



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms M Sonoo**

**v**

**Parvy Homes Limited**

**Heard at:** Watford

**On:** 16 August 2022

**Before:** Employment Judge Anderson

## **Appearances**

**For the Claimant: Mr V Sanassy (lay representative)**

**For the Respondent: Ms K Gill (solicitor)**

## **JUDGMENT**

1. The claimant's claim of unfair dismissal is struck out under Rule 37(1)(d) as it has no reasonable prospect of success.
2. The tribunal does not have jurisdiction in the claimant's claim for holiday pay as it is out of time. It was reasonably practicable for the claim to be presented in time and no extension of time is granted.
3. The claimant's claims of sexual orientation discrimination, unpaid wages and other payments are dismissed on withdrawal.

## **REASONS**

### **Background**

1. A preliminary hearing was ordered by EJ Lewis on 20 March 2022 to identify the legal and factual issues the tribunal will be asked to decide; to determine whether any of the claimant's claims should be struck out as having no reasonable prospects of success; to decide whether a deposit order should be made on the same ground; to list the case for hearing if appropriate and to make case management orders.

### **The Hearing**

2. I received a short bundle containing pleading and orders, and a witness statement from the claimant's husband, Mr Sanassy, who is also her representative. The claimant gave evidence on oath.

3. After some discussion with Mr Sanassy on sexual orientation discrimination he said that the claimant had misunderstood the meaning of that term, there was no sexual orientation discrimination, and that claim was withdrawn. Mr Sanassy said that there was no claim for unpaid wages or other payments.
4. After hearing from Mr Sanassy, the claimant on oath and Ms Gill for the Respondent I delivered the following judgement:

**Decision with Reasons**

5. The claims of sexual discrimination orientation, unpaid wages and other payments have been withdrawn. The claims of unfair dismissal and for holiday pay are maintained. Mr Sanassy explained that the claimant was dismissed by the respondent on 4 May 2021 when, the claimant alleges, Ms Luchman, Operations Director for the Respondent, threw her out of the workplace and told her not to come back. The respondent said that the claimant, who is employed under a zero hours contract, was not dismissed then and has not been to date.
6. I heard evidence from the claimant who said that she was dismissed when Ms Luchman told her to leave and not to return on 4 May 2021. She received no letter confirming dismissal and no other confirmation such as a P45. She went on to say that she had been thinking about whether to return but did not want to. She confirmed that the respondent had asked her on 5 August 2021 whether she wanted to return to work and had not decided at that time. The claimant confirmed that she had not resigned from her employment.
7. Mr Sanassy confirmed that dismissal was the last act complained of in relation to this claim to the tribunal. As the claim was not filed until 16 November 2021, after a period of early conciliation lasting from 14 September to 20 October 2021, the unfair dismissal claim it is substantially out of time. Mr Sanassy could give no explanation for this and said he was not sure why it was late. He thought it was in time. The claimant said that she had been ill with anxiety and stress after 4 May 2021 which was why the claim was not filed. I noted that a grievance was raised with the respondent on 9 May 2021 and put into writing on 28 August 2021. The claimant said that her husband helped her with the grievance. She could not say why this would not also apply to filing a claim in time.
8. The claimant's claim of unfair dismissal is struck out on the grounds that it has no reasonable prospects of success (*Rule 37(1)(b) Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Schedule 1*). I am aware that a claim should rarely be struck out where it is fact sensitive and particular regard should be had where the claimant is a litigant in person (in this case the claimant is represented by her husband in a lay capacity) as stressed in *Cox v Adecco and ors 2021 ICR 1307, EAT*. However, it was clear from the evidence given by the claimant that she was not dismissed on 4 May 2021 as she stated that the respondent asked her to come back to work in August 2021 and she was considering her position at that time. She also said that she was considering after the incident on 4 May whether to go back to

work. It is noted that the claimant is on a zero hours contract. She also confirmed that she had not resigned, and this is not therefore a case where constructive unfair dismissal is claimed.

9. Had I not found that claim should be struck out, it would have been out of time. I have considered whether it was reasonably practicable for the claimant to file the claim in time. Mr Sanassy was not sure why it was late. The claimant, an articulate witness, said she was ill which led to the delay but admitted that a grievance had been raised by WhatsApp on 9 May 2021 and in writing on 28 August 2021, also that her husband had been assisting her. The claimant is a person who is able to express herself clearly and I have no doubt could have accessed legal advice in person or by personal research about time limits. I find that it would have been reasonably practicable for the claimant to file the unfair dismissal claim in time and I would not have extended time.
10. The tribunal is without jurisdiction to hear the claimant's claim for holiday pay as it is out of time. Mr Sanassy said that the last act complained of was the dismissal (4 May). He confirmed that the claimant did not agree with the respondent that there was a conversation about holiday pay in September 2021 and that holiday pay should have been paid just after the claimant was dismissed on 4 May 2021. The claim was filed on 16 November 2021. For the reasons given above in paragraph 9 I find that it was reasonably practicable for the claim to have been presented in time and I decline to extend time.

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Employment Judge Anderson

Date: 19 August 2022

Sent to the parties on: 2/9/2022

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For the Tribunal Office