



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Nicholas

**Respondent:** The Secretary of State for Business, Energy and Industrial Strategy

**Heard at:** Watford (by CVP)

**On:** 1 December 2021

**Before:** Employment Judge Maxwell

## Appearances

For the claimant: in person

For the respondent: Ms Hirsch, Counsel

## JUDGMENT

1. The Claimant's claim is struck out under rule 37(1)(a) as she has no reasonable prospect of establishing the Tribunal has jurisdiction to determine her claims.

## REASONS

### Respondent

2. BEIS is an acronym referring to a Government department, namely Business, Energy and Industrial Strategy. The correct respondent to these proceedings is the Secretary of State for Business, Energy and Industrial Strategy. An amendment to that effect is made.

### Background

3. The Claimant contacted ACAS on 23 September 2020 and a certificate was sent the same day. She presented her claim on 24 September 2020, ticking the boxes for race discrimination, sex discrimination and arrears of pay. The Claimant complained the Respondent sought "feedback" on her, before going on to set out further complaints, none of which were entirely clear.
4. Subsequently, the Claimant has written to the Tribunal on many occasions making various further complaints, of a wide-ranging nature. The Claimant has complained about the actions of Government, named politicians, various public bodies and private sector companies. She has also forwarded copies of Civil Court proceedings she is pursuing.

5. In an email of 22 January 2021, the Respondent applied for an extension of time in which to present a response, attaching a draft of the same, which included a denial that the Claimant was or had been its employee or contractor and contending the claim presented set out no basis upon which she could pursue a complaint against the Respondent in the Tribunal. The response also said the claims were not particularised. On this basis a strike out was sought.
6. By order of EJ Lewis sent to the parties on 2 February 2021, time for the response was extended to 16 February 2021.
7. On 3 February 2021, the Respondent entered a response, in like terms as the draft.
8. By order of EJ Lewis sent to the parties on 4 July 2021, a preliminary hearing in public was listed to consider “strike out and deposit orders, give case management orders.”

### Submissions

9. The Claimant presented a written submission dated 24 November 2021, which comprised an argument and statement of case running to 90 pages, followed by extensive documentary exhibits.
10. Ms Hirsch relied upon written submissions dated 25 November 2021 and two authorities: **Secretary of State for Scotland v Mann [2001] ICR 1005** and **James v Blockbuster Entertainment Ltd [2006] IRLR 630**.
11. The Claimant then provided further written submissions dated 29 November 2021, responding to Ms Hirsch.
12. Both parties made oral submissions at this hearing.
13. Ms Hirsch, narrowed her position today to one based upon the Tribunal having no jurisdiction because the Claimant had not been a job applicant, employee or contract worker of the Respondent. It was agreed that any **Henderson v Henderson** point would be reserved to a later date, should that still be relevant.
14. The Claimant developed her argument that the Respondent was her covert or unseen employer, as its actions of a general and specific nature affected and intervened in what on the surface might appear to be her employment by others. Also because it prevented her from being employed or sought to intimidate her and prevent her from accessing justice.

### Law

#### Strike Out

15. Rule 37(1)(a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 provides:  

**(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 any 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[...].

16. The test of “no reasonable prospect of success” was considered in **North Glamorgan NHS Trust v Ezsias [2007] IRLR 603 CA**, per Maurice Kay LJ:

26 [...] what is now in issue is whether an application has a realistic as opposed to a merely fanciful prospect of success. [...]

29 [...] It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation.[...]

#### Deposit Order

17. Rule 39(1) provides:

Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ('the paying party') to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

18. In **Van Rensburg v Royal Borough of Kingston upon Thames [2007] UKEAT/0096/07**, Elias P addressed the lesser threshold of “little reasonable prospect of success”:

26. Ezsias then demonstrates that disputes over matters of fact, including a provisional assessment of credibility, can in an exceptional case be taken into consideration even when a strike out is considered pursuant to rule 18(7). It would be very surprising if the power of the Tribunal to order the very much more limited sanction of a small deposit did not allow for a similar assessment, particularly since in each case the tribunal is assessing the prospects of success, albeit to different standards.

27. Moreover, the test of little prospect of success in rule 20(1) is plainly not as rigorous as the test that the claim has no reasonable prospect of success found in rule 18(7). It follows that a tribunal has a greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response.

#### Employment

19. So far as material, section 230 of the **Employment Rights Act 1996** (“ERA”) provides:

**230.— Employees, workers etc.**

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

**(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.**

**(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—**

**(a) a contract of employment, or**

**(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;**

**and any reference to a worker’s contract shall be construed accordingly.**

**[...]**

20. The definitions at section 83 of the **Equality Act 2010** (“EqA”) include:

**(2) “Employment” means—**

**(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;**

21. The protection of EqA also extends to contract workers:

**(1) A principal must not discriminate against a contract worker [...]**

**[...]**

**(5) A “principal” is a person who makes work available for an individual who is—**

**(a) employed by another person, and**

**(b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).**

**(6) “Contract work” is work such as is mentioned in subsection (5).**

**(7) A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).**

## **Conclusion**

22. The jurisdiction of the Employment Tribunal is an entirely statutory creation, it has no common law or other inherent jurisdiction.

23. The Claimant brings her claim for wages under ERA and for discrimination under EqA.

24. In order to pursue her claim under ERA, the Claimant must show that she was an employee or worker of the Respondent. In order to pursue her discrimination claims under EqA she must show she was a job applicant, an employee, a contract worker, or that her circumstances were covered by some other provision which confers jurisdiction on the Tribunal.
25. The Claimant lists her previous employers in her first written submissions between pages 46 and 64. These do not include the Respondent. Then from the bottom of page 64 through to 67, she lists complaints she has against other parties.
26. The Claimant does not say she has entered into a contract with the Respondent under which she agreed to work for it, or that she has been supplied by a third party (e.g. an employment agency) to do work for the Respondent.
27. The Claimant's position is notwithstanding the lack of any contractual connection between her and the Respondent, nonetheless the latter has become her unseen / covert employer. The reasons she gives for this are many and include the Respondent:
  - 27.1 created the framework within which all UK employment is governed;
  - 27.2 established or failed to address widespread discrimination;
  - 27.3 established PCPs which affected her employment;
  - 27.4 oversaw the banking sector;
  - 27.5 intervened in her employment in many way including preventing pay rises and promotion;
  - 27.6 discriminated against her because of her Northern Irish background and for reasons connected with the Stormont Government and Good Friday Agreement;
  - 27.7 colluded with the Irish Government and AIG;
  - 27.8 has prevented her from obtaining employment;
  - 27.9 has engaged in harassment and intimidation of her;
  - 27.10 has interfered with the electoral roll;
  - 27.11 has interfered with third party service providers;
  - 27.12 has obstructed her from accessing the Courts, Tribunals and justice;
  - 27.13 has interfered in her family relations;
  - 27.14 has supported members of her family against her;
  - 27.15 made false claims about her mental health.

28. The hearing today was listed by way of CVP. Unfortunately, the Claimant could not join in this way because her broadband service has just been cut off. She cited this as another example of deliberate interference and obstruction of her by the Government. She joined the hearing using her mobile phone, with audio only.
29. The list set out above is not entirely exhaustive with respect to the various ways in which the Claimant argues the Respondent is her unseen / covert employer. Unfortunately, none of the matters she relies upon shows that she has entered into a contract with the Respondent of any kind, let alone one of employment. Nor was she provided to do work for the Respondent by a third party, such as an employment agency. Her argument is that she is the unwilling victim of the Respondent's malign actions and omissions. This, however, does not show what would be necessary to confer jurisdiction on the Tribunal, namely that she agreed with the Respondent to do work for it or agreed with a third party to go to work for the Respondent.
30. The Claimant has no reasonable prospect of showing that:
  - 30.1 she was an employee or worker of the Respondent within ERA;
  - 30.2 she was an applicant, employee or contract worker of the Respondent, or fell within any other relevant provision of EqA.
31. On this basis the Tribunal would have no jurisdiction to determine her claims, irrespective of whether she is right about all or any of the matters she wishes to complain about and see adjudicated.
32. The Claimant's claim is struck out.

EJ Maxwell

Date: 1 December 2021

Sent to the parties on:  
20 December 2021

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For the Tribunal Office:

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