. The Claimant was not employed for one or two years, even on his own case. As stated above, he could not argue that his employment had not been terminated without causing himself the other problem of having no grounds to issue such a complaint. The POA did not save the Claimant's case for the reasons given above.

Other matters

49. The Claimant's complaints of discrimination had not been set out in the Claim Form, despite the lengthy Memorandum. Although he put forward the grounds of his complaints at the hearing, the Respondent asserted that he would need to introduce them by amendment. No application was before the Tribunal.

50. The Judge accepted those arguments. Although one of the points referred to above (the alleged harassing emails) was covered in the Memorandum, the Judge noted that the Claimant had alleged that the emails had not been sent to him directly [I; 39]. The complaint had not been identified as one which was brought under the Equality Act, nor were the other matters referred which he referred to at the hearing. The points made by Mr Milsom within paragraphs 22-27 were justified.

51. There was a further *res judicata* point which would also fall to be considered were the claim to have proceeded; to what extent had the complaints been litigated before a court of competent jurisdiction in the Mali already such that they could not be repeated here? That argument was not developed at the hearing but it would have had to have been addressed at some point as well.

<u>Conclusions; summary</u>

52. The Claimant's claim was weak, not just in one area, but in several. There no reasonable prospect of the Claimant satisfying a tribunal that it had territorial jurisdiction. Beyond that, he clearly faced substantial further hurdles in relation to sufficiency of service and time (in relation to the complaint of unfair dismissal), and of time and a failure to set out any arguable claim (in relation to the complaints of discrimination).

53. Those latter points may not have been reason enough to have dismissed the complaint of discrimination claim on their own; the Claimant might have been able to have argued for an extension of time at a further preliminary hearing and/or at the final hearing and he might have been able to clarify his complaints of discrimination through the provision of further information but, given the fact that no application to amend his claim had been made, the tribunal was faced with the situation as it existed. But these points, when added to the territorial issue, made the claim look extremely bleak indeed.

54. The test under rule 37 was met. There was no reasonable chance of the claim succeeding, even in part, and it was appropriate for the claim to be dismissed in its entirety in the circumstances.

Employment Judge Livesey
Date: 29 April 2020
……………………………………………………