



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102288/2022

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Held in Glasgow on 3 February 2023

Employment Judge L Wiseman

10 **Mr U Punnuri**

**Claimant
In Person**

15 **AKS Shawlands Ltd**

**First Respondent
No appearance and
No representation**

20 **Muhammad Shahzad**

**Second Respondent
-as above**

25 **AKS Victoria Ltd**

**Third Respondent
-as above**

30 **Venturaone (a partnership)**

**Fourth Respondent
Represented by:
Mr Brien -
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to strike out the claim against the fourth respondent in terms of Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 because it has no reasonable prospect of success.

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REASONS

1. The claimant presented a claim to the Employment Tribunal on the 26 April 2022 complaining that he had been discriminated against because of the

protected characteristics of race, age, religion and belief. The claimant also asserted payments were due in respect of notice, holiday pay and wages.

2. The first, second and third respondents have not entered a Response to the claim. The fourth respondent has entered a Response denying the claims.

5 3. The claim brought by the claimant against the fourth respondent is that he made one or more protected disclosures to the fourth respondent and he suffered detriment on the ground that he had made one or more protected disclosures (section 43B Employment Rights Act). The detriment said by the claimant to have occurred was that the fourth respondent ignored his
10 concerns.

4. The case has been the subject of significant case management. Employment Judge Smith noted, at a case management preliminary hearing on the 3 October 2022, that *“the claimant’s claims against the Fourth Respondent appear to be inherently weak because the Fourth Respondent was not his
15 employer or a fellow worker even if it could be argued that it had some kind of legal responsibility for what the claimant says occurred. Further, the person to whom the claimant contends he made this protected disclosure was the receptionist and not necessarily “the employer”. On the next occasion the Tribunal may wish to consider listing the case for a preliminary hearing in
20 order to determine whether the case should be struck out against the Fourth Respondent as having no reasonable prospect of success, and in the alternative, determine whether the claimant should be ordered to pay a deposit as a condition of being permitted to continue with the claim.”*

5. Employment Judge Whitcombe, at the case management preliminary hearing
25 on the 8 December 2022, listed the case for this hearing to determine the fourth respondent’s application for the claim against it to be struck out, or a deposit ordered as a condition of continuing with the claim. He noted there were two broad reasons for his decision: first it was difficult to see the legal route by which the Fourth Respondent becomes liable to the claimant under
30 the Employment Rights Act 1996 even if it had done what was alleged.

Second, the Fourth Respondent argued that the claimant had completely misunderstood its nature, role and relationship to other Subway franchisees.

6. I heard evidence from Mr Shahid Sadiq, Director of the fourth respondent and I was referred to a jointly produced folder of documents. I made the following material findings of fact.

Findings of fact

7. The fourth respondent, Venturaone, is a partnership comprising two corporate partners SWS-1 Limited and SWS-2 Ltd.

8. Mr Shahid Sadiq and Mr Wahid Sadiq are the Directors of both companies and each own a 50% share in each company.

9. Venturaone is a franchisee of the Subway network. It has purchased 12/13 franchises of the Subway restaurant franchise (page 187) and operates those restaurants. The franchisor is Subway International BV, based in Amsterdam.

10. Venturaone employs staff to work in its various Subways. Venturaone did not employ, and have not at any time employed, the claimant.

11. Venturaone has no relationship with the three other respondents named in these proceedings.

12. Mr Shahid Sadiq is a Business Development Agent for Subway in the West of Scotland. He operates this business through a company called SWS DA Ltd.

13. Mr Sadiq, in his capacity as a Business Development Agent, supports and develops the area for Subway International BV. Mr Sadiq earns commission on new franchise businesses opening in his area. He also receives a percentage from sales in his area.

14. Mr Sadiq will visit Subway franchises, provide support and advice (particularly regarding revenue generation and resolution of complaints) carry out audits and report issues to Subway International. Mr Sadiq has no operational

control over other franchises, no control over pricing and cannot take “action” against a franchisee.

15. Mr Sadiq accepted the claimant had made contact with Ms Ali Raja, Development Co-Ordinator, who is one of the team (of 3) employed by SWS DA Ltd. Ms Raja passed on details of the claimant’s phone call to Mr Sadiq in December. Mr Sadiq spoke to the franchisee about the claimant’s complaint and asked him to look into it and sort it out. Mr Sadiq has no role in resolving employer/employee disputes in franchises other than the ones operated by Venuraone.

10 **Respondent’s submissions**

16. Mr Brien noted the application of the fourth respondent was to have the claim against them struck out because it had no reasonable prospect of success; or, in the alternative, to have the tribunal order that a deposit be paid as a condition of continuing with the claim in circumstances where the claim had little reasonable prospect of success.

17. Mr Brien submitted the claim should be struck out because the fourth respondent was not the employer of the claimant. The legal basis for the claim was section 48 Employment Rights Act. There was no suggestion the fourth respondent was the claimant’s employer (section 47B(1)(a)), nor was the fourth respondent another worker of the employer or an agent of the employer. Mr Brien referred the tribunal to the documents produced at pages 186 and 187.

18. The claim brought was against the fourth respondent and not against Mr Sadiq in his personal capacity. There was, it was submitted, a misunderstanding by the claimant of the Subway franchises and the fourth respondent. The claimant was confusing the role and remit of the Business Development Agent with ownership of the fourth respondent and the franchises it owns and operates.

19. Mr Brien acknowledged the Business Development Agent did provide support to franchisees, but this had no connection to the fourth respondent.

20. Mr Brien submitted that even if there was a legal basis for the claims, there had not been a protected disclosure. The complaint had been made to Venturaone.

5 21. Mr Brien invited the tribunal to grant the respondent's application to have the claim struck out because there was no prospect at all of the claimant satisfying the tribunal the fourth respondent had legal liability in this case.

22. (It was agreed that should the tribunal decide not to strike out the claim, but to order a deposit, the claimant would, at that stage, be invited to provide information regarding his financial means).

10 **Claimant's submissions**

23. Mr Punnuri submitted that Mr Sadiq, in his role as Business Development Agent, worked in the offices of the fourth respondent, and his email address was that of the fourth respondent. Mr Punnuri had assumed the fourth respondent had been tasked with doing the business development work.

15 24. Mr Punnuri submitted the business development agent appeared to have extensive control of the franchisees, and he believed the fourth respondent or Mr Sadiq had capacity to address issues.

25. Mr Punnuri had contacted Subway International BV and understood from them that the role of the business development agent was to deal with issues.

20 26. Mr Punnuri submitted Mr Sadiq was paid by Subway International BV, and he worked for Venturaone.

Discussion and Decision

25 27. The tribunal had regard to the relevant statutory provisions. Section 47B Employment Rights Act provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

28. Section 47B(1A) goes on to provide that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done by another worker of the claimant's employer in the course of that other worker's employment, or by an agent of the claimant's employer with the employer's authority.
29. The tribunal also had regard to the terms of Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 which provides that a tribunal may, either on its own initiative, or on the application of a party, strike out all or part of a claim on the grounds that it has no reasonable prospect of success. Rule 39 provides that where a tribunal considers a claim or any part of it has little reasonable prospect of success, it may make an order requiring a party to pay a deposit as a condition of continuing to advance that claim, allegation or argument.
30. Mr Punnuri has brought a claim against the fourth respondent asserting he made a protected disclosure to them and, because of having done so, he was subjected to the detriment of having his concerns ignored. The claim is brought under section 47B Employment Rights Act.
31. The claimant has the right, in terms of section 47B(1) (above) not to be subjected to any detriment by "his employer". The first issue the tribunal addressed was whether the fourth respondent was the claimant's employer. The tribunal noted the claimant did not seek to suggest he had worked for/at any of the franchised premises which are owned and operated by the fourth respondent (as set out on page 187). He did not suggest he was an employee of the fourth respondent.
32. The claimant's position (per page 126) was that Venturaone was the main Subway headquarters and official franchise distributor in the West of Scotland. The fourth respondent was the head of the franchisees and oversaw all the operations of the Subway stores in the area. They had power and responsibility to monitor and control the operation of each Subway franchise to maintain the standards of the brand, and the right to withdraw the franchisee's licence to operate.

33. These assertions are not factually accurate. Venturaone purchased a number of franchises from Subway International BV and it operated the Subway premises for which it had purchased the franchise. Venturaone employed a number of employees in each restaurant: the claimant was not one of the employees employed by Venturaone.
34. Venturaone had no role in business development. It was Mr Sadiq, in his personal capacity, who was the Business Development Agent for Subway International BV in the West of Scotland. Mr Sadiq has another company SWS DA Ltd through whom he employs a small team of three employees to assist him in the business development role.
35. Mr Punnuri sought to challenge whether Mr Sadiq was using Venturaone to facilitate the business development work, and to this end he pointed to the fact Mr Sadiq used an @venturaone email address and appeared to work out of the Venturaone office. Mr Sadiq accepted the same office premises were used and that he used an @venturaone email address, but denied that Venturaone had any involvement in the business development work. The tribunal accepted Mr Sadiq's evidence and accepted Venturaone had no involvement in the business development work.
36. The tribunal concluded the fourth respondent was not the employer of the claimant. The tribunal next asked whether the fourth respondent or Mr Sadiq was an agent of the claimant's employer. The tribunal assumed the claimant believed the first and/or third respondent was his employer. The tribunal was satisfied there was no relationship between the first/third respondents and the fourth respondent beyond them each being franchisees of Subway International BV, the franchisor of Subway.
37. The tribunal was also satisfied that Mr Sadiq was not an agent of the first and/or third respondent. Mr Sadiq was the Business Development Agent for Subway International BV. Mr Sadiq's role was to offer advice and support to franchise businesses in his area. Mr Sadiq and Subway International BV benefitted from developing new franchises and from existing franchises prospering. Mr Sadiq did obtain reports and did monitor businesses, but he

had no authority to take action against franchisees or to withdraw their licence to operate: that would be for Subway International BV. Mr Sadiq did not act on behalf of franchisees and did not involve himself in employer/employee disputes other than to encourage a franchisee to resolve matters.

5 38. The tribunal concluded, having taken into account the evidence of Mr Sadiq, the findings of fact and the above considerations, that Mr Sadiq was not a worker or an agent of the first or third respondent.

39. The tribunal decided the claimant has no legal basis to bring a claim against the fourth respondent and accordingly the tribunal decided to strike out the
10 claim against the fourth respondent.

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Employment Judge: L Wiseman
Date of Judgment: 09 February 2023
Entered in register: 09 February 2023
20 **and copied to parties**