



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss P Nwoko

v

Inmarsat Global Limited

Heard at:

Before: Employment Judge Glennie

JUDGMENT ON APPLICATION TO STRIKE OUT THE CLAIM

- 1. The complaint of unfair dismissal is struck out under rule 37(1)(a) of the Rules of Procedure on the grounds that it has no reasonable prospect of success.**
- 2. The complaint of discrimination because of race is not struck out under rule 37(1)(a).**
- 3. The Respondent's application to postpone the preliminary hearing for case management on 16 July 2020 (if in fact pursued) is refused.**

REASONS

- 1. At a Preliminary Hearing on 28 February 2020 I stated that I was considering whether the complaints of unfair dismissal and discrimination because of race should be struck out on the grounds that they have no reasonable prospect of success. I made orders for the provision of written representations, the parties having indicated that they were content for me to proceed in that way. I reminded the Claimant that she was entitled to request that the issue of striking out be considered at a hearing. She has not requested such a hearing, and I have determined the matter on paper.**
- 2. Disruption of the Tribunal's administration has led to a delay in the matter being referred back to me for attention.**

3. I have taken into account the Claimant's written submissions dated 4 March 2020 and a further email dated 20 March 2020 to which a case study concerning agency workers was attached. On the Respondent's side, I have taken into account written submissions dated 20 March 2020, and have read an email dated 15 June 2020 containing observations on how the issue should be determined procedurally, rather than making any further substantive submissions.
4. The relevant part of Rule 37 of the Rules of Procedure provides that a Tribunal may strike out all or part of a claim if it has no reasonable prospect of success. "No reasonable prospect of success" means just that: it does not mean, on the one hand, no prospect whatsoever, nor, on the other, that the claim is more likely to fail than to succeed. If the Tribunal decides that there is no reasonable prospect of success, striking out does not follow automatically. The provision that the Tribunal "may" strike out the claim means that there is a discretion, which must be applied judicially, as to whether to strike it out or not.
5. I find that the complaint of unfair dismissal has no reasonable prospect of success. Section 108(1) of the Employment Rights Act 1996 provides that:

(1) Section 94 [which provides for the right not to be unfairly dismissed] does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.
6. In the present case, there is a dispute about whether the Claimant was an employee of the Respondent at all. Assuming for present purposes that she was, her employment lasted for around 2 weeks, meaning that her unfair dismissal complaint could not succeed because of the effect of section 108(1). There are exceptions to that section, but the matters relied on by the Claimant (that her dismissal was an act of discrimination or victimisation) are not within those exceptions.
7. I also find that, as a matter of discretion, I should strike out the unfair dismissal complaint. There is no chance of it succeeding, and there is no other reason why I should allow it to continue.
8. I find the position to be different with regard to the discrimination complaint. At the Preliminary Hearing, I drew attention to the need for something more than a difference in protected characteristic, and a difference in treatment, for the burden to be placed on the Respondent of proving that it did not discriminate against the Claimant. In her submissions, the Claimant has asserted that there was a significant difference, which she says was not justified on performance or similar grounds, between the way in which she was treated and the way in which a colleague of a different ethnicity was treated. It is, in my judgment, possible for a significant and unwarranted difference in treatment (if that is what the Tribunal finds, having heard the

evidence) to amount to the “something more” that calls for an explanation from the Respondent.

9. I note that the complaint was, on the face of the matter, brought out of time. That is a factor to be taken into account, but it is open to the Tribunal to extend time if it considers that it is just and equitable to do so.
10. I therefore find that the requirement of no reasonable prospect of success has not been made out with regard to the discrimination complaint. This should not be interpreted as meaning anything more than that: in particular, I have not made any decision about whether there is little reasonable prospect of success, as required for a deposit order.
11. Alternatively, if I am wrong about the question of no reasonable prospect of success, because of the matters I have identified, I would not as a matter of discretion strike out the discrimination complaint.
12. Turning to procedural matters, the case is currently listed for a telephone preliminary hearing for case management on 16 July 2020 (replacing the 2-day full merits hearing, which cannot take place on that date because of the continuing pandemic-related restrictions). The Respondent has sought a postponement, seemingly on the understanding that a full merits hearing remains listed. Given my decision on the question of striking out, it seems to me that the preliminary hearing should proceed, as it will be necessary to re-list the full hearing and make case management orders to take the case forward. To the extent that there is an application to postpone that hearing, it is therefore refused, and the parties should prepare for a preliminary hearing for case management.

Employment Judge Glennie

Employment Judge Glennie

Dated:10 July 2020.....

Judgment sent to the parties on:

11/07/2020.....

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For the Tribunal Office