



EMPLOYMENT TRIBUNALS

Claimant: Mr T Asmashiel

Respondent: ADP Call Centres Ltd

Heard at: Liverpool by telephone

On: 14 February 2023

Before: Employment Judge Grundy

REPRESENTATION:

Claimant: did not attend the hearing

Respondent: Mr S Esmond Employment Consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal is struck out because the claimant does not have 2 years qualifying service pursuant to section 108 Employment Rights Act 1996. The Tribunal has no jurisdiction to hear the claim.
2. The claimant's claims for discrimination under the Equality Act 2010 on the grounds of sex and his claim on the grounds of sexual orientation are struck out under rule 37(1) (a) and (d) on the grounds that the claims have no reasonable prospect of success and the claims have not been actively pursued.

REASONS

1. The claimant was employed as a customer service advisor from the 5 January 2022 until 14 January 2022 by the respondent who were providers of outsourced telephony and other virtual services. He makes claims for unfair dismissal and discrimination on the grounds of sex and sexual orientation.

2. A strikeout warning was sent to him by the Tribunal, as under section 108 of the Employment Rights Act 1996 he does not have the requisite two years qualifying service to bring a claim for unfair dismissal for that reason his claim has been struck out to today.
3. In relation to the sexual discrimination and sexual orientation discrimination claims the tribunal listed a preliminary hearing by telephone. The claimant has not attended the hearing, the tribunal heard briefly from Mr Esmond as the tribunal's preliminary view was that the claims were unmeritorious and should be dismissed under Rule 37(1) (a) and (d).
4. It is the respondent's case from the ET3 that the claimant was dismissed due to serious concerns about his treatment of women at the workplace in the short period of his employment. Further that he failed to follow a management instruction to 'is keep his head down and get on with the job' It would appear there is no matter upon which the claimant relies for which a tribunal could conclude that a female in the same position as him speaking to man would be treated any differently and the same applies in relation to failing to follow a management instruction which was reasonable.
5. It is unfortunate that after his dismissal the ET3 records the claimant sent correspondence to the manager, which was threatening and offensive.
6. The claimant did not attend the tribunal today but the tribunal received emails from him on the 13th and 14th of February in the email on 13 February at 1425 he indicated, 'that he was seeking confirmation..if I can still cancel the case'. In that email he made derogatory slurs about an individual concerned and was offensive.
7. In the email on 14 February sent at 02.47 he said 'I'm obviously going to end this here then it won't be taking any more of my time'. The tribunal concluded that taken together with his non-attendance at the hearing the claimant was not seeking to actively pursue his claims.
8. Rule 37 of the employment tribunal rules 2013 provides as follows:

Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

1. (a) that it is scandalous or vexatious or has no reasonable prospect of success;
2. (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
3. (c) for non-compliance with any of these Rules or with an order of the Tribunal;
4. (d) that it has not been actively pursued;
5. (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

9. The EAT has held that the striking out process requires a two stage test in **HM Prison service v Dolby 2003 IR LR 694** EAT at paragraph 15. The first stage involves finding that one of the specified grounds that striking out has been established and if it has the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim, order it to be amended or order a deposit to be paid.
10. The Tribunals concluded that it was appropriate and in the interests of justice to strike out the claims the claimant had the opportunity to attend by telephone but chose not to. The claimant did not attend the hearing and the claimant's emails express a clear intention not to pursue the claim.
11. The Tribunal's provisional reading of the documents ET1 and ET3 and some correspondence (although Mr Esmond said there was more), lends itself to a conclusion that there is no reasonable prospect of success in relation to the discrimination claims. In the circumstances the tribunal considers it appropriate to strike out all of the claimants claims.
12. The tribunal has already sent a warning letter to the claimant regarding his correspondence if the claimant does not stop sending offensive correspondence to the tribunal the matter will be referred to the Regional Employment Judge.

Employment Judge Grundy
Date 14th February 2023

JUDGMENT SENT TO THE PARTIES ON
15 February 2023

FOR THE TRIBUNAL OFFICE

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