



EMPLOYMENT TRIBUNALS

Claimant		Respondents
Mr A Levenson Ahmadi	v	(1) Bucket Group LTD (In voluntary liquidation) (2) Sucre London LTD (3) River Group LTD (4) Gregory Max Godik (5) Georgina Godik (6) Patricia Godik (7) Zeev Godik

OPEN PRELIMINARY HEARING

Heard at: London Central (By CVP remote videolink)

On: 14 July 2022

Before: Employment Judge Brown

Appearances

For the Claimant: In Person, accompanied by his mother Ms L Levenson
For First Respondent: Did not attend and was not represented
For Respondents 2 - 7: Mr Z Malik, Solicitor

JUDGMENT AT AN OPEN PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. All claims 2207261/2021, 2201501/2022 and 2201524/2022 are joined and shall be heard together.
2. The Claimant's complaints of age discrimination are dismissed on withdrawal.
3. Claimant was employed by Bucket Group LTD (In voluntary liquidation) and Bucket Group LTD (In voluntary liquidation) is the proper Respondent to his complaints of ordinary and automatic unfair dismissal, notice pay, holiday pay, unlawful deductions from wages, failure to pay the National Minimum Wage, a redundancy payment and breach of contract.
4. His complaints ordinary and automatic unfair dismissal, notice pay, holiday pay, unlawful deductions from wages, failure to pay the National Minimum

Wage, a redundancy payment and breach of contract are struck out against: Respondent (2) Sucre London LTD; Respondent (3) River Group LTD; Respondent (4) Gregory Max Godik; Respondent (5) Georgina Godik; Respondent (6) Patricia Godik and Respondent (7) Zeev Godik Respondents, because they have no reasonable prospects of success.

5. The Claimant's complaints of ordinary and automatic unfair dismissal, notice pay, holiday pay, unlawful deductions from wages, failure to pay the National Minimum Wage, a redundancy payment and breach of contract continue only against the First Respondent Bucket Group LTD (In voluntary liquidation).
6. The proper Respondents to the Claimant's complaints of disability discrimination were: Respondent (1) Bucket Group LTD (In voluntary liquidation); Respondent (2) Sucre London LTD; Respondent (4) Gregory Max Godik; and Respondent (5) Georgina Godik.
7. However, all the Claimant's complaints of disability discrimination / discrimination arising from disability are struck out against all Respondents because they have no reasonable prospects of success.
8. The Claimant's complaints of ordinary and automatic unfair dismissal, notice pay, holiday pay, unlawful deductions from wages, failure to pay the National Minimum Wage, a redundancy payment and breach of contract against the First Respondent shall be listed for hearing.

REASONS

Background

The First Claim - Claim 2207261/2021

1. By claim number 2207261/2021 presented on 16 November 2021 the Claimant brought complaints of unfair dismissal, age discrimination, disability discrimination, holiday pay, arrears of pay and other payments against Respondents 1 – 5 . He had contacted ACAS on 5 September 2021. The ACAS certificate was issued on 17 October 2021.
2. At a Preliminary Hearing on 29 March 2022 EJ Isaacson identified the following claims in claim 2207261/2021:

“(4) .. ordinary unfair dismissal, including lack of proper consultation; and automatic unfair dismissal for whistleblowing and/or asserting a statutory right and /or for being a trade union member. The claimant alleges he raised a concern of not being paid his pension and shortly after he was told he was being dismissed. In August 2021 he also raised the fact that he was not being paid the national minimum wage which had gone up since August 2021 but was being paid the same rates as from April 2020. In September he was told he was being dismissed. On 16 August he raised with Greg Godik that he should receive holiday pay after the furlough payments ended in September 2021. The claimant did not receive the holiday payment and was told in September 2021 he was being dismissed.

(5) ... an unauthorised deduction from wages claim. This includes incorrect furlough payments paid based on less hours than he actually worked for the period April 2020 to March 2021.

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(6) The claimant also claims he had been paid at the lower hourly rate than the national minimum wage from August 2021 until his termination.

(7) The claimant also claims unpaid overtime for the period January 2019 to October/November 2019.

(8) The claimant also claims pay for the period from 1 October 2021 to his termination date. He alleges he did not receive any pay for work after September 2021 although he received a week's pay in October 2021 for the last week of September 2021 after the furlough payments were stopped.

(9) The claimant also claims that he was under paid for hours worked in January 2019 when the clock in and out system was not working

(10) ... from January 2019 he was told he would not be paid for hours worked past 2pm because he worked too slow and from 18 March 2019 he was not paid for hours worked past 1pm because he worked too slow. The claimant was required to clean up flood water and mouse droppings but was not paid for the actual hours he worked.

(11) The claimant also claims 24 days holiday being 22 days for 2021 and 2 days in January 2022.

(12) The claimant confirmed he was not claiming under the TUPE Regulations.

(13) The claimant claims redundancy pay and notice pay. His contract provided for 4 weeks notice pay.

(14) I tried to get the claimant to clarify his age discrimination claim. In the end he said that because of his age his hourly rate was higher than younger people and as a result he was not offered an alternative role at Sucre London Limited.

(15) The claimant alleges that he is disabled as he has asperger syndrome. He alleges the respondents were aware of this from the start of his employment. The claimant alleges that in January 2019 he was told that he worked too slow and consequently he would not be paid for any hours he worked past 2pm. In March 2019 he was told he would not be paid for hours he worked past 1pm. He alleges he worked slow because of asperger syndrome. He also alleges one of the reasons he was dismissed was because of his disability."

3. EJ Isaacson also listed this Open Preliminary Hearing to determine:

"1. Who are the correct respondents?

2. To consider any application for strikeout, deposit order or cost order, if appropriate.

3. To clarify any remaining claims and issues.

4. To consider whether to consolidate this claim with case reference number 222020915400 presented in March 2022.

5. Any further case management orders."

Claim number 2201524/2022

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4. On 27 March 2022 the Claimant presented claim number 2201524/2022 against Bucket Group (r1) Patricia Godik (R2) Zeev Godik (R3) Georgina Godik Hayward (R4) Gregory Max Godik (R5) Sucre London Ltd (R6) and Riverwalk Group Ltd (R7)) in substantially the same terms to claim 2207261/2021. He brought complaints of ordinary and automatic unfair dismissal, notice pay, holiday pay, unlawful deductions from wages, failure to pay the National Minimum Wage, a redundancy payment, breach of contract, age discrimination and disability discrimination.
5. He also alleged that he had been dismissed because he was a part time worker. This was a new complaint of automatic unfair dismissal on the grounds of part time worker status.
6. He said that he had not been offered employment at the Respondents' new Sucre restaurant which opened in July 2021.

Claim Number 2201501/2022 – Not Proceeded With

7. On 25 March 2022 the Claimant presented claim number 2201501/2022. The Claimant told me, at this hearing, that he wished to withdraw that claim; he wanted only to rely on his other 2 claims. It seemed to me that that claim contained the same complaints to those made in his other claims. I did not dismiss it on withdrawal because that would have contradicted the continuation of the complaints in the other claims.

All claims 2207261/2021 2201501/2022 and 2201524/2022 Joined Together

8. The Claimant and Respondents 2 – 7 agreed that all claims 2207261/2021 2201501/2022 and 2201524/2022 should be joined and heard together. I agreed that all those claims gave rise to similar issues of fact and law and should be heard together. I ordered that they were joined and would be heard together.
9. I was told that the Claimant had presented another claim to London South Employment Tribunal under claim number 2301405/2022, against 1750 London Limited, a business owned by the Respondent Georgina Godik. I was told that, in that claim, the Claimant alleged that 1750 London Limited was his employer. I was concerned that I should not determine the Claimant's employer in these cases separately from that other case, which involved similar facts. Nevertheless, the Claimant and Mr Malik, on behalf of R 2- 7, both forcefully agreed that I should proceed with the hearing today and determine the employer in the London Central ET claims. Given that they agreed that I should make a determination, I proceeded with this hearing. It may give rise to an estoppel in the London South ET case.

Disability and Age Discrimination Complaints

10. At this Hearing it was agreed that the Claimant was alleging that he had been discriminated against because of disability when he was not offered employment at Sucre Restaurant and when Sucre restaurant refused to consider his application for employment.
11. The Claimant therefore brought disability discrimination claims in relation to 4 matters:
 - a) His employer's failure to pay him for hours worked after 2am.
 - b) His dismissal.

- c) The Claimant's employer, Sucre's, Gregory Max Godik and Georgina Godik's failure to offer him work at Sucre Ltd
 - d) Sucre's failure to reply to his job application.
12. The Claimant withdrew his age discrimination complaints at this hearing. I dismissed them on withdrawal.

Procedure at This Hearing

13. The First Respondent did not attend this Open Preliminary Hearing.
14. There was a bundle of documents. I asked the parties which documents I should read for the purposes of this hearing. I read all the documents which the Claimant provided to me, including an updated case management agenda sent to the Tribunal on 6.7.2021 at 08.51, a document entitled, "Unfair Dismissal Claim/ Discrimination claim Abraham Levenson Ahmadi Claimant case no: 2207261/2021 and 2201524/2022" and a screen shot of an Instagram post by Sucre London and the Claimant's reply to it. The Respondent presented a skeleton argument, which I read, along with the documents referred to in it.
15. I read a witness statement from the Claimant's mother, which the Claimant then adopted as his own evidence. I said that, since the Claimant had first-hand knowledge of the matters in the witness statement, it was appropriate for him to give evidence. I therefore heard evidence from the Claimant. I heard evidence from Georgina Godik and Gregory Max Godik, having read their witness statements.
16. I made clear that I would not conduct a "mini trial" on the substantive merits of the claims. My decision on strike out / deposit order on the merits would not involve me making findings of fact. Insofar as the parties gave evidence or cross examined on the merits of the claims, I disallowed or disregarded those questions and evidence. None of the findings in this judgment relate to the substantive merits of the claim.
17. I said that I would consider evidence and make findings of fact on the correct identity of the Claimant's employer - and therefore who was the Respondent to the money/contract/unfair dismissal claims. I also invited the Claimant to give an explanation for delay in bringing discrimination complaints and he was cross examined about the dates of his discrimination complaints, in relation to time limits.
18. I asked the Claimant when he said he applied for a role at Sucre Limited and who he said made the decision not to offer, or consider him for, a role in Sucre Limited.
19. The Claimant said that he asked Georgina Godik to consider him for a role at Sucre Limited on 16 September 2021, p222. He said that Georgina Godik refused to offer him a role in Sucre on 7 October 2021, p. He said that Gregory Godik worked for Sucre and would have also made a decision not to offer the Claimant a role there in summer 2021. He said he had applied externally for a role at Sucre Limited on 23 September 2021 through social media.
20. The parties agreed that the Respondents to the Claimants claims that the Claimant was not considered for a role at Sucre were: the Claimant's employer (whose identity I needed to decide), Gregory Godik, Georgina Godik and Sucre Limited.

Findings of Fact

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21. The Claimant was employed by Bucket Group Limited from 22 May 2018, pursuant to a contract signed by the Claimant on 23 May 2018, p110. The Claimant told me that he was later given a different contract during the period of his furlough pay. However, he did not tell me that his employer changed during his furlough period. He told me that he did not enter employment with another employer. He makes no claim pursuant to TUPE regulations.
22. Bucket Group Limited was established and managed by Georgina Godik. It is a private company, limited by shares.
23. River Walk Group Limited is the largest shareholder in Bucket Group Limited with 48% ownership. River Walk Group Limited is an entity set up to invest in hospitality businesses. It is owned 35% by Patricia Godik, 35% by Zeev Godik, 10% by Gregory Godik, 10% by Jack Godik and 10% by Georgina Godik. Its sole director is Patricia Godik. River Walk Group Limited has made one investment, its holding in Bucket Group Limited.
24. Sucre London Limited is owned and controlled by Addmind group. Zeev Godik, is the Chairman of Addmind. Addmind is majority owned by another party.
25. Gregory Godik was contracted to project manage the opening of the Sucre London Site.
26. The Claimant worked as a kitchen porter at Bucket Group's "Bucket Seafood" restaurant based at 107 Westbourne Grove, London. He last worked there in March 2020, before he went on furlough leave.
27. Between March 2020 and January 2022, Bucket group operated some "pop-up" hospitality offerings at its 107 Westbourne Grove premises, such as: a takeout coffee bar; Boludo, Latin American street food; and a fish and chip takeaway. The Claimant was not offered work in any of these operations. He remained on furlough leave.
28. The Bucket Group Limited discussed potential redundancy with the Claimant in September 2021.
29. On 16 September 2021 the Claimant emailed Georgina Godik, with the title, "Request for position in one of your other restaurants in preference to redundancy put forward, which believe is unfair due to my age, disability and loyalty to the family business for over 3 years and longest serving employee." P226.
30. It was not in dispute that Ms Godik did not offer the Claimant work at Sucre Limited. She replied on 7 October 2021 saying, amongst other things, that the company only owned and operated one business, Bucket Seafood, and there was no associated employer in which the Claimant could be employed as an alternative to dismissal, p229.
31. On 8 October 2021 the Claimant replied. He said,".. although I asked, and was never told about Sucre that I found out about by chance, still owned by the Godik family but on different premises... I believe that I could and should have been offered a position in the new restaurant Sucre, regardless of % of shares held by Godik family in different company names." p236.
32. On 8 October 2021 Georgina Godik replied further saying, again, that there was not scope for the Claimant to be employed elsewhere, p234.

33. The Claimant produced what he said was the job application to Sucre Ltd. It was a screenshot of an Instagram post by Sucre on 23 September 2021. The Instagram post said, “We’re hiring! Want to join the team at Sucre? Drop us an email at jobs@sucrerestaurant.com”. The Claimant commented on the Instagram post: “Hello @sucrelondon. Can I ask what positions you are considering please?” It was not in dispute that the Claimant did not send an email to the address stated on the Instagram post. The Claimant told me that he could not, in fact, have made any formal application for any job because under the terms of his contract with Bucket Group LTD, he was not permitted to work elsewhere in the hospitality trade while he was still employed by Bucket Group.
34. The Claimant told me that he considered that his employer and Sucre Ltd and Gregory Max Godik and Georgina Godik all failed to offer him employment at Sucre Ltd. He said that he had asked Gregory Godik about working at Sucre in summer 2021.
35. On 3 December 2021 Ms Godik wrote to the Claimant again saying, that there was no scope for employment with associated employers, p258. She said, “I am very sorry that your employment with the Company has ended and I wish you the best for the future.”
36. There was a dispute between the parties about when the Claimant was dismissed. The Respondents contended that he had been dismissed by 3 December 2021. The Claimant contends that his employment ended in January 2022. It was not necessary or appropriate for me to resolve that dispute for the purposes of this hearing.
37. The Bucket Group went into voluntary liquidation in January 2022. In the Statement of Affairs for the Liquidation, 7 people were listed as “Company Creditors – Employees & Directors” of “Bucket Group Limited Trading As: Bucket, Jack’s Sprat and Boludo”, p322. The Claimant told me that he did not know who all these people were. He said that I could infer that they had been employed at Sucre Limited.
38. In relation to his dismissal, the Claimant asserts that he was dismissed in January 2022. He agrees that Bucket seafood restaurant ceased trading in January 2022 and that no other employees were employed after that date.
39. The Claimant told me that he believed that other employees of Bucket Group had been employed at Sucre restaurant. He was unable to give any particulars of these employees. The Respondents denied that any employees of Bucket Group had been employed at Sucre.

Claims against Employers

40. By s135 ERA 1996 “an employer” shall pay a redundancy payment to “any employee of his”. By s94 ERA 1996 an employee has the right not to be dismissed by his employer. By s23 ERA a worker can present a complaint that his employer has made a deduction from his wages. An employee can bring a breach of contract claim against his employer under the *ETs (Extension of Jurisdiction Order) 1994*. By *Reg 30 Working Times Regs 1998* a worker can bring a complaint that his employer failed to pay him accrued holiday pay on termination of his employment. By *s1 National Minimum Wage Act 1998* a worker who qualifies for the national minimum wage shall be remunerated by his employer at not less than the minimum wage.

41. For the purposes of establishing a redundancy situation, the business of the employer 'together with the business or businesses of his associated employers shall be treated as one', s 139(2) *Employment Rights Act 1996*. Two employers shall be treated as associated if one is a company of which the other (directly or indirectly) has control, or both are companies of which a third person (directly or indirectly) has control, s 231 *Employment Rights Act 1996*.

Strike Out

42. An Employment Judge has power to strike out a claim on the ground that it has no reasonable prospect of success under Employment Tribunal Rules of Procedure 2013, r37. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances, *Teeside Public Transport Company Limited (T/a Travel Dundee) v Riley* [2012] CSIH 46, at 30 and *Balls v Downham Market High School & College* [2011] IRLR 217 EAT. In that case Lady Smith said:

"The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word 'no' because it shows that the test is not whether the Claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral recollections regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospect".

43. A case should not be struck out on the grounds of having no reasonable prospect of success where there are relevant issues of fact to be determined, *A v B* [2011] EWCA Civ 1378, *North Glamorgan NHS Trust v Ezsias*, [2007] ICR 1126 ; *Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly* [2012] CSIH 46. On a striking-out application (as opposed to a hearing on the merits), the tribunal is in no position to conduct a mini-trial. Only in an exceptional case will it will be appropriate to strike out a claim for having no reasonable prospect of success where the issue to be decided is dependent on conflicting evidence. Such an exceptional case might arise where there is no real substance in the factual assertions made, particularly if contradicted by contemporary documents *E D & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, or, where the facts sought to be established by the claimant were 'totally and inexplicably inconsistent with the undisputed contemporaneous documentation', *Ezsias* para 29, per Maurice Kay LJ.
44. Discrimination cases should only be struck out in the very clearest circumstances, *Anyanwu v Southbank Student's Union* [2001] IRLR 305 House of Lords.
45. In *Madarassy v Nomura International Plc* [2007] IRLR 246 Lord Justice Mummery said that, in discrimination cases, the burden of proof does not shift from the Claimant to the Respondent where the Claimant proved only the bare facts of a difference in status and a difference in treatment. He said that a difference in protected status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities a Respondent had committed an unlawful act of discrimination, paragraph 56 of that Judgment.

Relevant Law -Time Limits & Continuing Acts

46. By s123 *Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of
- a) the period of three months starting with the date of the act to which the complaint relates or
 - b) such other period as the Employment Tribunal thinks just and equitable.
47. By s 123(3) & 4 *EqA*
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
 - (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
48. The power to extend time for the consideration of a complaint have been held to give Tribunals 'a wide discretion to do what it thinks is just and equitable in the circumstances ... they entitle the [employment] tribunal to take into account anything which it judges to be relevant', *Hutchison v Westward Television Ltd* [1977] IRLR 69, [1977] ICR 279, EAT. The discretion is broader than that given to tribunals under the 'not reasonably practicable' formula: *British Coal Corp v Keeble* [1997] IRLR 336; *DPP v Marshall* [1998] ICR 518, EAT. Factors which can be taken into account include the prejudice each party would suffer as a result of the decision reached and all the circumstances of the case, including the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information, the promptness with which the Claimant once he knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he r she knew of the possibility of taking action
49. However, notwithstanding the breadth of the discretion, there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion. The onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time, 'the exercise of discretion is the exception rather than the rule' , *Robertson v Bexley Community Centre* [2003] EWCA Civ 576, [2003] IRLR 434, at para 25, per Auld LJ.

Discussion and Decision

Unfair dismissal/Notice Pay/Holiday Pay/Wages/Breach of Contract/ Failure to pay National Minimum Wage/Failure to pay Redundancy Payment

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50. The Claimant was employed by Bucket Group Limited from 22 May 2018 until he was dismissed by Bucket Group, p110. He was employed by Buckey Group Limited until 3 December 2021 (on the Respondents' case) or until January 2022 (on the Claimant's case). His employer never changed during that time.
51. While the Claimant alleged that the members of the Godik family were involved with other restaurants, there was no evidence that the Claimant was ever employed by any of those other businesses.
52. Under the relevant legislation, complaints of Unfair dismissal/Notice Pay/Holiday Pay/Wages/Breach of Contract/Failure to pay National Minimum Wage/Failure to Pay Redundancy Payment are all properly brought against the employee's "employer".
53. While an associated employer may be taken into account in deciding whether there is a redundancy situation, an associated employer is not the proper Respondent to a claim for a Redundancy Payment.
54. Given that Bucket Group Limited was the Claimant's employer at all times during his relevant employment, Bucket Group Limited is the proper Respondent to the Claimant's complaints of Unfair dismissal/Notice Pay/Holiday Pay/Wages/Breach of Contract/Failure to pay National Minimum Wage/Failure to Pay Redundancy Payment.
55. None of the other Respondents were the Claimant's employer. I struck out the complaints of Unfair dismissal/Notice Pay/Holiday Pay/Wages/Breach of Contract/Failure to pay National Minimum Wage/Failure to Pay Redundancy Payment against all the Respondents apart from the First Respondent. Those complaints against them had no reasonable prospects of success because they could not be brought against anyone who was not the Claimant's employer.

Disability Discrimination Complaints - Correct Respondents

56. Discrimination complaints can be brought against individuals as agents for a principal, or as employees of the Respondent employer, for whom the employer is vicariously liable, *ss109 & 110 Equality Act 2010*. The Claimant's discrimination complaints also relate to applications for work under *s39(1) EqA 2010*.
57. The Claimant said that all of the following: his employer, Sucre Ltd, Gregory Max Godik and Georgina Godik failed to offer him work at Sucre, or ignored his application for work there.
58. Ultimately, the Respondents did not dispute that the Respondents to the Claimant's discrimination claims were his employer and Sucre Ltd and Gregory Max Godik and Georgina Godik.
59. I found that they were the appropriate Respondents. The Claimant does not allege that River Group Ltd, or Patricia Godik, or Zeev Godik made any decision not to offer him work at Sucre Limited.

Disability Discrimination Complaints - Strike Out

60. The Claimant brought disability discrimination claims in relation to 4 matters:
 - a) His employer's failure to pay him for hours worked after 2am.

- b) His dismissal.
 - c) His employer's and Sucre Limited's and Gregory Max Godik and Georgina Godik's failure to offer him work at Sucre Limited.
 - d) Sucre's failure to reply to his job application.
61. In relation to his dismissal, the Claimant asserts that he was dismissed in January 2022. He agrees that Bucket seafood restaurant ceased trading in January 2022 and that no other employees were employed after that date. On the undisputed facts, there was not even a difference in treatment between the Claimant and other employees in relation to dismissal. I considered that there was no reasonable prospect of a Tribunal concluding that disability, or something arising from disability, was any part of the reason the Claimant was dismissed, rather than the Bucket Group Limited stopping trading and all employees dismissed.
62. In relation to the failure to offer the Claimant work at Sucre, the Claimant originally asserted that other employees had been offered work at Sucre. He was, however, unable to provide any names of any employees who had been offered such employment. He was unable to provide any particulars of what roles they might have been employed in, or when. He pointed to the Statement of Affairs for the Liquidation in Bucket Group, showing payments to other employees. He said that an inference could be drawn that they were employed by Sucre. I did not agree that any such inference could possibly be drawn. It was illogical and unwarranted. There was no link between those names and any employment at Sucre.
63. On the Claimant's own case, he can give no positive evidence beyond a mere assertion that others were offered roles in Sucre, when he was not. I considered that there was no reasonable prospect that he would establish that he had been less favourably treated. There was no reasonable prospect of the Tribunal finding as a fact that others were employed when he was not on the basis of such a bare assertion. Even if he was able to establish that some other employees were employed and he was not (for example following disclosure), I considered that the Claimant's allegation was still nothing more than an allegation of difference in treatment and difference in protected characteristic. For example, the Claimant's claim still lacks any particulars of what roles those other employees might have been employed in, what their qualifications were and in what circumstances they were offered work. I decided that the burden of proof would not pass to the Respondent to show that disability (or something arising from disability) was not the reason that the Claimant was not offered work at Sucre.
64. Regarding Sucre's alleged failure to reply to his job application, the Claimant produced what he said was the job application to Sucre Ltd. It was a screenshot of an Instagram post by Sucre on 23 September 2021. The Instagram post said, ""We're hiring! Want to join the team at Sucre? Drop us an email at jobs@sucrerestaurant.com". The Claimant commented, below, on the Instagram post: "Hello @sucrelondon. Can I ask what positions you are considering please?" It was not in dispute that the Claimant did not send an email to the address stated on the Instagram post. The Claimant told me that he could not, in fact, have made any formal application for any job during 2021 because under the terms of his contract with Bucket Group LTD, he was not permitted to work elsewhere in the hospitality trade while he was still employed by Bucket Group.

65. I decided that there was no reasonable prospect of the Claimant succeeding in a claim that Sucre or Georgina Godik or Gregory Godik discriminated against him by failing to reply to this “job application”. The Claimant did not, on his own case, make an application for a job at Sucre at all. He merely made an enquiry about which jobs were available. He did not use the route specified, even to enquire about available jobs. He does not assert that others who made mere enquiries about available jobs, through the wrong route, were later offered work.
66. On those facts, the burden of proof would not pass to the Respondent to show that disability , or something arising from disability, was the reason the Respondent did not reply to his “application”.
67. Regarding his claim that he was underpaid until March 2020 because of something arising from disability, the Claimant agreed that he last worked in March 2020. Thereafter, he was in receipt of furlough pay and was not underpaid. He was given a different contract of employment from March 2020. He makes no complaint about disability discrimination in relation to furlough pay after his new contract was entered into.
68. March 2020 was therefore the last time when the was discriminated against by being underpaid. His complaint in that regard was over a year out of time. The Claimant, despite my prompting, did not give any reason why he had not brought his claim earlier than he did. It was for the Claimant to show why time should be extended. He failed to do so. I did not extend time for that complaint. The Tribunal therefore had no jurisdiction to consider it. I struck out this last disability discrimination complaint as it too had no reasonable prospect of success.

Remaining Claims

69. The Claimant remaining claims are are against Bucket Group Limited only.
70. The Claimant told me that the Redundancy Payments Office had not made full payments on his claims. He said there was a dispute with the insolvency practitioner about the value of his claims for holiday and wages. He said that he wished the Tribunal to make a decision about how much money he is owed for holiday, notice pay and other payments.
71. I will list his remaining claims for a hearing, for the Tribunal to determine liability and remedy. They are undefended by the First Respondent so I will list them for hearing before a judge sitting alone, for one day.

EMPLOYMENT JUDGE BROWN

On: 14 July 2022

SENT TO THE PARTIES ON

19/07/2022

FOR SECRETARY OF THE TRIBUNALS