



EMPLOYMENT TRIBUNALS

Claimant: Ms W Dunmore

Respondent: Mid and South Essex NHS Foundation Trust

Heard at: East London Hearing Centre (via Cloud Video Platform)

On: 24 September 2021

Before: Employment Judge Brewer

Representation

Claimant: Ms C Ashley, lay representative
Respondent: Ms E Skinner, Counsel

JUDGMENT

The claim is struck out.

REASONS

1. The respondent applied for the claimant's claim under case number 3201908/2021 to be struck out as having no reasonable prospect of success. That application was listed to be heard alongside the claimant's application to add a new claim at an open preliminary hearing. That hearing took place before me.
2. I heard representations from both representatives, and I had an agreed bundle of documents as well as an agreed agenda.
3. The relevant law is as follows.
4. Rule 37 of the 2013 Procedure Rules states:

Striking out

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 is scandalous or vexatious or has no reasonable prospect of success;

5. In terms of case law the following is noted.
6. In **Mbuisa v Cygnet Healthcare Ltd** EAT 0119/18 the EAT noted that strike-out is a draconian step that should be taken only in exceptional cases. Particular caution should be exercised if a case is badly pleaded – for example, by a litigant in person.
7. In **Cox v Adecco and Ors** EAT 0339/19 the EAT stated that, if the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike-out will be appropriate. The claimant's case must ordinarily be taken at its highest and the tribunal must consider, in reasonable detail, what the claim(s) and issues are. Thus, there has to be a reasonable attempt at identifying the claim and the issues before considering strike-out or making a deposit order. In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case.
8. In **Ahir v British Airways plc** 2017 EWCA Civ 1392, CA, the Court of Appeal asserted that tribunals should not be deterred from striking out even discrimination claims that involve disputes of fact if they are entirely satisfied that there is no reasonable prospect of the facts necessary to find liability being established, provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been explored.
9. Finally, in **Kaur v Leeds Teaching Hospitals NHS Trust** 2019 ICR 1, CA, Lord Justice Underhill observed that *'Whether [striking out] is appropriate in a particular case involves a consideration of the nature of the issues and the facts that can realistically be disputed...'*
10. In the present case the claimant's claim is for unauthorized deductions from wages. In essence her claim is that she was overpaid wages in the sum of just over £18,000 on 26 November 2020. As a result, she was denied payments of Universal Credit. It seems that the non-payment of the Universal Credit is the alleged unauthorized deduction.
11. First, there was no payment of wages to the claimant which was less than the amount she was expecting, or which was properly payable to her. Quite the opposite in fact. There was a significant overpayment.
12. That overpayment had the unfortunate knock-on effect of the government withholding the claimant's Universal Credit.

13. In Ms Skinner's submission, with which I entirely agree, there was no unauthorized deduction of wages by the respondent. On the claimant's case at its highest, she suffered reduced benefits, but that was a) not the decision of the respondent and b) not reduced wages within the meaning of section 13, Employment Rights Act 1996.
14. Given the way the case is put, even taken at its highest, it cannot succeed as a matter of law and is therefore struck out.

**Employment Judge Brewer
Date: 24 September 2021**