



EMPLOYMENT TRIBUNALS

Claimant: Mr Jean Bosmans

Respondent: Amazon UK Services Ltd

HELD AT: Manchester (by cloud video platform) **ON:** 25 April 2023
BEFORE: Employment Judge Ficklin

REPRESENTATION:

Claimant: In person
Respondents: Mr Sangha of counsel

JUDGMENT

1. On 25 April 2023, I gave judgment that the Employment Tribunal does not have jurisdiction to hear the claimant's claims for unfair dismissal and for suffering detriments due to health and safety and due to exercising rights under the Public Interest Disclosure Act, because the claims had no reasonable prospects of success. The claims were dismissed.
2. I was asked for reasons for my judgment.

REASONS

3. This case was listed for an open preliminary hearing upon the respondent's application to consider whether the claimant's complaints had any prospects of success because the claimant resigned and was not dismissed under s. 95 of the Employment Rights Act 1996 (ERA 1996).
4. At the hearing, the claimant represented himself. The respondent was represented by Mr Sangha. The claimant gave evidence. I then heard submissions from both representatives. I had a bundle of documents that included recordings of telephone calls between the claimant and the respondent's Employee Relations Complaint Team that I listened to, as well as transcripts of those conversations.

5. At the end of the hearing, I dismissed the claimant's claims as having no reasonable prospect of success and gave reasons orally. The claimant later requested written reasons.

Legal framework

6. Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013 materially states:

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—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

7. The Court of Appeal has determined that whether someone has resigned depends on what they say and the circumstances (*Sothorn v Franks Charlesly & Co* [1981] IRLR 278). If the words someone used to convey that they intended to resign were unambiguous, then their intention is not to be ascertained subjectively, but rather by reference to how a 'reasonable bystander' would interpret them (*Willoughby v CF Capital Plc* [2011] IRLR 985). If a party in an employment relationship gives notice to terminate the contract, it cannot be unilaterally withdrawn later (*Harris & Russell Ltd v Slingsby* [1973] IRLR 221).

Findings of fact and conclusions

8. If the claimant resigned then he would have no reasonable prospect of success in a final hearing and his claim would appropriately be struck out. I bear in mind that I am not considering that as if it was a final hearing, I am considering whether there is more than a fanciful prospect of whether he can prove that he was dismissed.
9. The claimant was employed from 23 April 2021 to 14 November 2021 as a warehouse operative.
10. The caselaw says that where someone's words are unambiguous, I should generally not attempt to look behind them for the intention. If someone says clearly, "I resign", whatever they mean by that, the respondent is entitled to treat it as the resignation. The caselaw allows for withdrawal of notice of resignation when it can be shown that the person never intended to give that notice, ie "his mind was not in tune with his words".
11. I have listened to the recordings and read the transcripts for the telephone calls from the claimant to the respondent's Employee Relations Complaint Team (ERCT) 13 November, 20 November and 8 March. There is no reasonable reading of the transcripts, or in the recordings of the conversations of 13 November and 20 November, that indicates anything other than the claimant's intention to resign.
12. There is no dispute that the claimant rang the ERCT on 13 November 2021 with the intention to resign. The claimant agrees that he said he wanted to resign. But the claimant says that by the end of the telephone call, he believed that he had

withdrawn his resignation and was surprised to find out on 20 November 2021 that his resignation had been processed.

13. The claimant's words on 13 November are clear. He says he is resigning. I place reliance on the unambiguous words the claimant used. But also it was made clear to him that the respondent would process his resignation from that point, notwithstanding the expectation that the claimant should confirm his resignation in writing. The claimant now says that at the end of the call, his understanding was that he had not resigned, and that he was going to have discussions with management about his grievance. But that is not what the transcript and recording say. That call clearly ended with the understanding that the claimant was resigning.
14. There were, I accept, administrative failings after that. The claimant's frustration with some of the respondent's behaviour in this matter is understandable. Management and human resources failed to contact him. It was unhelpful that Abby Ralphs from human resources advised the claimant about what should, could or would have been done in response to his resignation, without any basis or investigation. No doubt, the claimant's annoyance was made worse because of the initial failure of the human resources team to follow through on what was supposed to happen with the resignation process.
15. But it is also evident from the call on 20 November that the claimant understood that he had used clear words to resign. I accept, as the claimant submitted, that there can be differences in meaning when the actual voices can be heard when compared to the dry words on the page. From both reading and listening I find that the claimant's complaint was over the process, not the fact of his resignation. In the 20 November call he does not actually say that he did not intend to resign. He takes issue with the fact that it was processed without a resignation letter, but the records of the call do not indicate that the claimant was aggrieved because of the resignation itself at that point.
16. The respondent's handling of this matter was at times poor. But nothing that the respondent did changes the clear resignation that the claimant made on 13 November. I found that the claimant's claim has no reasonable prospects of success because on its face, the respondent was entitled to treat his words as a resignation. I grant the respondent's application to strike the claim out under Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013.

Employment Judge Ficklin

31 May 2023

SENT TO THE PARTIES ON

1 June 2023

FOR THE TRIBUNAL OFFICE