EMPLOYMENT TRIBUNALS

Claimant: **Mrs Rosaleen Habron**

Respondent: **ALS Laboratories Ltd**

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (by telephone) On**:** **27 May 2021**

Before: Employment Judge R S Drake (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Mr M Brain (Solicitor)

JUDGMENT

1. The Claimant's claim of unfair dismissal is struck out in accordance with Rule 37(1) paragraph (a) of 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

2. I went through with the Claimant every significant paragraph of her claim form and of the Respondent's response to her claim and noted that when given notice of termination on grounds of redundancy om 5 October 2020, she was told that if a suitable vacancy emerged, she would be given opportunity to apply.

3. With further reference to paragraph 11 of the Grounds of Resistance attached to the ET3, it was alleged and today the Claimant accepted that following being given notice and during its running, in a Facebook Messenger exchange with her erstwhile line manager Mrs Rachel McGrath, she had

learned that another Quality officer her was leaving post at another branch in Rotherham and thus a post was becoming vacant. In response to this with reference to that potential vacancy she wrote to Ms McGrath as follows:
"I really don't fancy that journey" (she lives in Mirfield) and in further response to Ms McGrath asking if she was interested in the post, she wrote: -
"So, no … I now have 3 customers for cleaning!" The Respondents took this to mean that she was not interested in that post.

4. The Claimant argues that the exchange was not with someone with authority to discuss any vacancy, and that she was not speaking to the company in its corporate sense. I find that Ms McGrath was by the Claimant's own admission her immediate superior and in law was an accredited representative of the Respondents.

5. Further, the Claimant argues that because the discussion was not undertaken in the context of it being part of a formal offer to consider the post, it should not be regarded as determinative as to her intention not to apply. I took the ordinary objective meaning of the words used in the context in whi9ch they were used which was albeit an informal discussion, nonetheless a discussion about a vacancy with someone who was the Claimant's line manager and who can be regarded in law as having been held out by the Respondents as someone with authority to discuss such matters.

6. Whether or not the exchange was formal or informal makes no difference in law as it is clearly and objectively something in which a clear statement of intention was made. The labels one puts on a statement make no difference to the content of them if given openly as was the case here. I find that this engages Paragraph (a) of Rule 37(1).

8. 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 … <u>has no reasonable prospect</u> of success (my emphasis)"

9. I note that the Claimant sought to argue that it could not be said that her claim had no reasonable prospect of success, but that it should be regarded as having a limited prospect and that she could pay a deposit as a condition of being allowed to proceed with her hearing. I concluded that on her own admissions to me, the Claimant accepted that whatever she thought was the context in which the words were uttered, they could be regarded as being definitive as to her intention so far as an accredited representative of the Respondent in managerial capacity was concerned.

10. I concluded that on the Claimant accepting use of such words by her, it was open to the Respondent to regard such use as being unequivocal and thus

relieving them of any perceived duty to offer her something which she had openly said she did not want. Because the Claimant could not argue before me any basis for saying that this was not a reasonable outcome, that she had no reasonable prospect of success in her claim as such.

11. I took account of the Court of Appeal's finding in **Swain v Hillman [2001] 1 All ER 91** in which it was held that a Court (or Tribunal in this case) must consider whether a party " … has a realistic as opposed to fanciful prospect of success …" in the context of assertions as in this case that the Claimant's case has no, as opposed to little, prospect of success. In this case there is clearly on my examination no conflict of evidence on the key points such as would necessitate ventilation at a full hearing. I considered the balance of prejudice facing the Claimant if I struck out her case leaving her with no further way of arguing her views as to the context of her admitted words, or to the Respondent if the case were not struck out causing them to have to devote considerable time and energy to meeting a claim which on what I have seen and heard today and based on the Claimant's admissions has no prospect of success. On this analysis I conclude that the balance of prejudice favours the Respondent leading me to conclude it is right I should strike out the claim.

12. For all the reasons set out above, I conclude paragraph (a) of rule 37(1) is engaged and empowers 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

27 May 2021