



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Jordan Phillips-Gaynor

v

(1) PMP Recruitment Limited; and  
(3) Ms Anmol Gul

**Heard at:** Huntingdon

**On:** 28 November 2022

**Before:** Employment Judge Ord

## Appearances

**For the Claimants:** Ms Jordene Phillips-Gaynor, Family Member

**For the Respondent:** Mr Paul Brill, Solicitor

## JUDGMENT on STRIKE OUT APPLICATION

1. The Third Respondent is released from these proceedings, the claims against her are dismissed on withdrawal.
2. The Claimant's complains that:
  - 2.1 He was automatically unfairly dismissed because of his status as a fixed term worker;
  - 2.2 The termination of his engagement or his dismissal was an act of less favourable treatment because of his status as a fixed term worker; and that
  - 2.3 His dismissal was automatically unfair for health and safety reasonsare dismissed as they have no reasonable prospects of success.
3. The remaining claims as identified in Employment Judge Quill's Case Management Summary and Orders dated 9 August 2022, proceed to a Final Hearing.

## REASONS

1. This matter came before me following an Order of Employment Judge Quill on 9 August 2022.
2. At that time the Second Respondent had made an Application to strike out the claims brought against it, the Third Respondent had made an Application for a Deposit Order.
3. Subsequently on 4 November 2022, the First Respondent made an Application for Strike Out or Deposit Order and the Second Respondent are no longer a party to these proceedings.
4. During the course of today's Hearing the Claimant accepted that, on the basis that any acts or omissions which amounted to acts of discrimination of which the Third Respondent was guilty would be met by the First Respondent as they accepted vicarious liability for such acts or omissions (no statutory defence being pleaded or pursued), the Claimant was content that the claim against the Third Respondent should be dismissed on withdrawal.
5. I have had before me today a Bundle of documents, chronology and a witness statement on behalf of the First Respondent from Mr Alexescu. I have heard from Mr Brill, Solicitor for the First and Third Respondents and from the Claimant and his assisting family member, Ms Phillips-Gaynor.
6. Employment Judge Quill had identified the complaints which are made in this claim and in summary they were:
  - 6.1 a complaint that the Claimant had been automatically unfairly dismissed for Health and Safety reasons or because of his status as a fixed term worker;
  - 6.2 an allegation of less favourable treatment as a fixed term worker when the Claimant's assignment was ended or dismissed, or when he was dismissed;
  - 6.3 direct discrimination contrary to s.13 of the Equality Act 2010 when the Claimant was:
    - 6.3.1 required to move to another location (Dartford);
    - 6.3.2 told that his assignment was ended; and
    - 6.3.3 dismissed -  
  
on the basis of his age or race;
  - 6.4 a breach of contract amounting to unpaid notice pay and an unpaid sign on bonus.

7. In relation to these matters I reached the following conclusions.

### Conclusions

8. The Claimant was not a fixed term worker. He was engaged as an Agency worker at Amazon, employed by the First Respondent.
9. He was placed on assignment at Amazon premises in Barking which are very close to his home, after he responded to an advertisement placed through the “Indeed” website. His contract was with the First Respondent. The First Respondent was his employer.
10. The Claimant’s assignment was, according to his letter of appointment, expected to last 39 weeks but in fact after the Claimant began work on 25 November 2021, it was ended on 29 December 2021 – five weeks later.
11. According to the First Respondent, this was due to a “*ramping down*” of requirements for workers at the Amazon premises in Barking.
12. The Claimant says a number of employees were retained at Barking. He says that they were mainly people who had worked at other locations previously, that they were of Asian descent, whilst the Claimant is Black British Carribean.
13. It is not clear to me, nor has it been explained at all, what role if any the First Respondent had in determining which employees would stay and which would leave and how they were selected. Absent that information, the Claimant’s assertion that he was selected either because of his age or his race cannot be said to have no or little reasonable prospects of success. It is a matter for evidence at the Final Hearing.
14. It is not clear if the Claimant has been dismissed or not. There is a document in the Bundle produced before me, described in the Index as being of the First Respondent’s production (but I am told today by Mr Brill that it is in fact a document from Amazon) that states that the Claimant’s position is “*terminated*”. By contrast, the First Respondent says that the Claimant remains in the employee of the Respondent.
15. The claimant has not received a P45, but the absence of a P45 document is not determinative. I am told by Mr Brill that ordinarily if an employee has not been offered or accepted an assignment within four or six months of the end of his or her final assignment, then a P45 is automatically generated. But that this is not done in circumstances where proceedings have been issued with an allegation of discrimination. The issue of whether or not employment has ended is a matter for determination on evidence at the Final Hearing.

16. For those reasons, it cannot be said that the Claimant's assertion that he was dismissed for reasons relating to age or race have little or no reasonable prospects of success.
17. The Claimant's allegation that his dismissal was due to his raising Health and Safety matters has no reasonable prospects of success. The only Health and Safety matter raised by the Claimant and referred to in these proceedings is that travelling to another location where he was offered work (Dartford) would take too long, and because he was using Public Transport he would be at increased risk of contracting the Covid-19 virus. He also states this could impact on his mental health, but no evidence for that latter allegation has been produced.
18. The reason why the Claimant refused the alternative work which had been offered to him was clearly a matter of convenience for him. Added travel time was the key factor. This was not a Health and Safety related reason and this claim has no reasonable prospect of success.
19. As regards the Claimant's breach of contract claim, the First Respondent denies the Claimant has been dismissed (that is a matter for determination at the Final Hearing). If the Claimant has been dismissed, it will be a matter for determination at the Final Hearing as to whether or not the Claimant is entitled to any notice pay and whether that dismissal was discriminatory.
20. The Claimant also says that he responded to an advertisement when he obtained the work at Barking, which offered a £2,000 "sign on" bonus. He no longer has the advertisement. However, other advertisements have been produced which show some signing on payment being payable.
21. It is surprising that the First Respondent has not produced a copy of the relevant advertisement and absent the advertisement which the Claimant actually replied to, I cannot say that his case has little or no reasonable prospect of success.

## Summary

22. Accordingly, the following issues / claims proceed to a Final Hearing:
  - 22.1 Has the Claimant been dismissed by the First Respondent, and if so, on what date?
  - 22.2 Was the Claimant subject to direct discrimination because of his race, or alternatively, because of his age, when:
    - 22.2.1 his assignment was ended;
    - 22.2.2 he was required to move to Dartford to continue work; and
    - 22.2.3 he was dismissed?

- 22.3 The Claimant says other employees of the First Respondent not sharing the Claimant's protected characteristics were retained at Barking.
- 22.4 Did the Claimant suffer a breach of contract by the non-payment of a sign on bonus, and if so, in what sum?
- 22.5 If the Claimant has been dismissed, is he entitled to any notice pay, and if so, in what sum?

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Employment Judge Ord

Date: 13 January 2023

Sent to the parties on: 27 January 2023

For the Tribunal Office.