



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4109935/2021
Preliminary Hearing
Held on the Cloud Video Platform
on 14 October 2022**

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Employment Judge Jones

Mr M Angell

**Claimant
Not present and not
represented**

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Kwik-fit (GB) Ltd

**Respondent:
Represented by
Mr Bunting, Counsel**

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Judgment

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It is the Tribunal's judgment that the claimant's claim be struck out in terms of Rule 37(1) (a) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 as having no prospects of success.

Background and reasons

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1. This claim has a long procedural history. Postponements of preliminary hearings for the purposes of case management have been granted on three occasions on the application of the claimant's mother who has been representing him. On a further occasion, a preliminary hearing proceeded in the absence of the claimant or a representative, a request for postponement having been refused.
2. A preliminary hearing did take place on 3 August at which the claimant's representative attended. At that hearing, the claimant was asked to confirm

whether he wished to insist on a claim of unfair dismissal in terms of section 94 Employment Rights Act 1996 as he appeared to have less than 2 years' service. The claimant was asked to indicate if he did wish to insist on such a claim, on what basis he said that the Tribunal had jurisdiction to consider the claim.

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3. An email dated 25 August was sent on behalf of the claimant withdrawing the other aspects of the claimant's claims but insisting on a claim of unfair dismissal. The email stated "As he was only 9 weeks short of 2 years service we would wish to claim under this basis.'

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4. The respondent then made an application for the claim to be struck out on the basis it had no prospects of success.

5. The claimant requested a hearing to determine this application in an email dated 1 September.

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6. A hearing was listed to take place on the Cloud Video Platform. The clerk to the hearing made various attempts in the week preceding the hearing to conduct a test with the claimant's representative without success. On the morning of the hearing, when contacted by the clerk, Mrs Angell indicated that she was not able to join the hearing from the laptop she had borrowed. Mrs Angell was advised that the hearing would proceed at 10.30am and if she had not join the hearing by that stage, the hearing would proceed in her absence.

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7. Mrs Angell sent an email timed at 10.30am saying that she could not join and asking whether a postponement of the hearing could be granted. This email was not seen by me until the hearing had concluded.

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8. I heard submissions from counsel for the respondent on why the claim should be struck out. Essentially counsel indicated that the Tribunal had no jurisdiction to consider the claim as the claimant had insufficient qualifying service and accepted that the first date on which he could demonstrate he had worked for the respondent was consistent with his contract of employment.

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9. In these circumstances, I determined that the claim should be struck out. There is no legal basis on which a Tribunal has jurisdiction to consider a claim of unfair dismissal because the claimant is 9 weeks short of 2 years' service.

10. The claimant had been given an opportunity to make submissions in writing as to the basis on which it was said that the Tribunal had jurisdiction to consider the claim. A hearing was arranged at the request of the claimant's representative. Despite the efforts of the clerk, the claimant's representative failed to take part in a test in advance of the hearing and indicated that one was not necessary. The Tribunal is not convinced that, given Mrs Angell's reluctance to take part in a test in advance that she did in fact attempt to take part in the hearing. Even if she did do so, the failure to take part was due to her failure to take up the various offers of a test in advance. Therefore, I am satisfied that the claimant has been given a reasonable opportunity to make representations as to whether the claim should be struck out both in writing and at a hearing.

11. The claim is therefore struck out as of today's date.

15 Employment Judge: Amanda Jones
Date of Judgment: 14 October 2022
Entered in register: 25 October 2022
and copied to parties

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