



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103190/19 (P)

Held on 27 July 2020

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Employment Judge N M Hosie

Mrs K Mutch

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**Claimant
Represented by
Ms L Bishop-Neil,
Solicitor**

Ban-Car Limited

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**Respondent
Represented by
Mr M W Anderson,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the application by the respondent's solicitor to strike out the claim or alternatively for a Deposit Order is refused.

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REASONS

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1. On 13 January 2020, I issued a Judgment in this case following a preliminary hearing which was held on 19 November 2019. Although I refused the respondent's application to strike out the claim or alternatively make a Deposit Order, I was of the view the claim was lacking in specification, that further and better particulars were required, and I so directed the claimant. I also advised that on receipt of these further and better particulars I would, *"revisit the issue of the prospects of the claim succeeding on the basis of the pleadings, as amended and any further written submissions which the parties'*

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solicitors wished to make as to the prospects of the various complaints succeeding”.

5 2. The claimant’s solicitor submitted further and better particulars by way of an attachment to her e-mail of 20 February. The claim is amended in terms thereof.

10 3. At the preliminary hearing which I conducted on 16 July 2020, the respondent’s solicitor advised that he did not wish to make any further submissions or amend his written pleadings further. Nor did the claimant’s solicitor wish to make any further submissions. They were both content for me to make a decision “on the papers”.

Discussion and Decision

15 4. Under the heading “Discussion and Decision” in my previous Judgment I set out the relevant case law. I also recorded that *“the test for strike out of a discrimination complaint is a high one”*.

20 5. For the purpose of this exercise, I have taken the claimant’s pleadings, as amended, at their highest value. In other words, I have evaluated the prospects of the claim succeeding on the assumption that the claimant will be able to prove all that she avers.

25 6. On that basis, I am satisfied, having regard to the burden of proof provisions in s.136 of the Equality Act 2010, that the claimant will be able to establish a *prima facie* case.

30 7. I do not conclude, therefore that the claim, as amended, has *“no reasonable prospect of success”* or *“little reasonable prospect of success”*.

8. The respondent's application for strike-out or alternatively a Deposit Order is therefore refused.

Further procedure

- 5 9. As directed at the case management preliminary hearing on 16 July, the case will now proceed to an "in-person" Preliminary Hearing to consider and determine the issue of disability status. In the meantime, **I direct the parties' solicitors to liaise in this regard.**

10	Employment Judge	Nick Hosie
	Date of Judgement	30 July 2020
	Date sent to parties	3 August 2020

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