



EMPLOYMENT TRIBUNALS

Claimant: Mr O Adesalu
Respondent: ABM Facility Services UK Ltd

Before: EMPLOYMENT JUDGE CORRIGAN
Sitting Alone

Representation

Claimant: Ms H Ndi, Friend of the Claimant
Respondent: Mr A O'Neill, Solicitor

CVP HEARING LONDON SOUTH

On: 22 September 2020

JUDGMENT

This was a remote hearing which was not objected to by the parties. The form of remote hearing was V-CVP. A face to face hearing was not held because it was not practicable. I was referred to bundles prepared by each side and a witness statement prepared by Mr Donovan for the Respondent.

1. The Claimant's claim was struck out as having no reasonable prospects of success.

REASONS

1. The Claimant and his Representative initially attended the hearing sharing a video connection together in the back seat of a car. The hearing was adjourned so that they could find locations that enabled them to both connect to the CVP hearing and socially distance. Unfortunately there were then connection issues at their end, leading to the hearing having to be conducted with cameras turned off, and the Claimant and his representative attending by telephone. The hearing therefore become an audio hearing on CVP.
2. Although in these circumstances it was not possible to hear witness evidence fairly, it was possible to identify the claims and the issues. The Claimant's Representative confirmed that there is no claim for holiday pay, and that box was ticked in error. I explained that the Tribunal does not have jurisdiction for personal injury claims. In respect of the claim for the lost belongings it was identified that the only potential type of claim that could be was breach of

- contract but this falls outside the Tribunal's jurisdiction as the Claimant remains in employment with the Respondent.
3. It was agreed that the only claim within the Tribunal's jurisdiction is a claim for unlawful deduction of wages for the period the Claimant was absent from work after the traumatic incident in October 2019.
 4. The Claimant's Representative explained that the basis of this claim was that the Claimant was not sick and that his absence was a result of the traumatic incident in October 2019. However there was a fit note in the Respondent's bundle stating the Claimant was unfit for work for the relevant period, therefore the absence would be considered sickness absence. With respect to the traumatic incident causing the sick leave, this would appear to be potentially another reference to a personal injury claim, which is outside the Tribunal's jurisdiction (and I cannot comment on the merits of such a claim).
 5. The only question for me in respect of a claim for unlawful deduction of wages is whether the Claimant received his contractual entitlement during his sick leave. The Respondent has produced a policy in respect of bereavement leave and sick pay, and has paid more to the Claimant than the policy provides. The Claimant has not provided any other contractual sick pay scheme or policy. The Respondent's policy does say that there is a contractual sick pay scheme in addition but Mr Donovan says in fact there is not, unless an individual has been TUPE'd with an entitlement to contractual sick pay, which he believes did not apply to the Claimant. The Claimant was not aware of another contractual sick pay scheme but says that he did have entitlement to full sick pay due to having been TUPE transferred. His Representative requested time to look for relevant paperwork but this had not been produced by the Claimant today, despite this being the final hearing. This had not been the basis for his claim and was prompted by questions from myself about the contractual position.
 6. I decided, after hearing from both representatives on this, to strike out the claim rather than adjourn to another date, as that would be disproportionate when it was apparent on the Claimant's case that he had no reasonable prospects of success. After the decision was made the Respondent's Representative received confirmation from the Respondent that the Claimant's TUPE documentation said that he was only entitled to statutory sick pay.

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Employment Judge Corrigan
London South
22 September 2020

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