



EMPLOYMENT TRIBUNALS

Claimant

Ms Anna Agdan

Respondent

Kettle Foods Limited

v

Heard at: Norwich

On: 12 April 2023

Before: Employment Judge Postle

Appearances

For the Claimants: Did not attend and was not represented

For the Respondent: Mr Hickford, Solicitor

JUDGMENT

on the Respondent's Application to STRIKE OUT the CLAIM under the Employment Rights Act 1996

1. The Respondent's Application to Strike Out the Claimant's claim under the Employment Rights Act 1996, in the unfair dismissal, succeeds on the grounds that the Claimant's claim has no reasonable prospect of success.
2. The Claimant's claim for breach of contract is also Struck Out on the grounds it has no reasonable prospect of success.
3. This Judgment should be read in line with the Judgment on the issue of whether the Claimant has a disability within the meaning of s.6 of the Equality Act 2010.
4. To add to that, it is clear that during the course of the Claimant's absence from her employment with the Respondents as a Production Operative, which was for over a period of 12 months, the reasons for her absence changed a number of times and were evolving. At various times Occupational Health were recommending the Claimant was fit to return to work and for reasons best known to the Claimant, she declined to return to work.
5. Before the Respondents took the decision to dismiss, there was a number of referrals to Occupational Health, proposals for a phased return and at

the end of the last meeting it appeared there was going to be at least another four to six weeks before there was any chance that the Claimant would return. Given the history of the Claimant's absence over the last year, it was highly likely at that stage she would not have returned.

6. This is not a claim where the Claimant is arguing that there is some procedural defect in the process, she is claiming that the decision to dismiss was effectively outside the bands of a reasonable response of a reasonable employer.
7. If one looks at the plain facts of this case, the investigations that the Respondents carried out, the referrals to Occupational Health and the proposals for phased return which the Claimant declined, it is clear the Claimant will not be able to convince a Tribunal that the Respondent were in some way acting outside the bands of a reasonable response of a reasonable employer in dismissing her for ill health capability after over a year of absence, over which the reason for those absences kept changing.
8. In the circumstances, the Claimant's claim for breach of contract and unfair dismissal have no reasonable prospect of success and are therefore Struck Out.

Employment Judge Postle

16.05.2023

Date:

02.06.2023

Sent to the parties on:

J Moossavi

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For the Tribunal Office.