



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number 4108488/2022**

**Held in Glasgow on 31 March 2023**

**Employment Judge C McManus**

**Mr C Douglas**

**Claimant  
No appearance and  
No representation**

**Scottish Fire and Rescue Service**

**Respondent  
Represented by:  
Ms R Medlock –  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

In terms of the powers conferred under Rule 27 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, this claim is dismissed.

### **REASONS**

#### **Background**

1. At the stage of Initial Consideration of this claim, under Rule 26 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('The Tribunal Rules') and on consideration of the position in the ET1 and ET3, I considered that further information was required from the claimant. On 26 February 2023, correspondence was sent from the Tribunal office to the claimant (copied to the respondent's representative) directing the claimant to provide a written response to the position set out at paragraphs 8 – 10 of the respondent's paper apart. Those paragraphs 8 – 10 state:

*"8. The employment tribunal has no jurisdiction to the claim as set out by the claimant. The claim as brought is not covered by sections 2 and 3*

*of the Employment Tribunals Act 1996. Section 3(3) Article 3 specifically exclude from the types of contractual claim that may be brought before an employment tribunal, the recovery of damages or a sum due in respect of personal injuries.*

9. *The employment tribunal therefore has no jurisdiction and is not competent to hear the claim as brought.*
  10. *Accordingly, the Employment Tribunal is invited to reject this claim under Rule 12 of the Employment Tribunals Rules of Procedure, contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.”*
2. On 6 February 2023, no response having been received from the claimant, further correspondence was sent from the Tribunal office to the claimant (copied to the respondent’s representative). In that correspondence, the claimant was directed to reply in writing by no later than 13 February 2023. No correspondence has subsequently been received from the claimant to the Tribunal office.
  3. On 6 February 2023 the respondent’s representative sent an email to the Tribunal office, copied to the claimant, with an attached handwritten note. The respondent’s representative’s position in that email was that the handwritten note had been received from the claimant. In that email, the respondent’s representative position was that the handwritten note did not disclose a claim which the Employment Tribunal has jurisdiction to hear. The respondent maintained their position that no claim was set out by the claimant which the Employment Tribunal had jurisdiction to hear.
  4. On the direction of EJ M Whitcombe, on 8 February 2023, correspondence was sent from the Tribunal office to the parties stating:  
  
*“Employment Judge M Whitcombe’s current view is that neither the ET1, nor any of the other documents subsequently submitted by the claimant, have identified a type of claim falling within the jurisdiction of an Employment Tribunal which has a reasonable prospect of success. Therefore, a hearing*

*will be listed under Rule 27(3) of the ET Rules of Procedure, to decide whether the claim, or any part of it, should be permitted to proceed. The respondent may, but need not, attend and participate in the hearing. Under Rule 27(4), the Employment Judge will make a case management order if any part of the claim is permitted to proceed.”*

5. A Notice of Hearing was separately sent to both parties, giving details of a hearing in person at Glasgow Tribunal Centre at 10am on Friday 31 March 2023, to decide whether the claim (or part of the claim) should be permitted to proceed. This hearing was listed to be in person because the claimant had indicated in his ET1 form that he was unable to participate in a video hearing.

#### **Rule 47**

6. The claimant was not present at the Hearing on 31 March 2023. There was no explanation provided for his non-appearance. A Tribunal clerk phoned the contact number provided in the ET1. It was not answered and a message was left on the answering service asking the claimant to contact the Tribunal office as soon as possible in respect of his non-attendance at this hearing. No contact was then made by the claimant. There was no explanation for the claimant's absence. In the claimant's absence, the Hearing began at 10.25am, with the respondent's representative being present and making submissions.
7. Rule 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended ('the ET Rules of Procedure'), states:-

*“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.”*

8. The claim could then have been dismissed under Rule 47, on the claimant's absence at this hearing and failure to provide any explanation for that absence. Rule 47 provides that alternatively the hearing can proceed without the absent party. This hearing proceeded, with consideration of the respondent's representative's submissions in respect of Rule 12 and Rule 27 of the Tribunal Rules.

### **Rule 12**

9. I did not accept the respondent's representative submission that the claim should be dismissed under Rule 12. Rule 12 applies before service for the claim. This claim was served on the respondent and was not dismissed under Rule 12 of the ET Rules of Procedure.

### **Rule 27**

10. Rule 27 of the ET Rules of Procedure states:-

*(1) If the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, the Tribunal shall send a notice to the parties—*

*(a) setting out the Judge's view and the reasons for it; and*

*(b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.*

*(2) If no such representations are received, the claim shall be dismissed from the date specified without further order (although the Tribunal shall write to the parties to confirm what has occurred).*

*(3) If representations are received within the specified time they shall be considered by an Employment Judge, who shall either permit the claim (or part) to proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so. The respondent may, but need not, attend and participate in the hearing.*

*(4) If any part of the claim is permitted to proceed the Judge shall make a case management order.*

11. This hearing was fixed under Rule 27(3). No written representations were received by the Employment Tribunal from the claimant. The handwritten note which was sent to the Tribunal office from the respondent's representative on 6 February 2023, purporting to be a note sent to them from the claimant, does not set out the legal basis of a claim which the Employment Tribunal has jurisdiction to hear. That note includes the position that *'I had no doubt been a victim of discrimination and bullying and harassment...'* and *'...I was a victim of bullying and harassment...'* The Employment Tribunal has jurisdiction to hear claims of discrimination, bullying and harassment which are unlawful under the Equality Act 2010. It is a requirement that the alleged unlawful acts or failures relate to at least one of the protected characteristics listed in section 4 of the Equality Act 2010. These listed protected characteristics are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The Employment Tribunal does not have jurisdiction to hear a claim for discrimination, bullying or harassment which is not based on the claimant having one or more of these protected characteristics. The claimant has not provided the Employment Tribunal with any information to indicate that his claim is based on him having one or more of these listed protected characteristics.
  
12. I have taken into account that in his ET1 claim form at box 8.2 the claimant has set out that he has health difficulties. I have taken that into consideration whether what is set out in that ET1 indicates that the claimant is seeking to rely on the protected characteristic of disability. The claimant has not indicated at box 8.1 of his ET1 that he seeks to bring a claim of disability discrimination (or for discrimination based on any other grounds). I have taken into account the position set out by the respondent in their ET3 in respect of the outcome of the grievance brought by the claimant and their position on the opinion of their instructed Occupational Health Practitioner. I have considered it to be very significant that the claimant has not responded

to the Employment Tribunal to correspondence asking him to set out the legal basis of his claim. I have considered it to be very significant that since receipt of the ET3, and despite the terms of the correspondence sent to him from the Tribunal office on 26 January and 6 February 2023, the claimant has not indicated to the Tribunal that he is disputing the respondent's position that he is medically fit for work and has not set out the legal basis for his claim.

13. I have taken into account the guidance from the EAT in *Uwhubetine & another v NHS Commissioning Board England & others* [2019] 4 WLUK 633, EAT, and in *Minnoch v Interserve FM Ltd and ors* [2023] EAT 35. I considered those cases to be relevant, although the judgments concerned consideration of whether there had been compliance with Unless Orders issued under Rule 38 of the ET Rules of Procedure. I have taken into account the guidance in *Tayside Public Transport Co Ltd v Reilly* 2012 IRLR 755, Crt Session (Inner House) in relation to the correct approach in strike out cases. I have taken into account that my consideration in this case is in respect of whether the claim should be dismissed under Rule 27, rather than whether there should be strike out under Rule 37 or Rule 38. I make my decision applying the overriding objective set out in Rule 2 of the ET Rules of Procedure. I have taken into account that dismissal may be considered to be draconian. I have taken into account the purpose of the Initial Consideration stage set out at Rule 26 – 28 of the ET Rules of Procedure.
14. In all these circumstances my decision is that this entire claim is dismissed under Rule 27 of the ET Rules of Procedure because the Employment Tribunal has no jurisdiction to consider the claim. No part is permitted to proceed. The claimant has not set out the legal basis on which the Employment Tribunal would have jurisdiction to consider his claim. Discrimination, harassment and / victimisation are only unlawful on certain statutory grounds, none of which appear to be relied on by the claimant.

**Employment Judge: C McManus**  
**Date of Judgment: 3 May 2023**  
**Entered in register: 3 May 2023**  
**and copied to parties**

