



Case Number: 3305258/2021

MK

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr G C Enachioiu

Respondent

and

Wincanton Group Limited

Held by CVP on 10 February 2022

Representation

Claimant:

In Person

Respondent:

Ms S Way, Counsel

Employment Judge Kurrein

Statement on behalf of the Senior President of Tribunals

This has been a remote hearing that has not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 68 pages, the contents of which I have recorded.

JUDGMENT

The Claimants claim has no reasonable prospect of success and is struck out

REASONS

- 1 On 1 April 2021 the Claimant presented a claim to the tribunal. He had not ticked any of the boxes as to the type and details of his claim save that to indicate he was making "another type of claim which the employment tribunal can deal with". He indicated this was "bullying and discrimination".
- 2 The Respondent presented a full response on 1 June 2021 in which it accepted that the Claimant had informed them of lower back pain in about January 2020 and had been assigned light duties as a consequence. It also recounted that he had raised a grievance in respect of pay on 12 January 2021 which had been dismissed, and that at the time he was signed off (on 31 March 2021) a disciplinary hearing was pending because of his failure to follow guidelines and wear a mask.
- 3 The Claimant has not returned to work since. He failed to attend an occupational health meeting on 26 May 2021, but did so on 4 June 2021.

- 4 The Respondent received an occupational health report which indicated that the Claimant was unlikely to be covered by the Equality Act 2010 and, following receipt of the Claimant's impact statement, it has confirmed that is its position.
- 5 On 8 August 2021 EJ Bloom directed an Open Preliminary Hearing to consider strike out/deposit, which has come before me today.
- 6 At the start of the hearing the Claimant, who is a Romanian national, confirmed to me that he was confident of his ability to take part in the proceedings and his ability to understand and communicate in English.
- 7 I explained to him the principles of the overriding objective, inviting him to ask questions if he required any clarification, and the purposes of the preliminary hearing.
- 8 Following discussions with him and consideration of his claim form he accepted that the only wrongdoing he alleged in his ET1 was a threat to cut his hours. He did not complain this had in fact taken place. When asked he told me that this had been in January/February 2020, shortly after his back pain started.
- 9 I accept that the Claimant sought to resile from this position, saying I had misunderstood him, when I explained to him that that claim was potentially very out of time. Counsel was able to confirm to me that my understanding of what the Claimant had said was what he had also understood.
- 10 I asked the Claimant why it would be fair to allow the tribunal to hear a claim that was almost one year out of time. He simply reiterated that he had been treated badly and I had misunderstood him.
- 11 I did not accept that that was the case.
- 12 In my view, even without the time issue, the Claimant's claim had very dubious prospects of success. The time issue however is in my view conclusive. The claim relating to the alleged threat to cut his hours, which is itself disputed, took place almost 12 months before the cut-off date applicable to these proceedings, in which early conciliation was started on 25 March 2021.
- 13 The onus is on the Claimant to establish, on the balance of probabilities, that it would in all the circumstances be just and equitable to extend time in his favour so it's confer jurisdiction on the tribunal for this claim. He has reduced no evidence on which I can make such a finding. In those circumstances the claim must be dismissed.

Employment Judge Kurrein

10 February 2022

Case Number: 3305258/2021

Sent to the parties and
entered in the Register on : :

.....

For the Tribunal

Public access to employment tribunal decisions Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and respondent(s) in a case.