EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Y LAOUEJ	**v**	**VEOLIA ES (UK) LIMITED**

Heard at: London Central (by video)

On: 17 May 2023

Before: Employment Judge P Klimov (sitting alone)

Representation:

For the Claimant: in person

For the Respondent: Ms R Senior, counsel

JUDGMENT

The respondent's application to strike out the claimant's claim fails and is dismissed.

REASONS

Background and Issues

1. On 4 December 2022, the claimant presented a claim form ("**ET1**") to the Tribunal. In paragraph 8.1 of the ET1 the claimant ticked the box "*I am making another type of claim which Employment tribunal can deal with*". He did not tick any other boxes. In response to "*Please state the nature of the claim*", the claimant wrote "*accident at work*".

2. In box 8.2 he gave details of his claim. He described an accident at work on 11 February 2021, when he fell from the respondent's refuse collection truck

and injured his back. He said that he had reported the accident to his foreman and the company's manager, and that following the accident he found himself facing allegations of misconduct and being subjected to extensive investigation by the respondent.

3. He complained that the delay in investigation had caused him anxiety and stress. He indicated that he was seeking compensation and a recommendation but provided no further details.

4. On 20 February 2023, the respondent entered a response asking the Tribunal to strike out the claim for want of jurisdiction, because the claimant's claim was for compensation for personal injury, and this type of claims was not judiciable in employment tribunals.

5. On 18 April 2023, Employment Judge Hodgson directed that there shall be a preliminary hearing to determine whether the claim should be struck out and, in the alternative, to give case management orders.

6. The claimant appeared in person. Ms Senior appeared for the respondent. There was a bundle of document of 29 pages the respondent prepared for the hearing. The claimant submitted further documents, 20 pages in total. These were largely statements prepared by his colleagues about the alleged negligent driving by Mr South, whom the claimant blames for the accident on 11 February 2021. There was also a statement from the claimant, his medical records, and some other documents. All of them were of little relevance to the issue I needed to decide. No witnesses were called by the parties.

7. The claimant was assisted at the hearing by an interpreter, Mr Adil Osmar, to whom I extend the Tribunal's gratitude for his good services.

Submissions

8. At the start of the hearing, I explained to the claimant that employment tribunals were a statutory creation and, unlike civil courts, were limited as to the types of claims they could hear. In particular, claims for personal injury arising from accidents (whether at work or not) fall outside the employment tribunal's remit.

9. I asked the claimant what his complaint was about. The claimant said that his complaint was about health and safety at work. He described the accident and how much he suffered physically and emotionally after the accident. He also said that after the accident he was mistreated by the respondent. He said that the respondent harassed him, that the investigation into the accident took two years to complete, that he was put on sick pay instead of his full pay, that he had a disciplinary meeting, at which he was accused of benefit fraud and told that if he had not resigned voluntarily, he would be reported to the authorities. He said that all this had caused him a lot of distress because he had done nothing wrong.

10. I clarified with the claimant that the disciplinary meeting he was referring to was on 23 March 2023. The claimant also confirmed that he had been dismissed by the respondent on 17 April 2023 and was appealing his dismissal, with the appeal meeting fixed for 26 May 2023.

11. I passed it over to Ms Senior to make her strike out application. Ms Senior made very clear and thorough submissions drawing my attention to the relevant parts of the ET1 and the relevant authorities. Recognising her duties to the Tribunal and her professional obligations, in her submissions she highlighted the relevant factual issues and legal points that I needed to take into account, even where some of those were not in support of the respondent's application. Her approach was co-operative and courteous at all times. I am grateful for that.

12. In sum, the respondent's application was made under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 ("**the ET Rules**") on the ground that the claimant's claim has no reasonable prospect of success. Ms Senior argued that the only discernible claim in the claimant's ET1 is one for personal injury arising from the accident on 11 February 2021, and claims for the recovery of damages or a sum due in respect of personal injuries are not judiciable in employment tribunals (see s.3(3) of the Employment Tribunals Act 1996 and Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('**the Order**'). Therefore, she argued, the claim must be struck out for want of jurisdiction.

13. At the end of her submissions, I asked Ms Senior whether the claimant's ET contained a complaint of a detriment for raising a health and safety concern contrary to s.44(1)(c) Employment Right Act 1996 claim. Ms Senior said that the respondent's position was that the ET1 did not contain any such complaint, because there were no suggestions on the face of it that a health and safety complaint had been made, and an "oblique" reference was not enough. Ms Senior also said that there was no reference in the claim form to the claimant making a protected disclosure and ticking box 10 in the ET1 (information to regulators in protected disclosure cases) was not enough. In support for her contention, she referred me to the EAT decision in *Parekh v London Borough of Brent* EAT 0097/11.

14. Responding to the application, the claimant said that he felt he was treated unfairly by the respondent, that his claim was for health and safety and for the harm he had sustained as a result the respondent's treatment. He said that following the accident the respondent had issued health and safety guidance on how to mount and dismount a truck.

Analysis and Conclusion

15. Ms Senior referred me to various authorities on the tribunal's exercise of its powers under Rule 37 of the ET Rules. Many of those are only relevant in the circumstances where a tribunal is asked to strike out a claim that falls within jurisdiction of employment tribunals. They are of little assistance when it

comes to the issue of whether an employment tribunal has jurisdiction to consider the type of a claim before it. That is because if the tribunal does not have such jurisdiction, there is no discretion to exercise whether or not to strike out the claim. If this type of claims is not judiciable in employment tribunals, the tribunal simply does not have any authority to adjudicate on it, and any decision it might make in purported determination of such claim would be a nullity, as a matter of law.

16. The real question for me is whether the claimant's ET1 on the face of it discloses a complaint judiciable in employment tribunals. If it does – that complaint should proceed further, if it does not – the tribunal has no jurisdiction over the claim, and therefore it stands to be struck out for want of jurisdiction.

17. I accept that the claimant complains about the accident at work, him falling from the respondent's truck and sustaining a back injury, as the foundation of his claim. He also seeks compensation for the sustained injury.

18. I pause here to say that I make no factual findings and no legal determinations as to whether the accident did in fact happen, whether the driver of the truck was negligent or otherwise in breach of health and safety rules, the extent of the respondent's liability for actions/omissions of the driver, or whether the claimant sustained an injury as a result of the alleged accident. All these questions are not relevant for the determination of the issue before me.

19. If the claimant complaint were indeed only about him falling from the truck and sustaining an injury and he was seeking compensation only for that, such claim would undoubtedly fall outside the Tribunal's jurisdiction and be liable to be struck out on that basis.

20. Furthermore, the Tribunal has jurisdiction to hear claims for the recovery of damages or any other sum, which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine, if the claim arises or is outstanding on the termination of the employee's employment (Article (3)(c) of the Order). Because the claimant was still employed by the respondent when he brought this claim, the Tribunal does not have jurisdiction to consider any contractual or tortious claim even if it was not for compensation for personal injury.

21. However, the question is whether that is the only complaint that the claimant's ET1 contains. The claimant says his complaint is about health & safety. This, however, does not advance the matter much further. My exercise is to read the claimant's ET1 and decide whether on a fair reading it as a whole it discloses any other complaint judiciable in employment tribunals.

22. I accept Ms Senior's helpful submissions on the relevant legal principles, in particular that a claim form must be read by reference of the entire document and not simply by reference to ticked or non-ticked boxes. The law is

summarised by Mr Luba QC (Recorder, as he then was) in *Parekh v London Borough of Brent* EAT 0097/11 at [12].

23. As Ms Senior correctly identified, the fact that the claimant is a litigant in person and has limited command of English are also the factors, which I need to take into account in construing his ET1. In reading his claim form I must avoid engaging into pernickety and overcritical analysis. This, however, does not mean that I can read into his ET1 a complaint, which on the face of it is simply not there. Ms Senior correctly referred me to the EAT decision in *Cox v Adecco and ors* 2021 ICR 1307, EAT, in particular paragraphs 28 – 32, which I duly take into account.

24. In my judgment, on a fair reading of the claimant's ET1 it does contain a complaint for detriment contrary to s. 44(1)(c) ERA.

25. S.44(1)(c) ERA states:

44.— Health and safety cases.

(1) An employee 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—

(c) being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

26. At 8.2 the claimant's ET1 states [***emphasis added***]:

I felt from the Veolia truck onto the ground and injured my back whilst on duty *collecting and loading the bins during my shift. I attribute my accident to the negligent driving and conduct of Mr South.* ***Immediately following the incident, I informed my foreman and my company's manager****.*

Although I was the victim of the accident, ***I found myself facing allegations of misconduct and failure to comply with the health and safety policies I have been subject to extensive investigation by Veolia*** *which remains ongoing to date*.

27. On my reading of that passage it contains all the constituted elements of a complaint under s.44(1)(c): - a detriment of being accused of misconduct and subjected to extensive investigation, bringing to the employer's attention circumstances connected with the claimant's work (falling from the truck whilst on duty), which he reasonably believed were harmful or potentially harmful to health and safety (falling from the truck and injuring his back due to the alleged negligent driving and conduct of Mr South), and the causative (on the

ground that) link (*Immediately following the incident, I informed my foreman and my company's manager. Although I was the victim of the accident ….*).

28. I do not accept Ms Senior's submission that there is no suggestion of a health and safety complaint. On any reasonable view, falling from a truck whilst at work and sustaining a back injury are the circumstances connected with the claimant's work which were harmful to his health or safety, and it would seem very reasonable for the claimant as the victim of the accident to hold such a belief.

29. Also, whether or not what the claimant told his foreman and the respondent's manager qualifies as a protected disclosure under 43A ERA is neither here nor there. It is not a claim for protected disclosure detriment contrary to s.47B ERA. It is hard to see why informing the foreman and the company's manager would not be bringing the matter to the employer's attention, *by reasonable means*.

30. I do accept that to make out his claim under s.44(1)(c), the claimant will still need to prove that either at his place of work there was no health and safety representative or safety committee, or there was such a representative or safety committee, but it was not reasonably practicable for him to raise the matter by those means. This might create potentially serious obstacles for the claimant. However, this is a matter for evidence in due course. Besides, there is no application before me to strike out the claimant's s.44(1)(c) complaint as having no reasonable prospect of success on that basis.

31. To conclude, I find that the claimant's claim does contain a complaint under s.44(1)(c) ERA, which complaint falls within jurisdiction of employment tribunals. Accordingly, the respondent's application to strike out the claimant's claim fails and is dismissed.

Employment Judge Klimov

17 May 2023

Sent to the parties on:

18/05/2023

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For the Tribunals Office

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