



EMPLOYMENT TRIBUNALS

Claimant: Mr Dale Richardson

Respondent: Hentons & Co LLP

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in private by telephone) **On:** 24 February 2021

Before: Employment Judge R S Drake (sitting alone)

Appearances

For the Claimant: In Person

For the Respondent: Ms R Reidy (Senior Litigation Executive)

JUDGMENT

The Claimant's claim of unfair dismissal is struck out in accordance with Rule 37(1) paragraph (a) in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), on the grounds that the claim has no reasonable prospect of success.

Reasons

- (1) The basis of Claimant's claim is fully noted and recorded in the ET1 filed 11 December 2020 and responded to by the Respondents on 19 January 2021.
- (2) I noted further that the Claimant accepted he had less than two years' service as at the effective date of termination of his employment which was on 27 August 2020 .

- (3) Further, I noted that the Claimant has seen and noted the Respondent's ET3 and that it was expressly stated and notified therein that he faced a request by the Respondent that the Tribunal consider striking out his claim on grounds of their belief that the claim has no merits. I therefore concluded that the Claimant is and was at all material times aware that at any Preliminary Hearing he would face an application for strike out.
- (4) The hearing today was set in terms to examine whether the claim had no reasonable prospect of success and also whether it was still possible to hold a fair hearing without evidence from either side supporting their respective arguments but clearly in all such claims the onus of proof rests with the Claimant who has said he has no evidence. This therefore engages paragraph (a) of Rule 37(1).
- (5) I heard detailed argument from the Claimant himself and the Respondent's representative and considered all the material before me on the Tribunal file.
- (6) In particular I noted that the Claimant admitted to me with commendable candour that he had not informed the Respondents that he had made a complaint about them to the DWP relating to what he regarded as unfair practice in, as he put it, singling him out for a heavier workload than his colleagues. He admitted that he had made an enquiry to the DWP but had not secured any evidence and thus could not provide to the Respondent or to me any evidence that he had made a complaint, the nature of it, or the date, or that it had been acknowledged and acted upon by the DWP.
- (7) The Claimant also admitted to me he assumed DWP had followed up his complaint. the Respondent's position has been clear from the ET3 they were unaware of any complaint by the Claimant until receiving the ET1 and have not been contacted by the DWP to verify a complaint. Thus, whatever they did when dismissing the Claimant as not tainted by any awareness of any such complaint. In terms, the Claimant admitted he could not evidence any such necessary awareness.
- (8) I concluded that whether or not the complaint to the DWP was a qualifying protected disclosure for the purposes of Section 43A to 43H of the Employment Rights Act 1996 as amended, this was irrelevant if the Claimant could not first prove he had made the Respondents aware or that they were actually aware of the making of a disclosure, qualified and protected or otherwise such as might thus be construed as a causative factor.
- (9) For the sake of completeness, I set out below the basis upon which I had to consider the position so far as set out in Rule 37: -

"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –

(a) that it ... has no reasonable prospect of success;" (my emphasis)

- (10) For all the reasons set out above, I conclude each and all of the above paragraphs of rule 37(1) are engaged and empower me to strike out the claim in accordance with rule 37. Therefore, I have no alternative but to dismiss the claim

Employment Judge R S Drake

Signed 24 February 2021