



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Estela Neicelyte

Respondent: Bixbite German Doner Kebab

Heard at: London South (Croydon) (in private)

By: CVP

On: 18th August 2023

Before: Employment Judge L Clarke

Appearances

For the claimant: Did not attend and was not represented

For the Respondent: Husnain Asif (Employment Law Consultant: Guardian Support)

JUDGMENT

- (1) All claims brought by the Claimant are struck out.

REASONS

1. The Claimant's employment with the Respondent commenced on 8th June 2022. The claim, brought on 18th June 2022, was made for unfair dismissal and religion and belief discrimination in relation to a dismissal on 13th or 14th June 2022. The details of the claims on the claim form are unclear and no particular acts of the Respondent other than exclusion from training and the dismissal itself are specified in support of the claim.
2. The Respondent's response sought a strike out of both the unfair dismissal claim and the discrimination claim on the basis that they were poorly particularised, vexatious and lack prospects of success and, in relation to the unfair dismissal claim only, because the Claimant was unable to bring a

claim of ordinary unfair dismissal as she had less than 2 years continuous service. In any event, the Respondent denied all of the Claimant's claims.

3. On 23rd August 2022 the Claimant sent an e-mail attaching a handwritten letter containing further information to the Tribunal. The Claimant also sent an e-mail to the Tribunal on 25th August 2022 stating that it was in response to a request to give further information. In these correspondences she indicated that her religion was that of Lithuanian origin and that, if asked to tick a box to describe her religion or belief, she would tick "other". She stated that her religion or belief included having a baby and being married prior to reproduction. She did not explain how that information related to the claim she has brought, and it does not obviously do so. In neither correspondence were any additional acts of the Respondent described, save that she stated that the Claimant's manager had stated "Don't you think companies have a right to choose who to fire".
4. On 12th September 2022 the Tribunal wrote to the parties to advise them that there would be a 3 hour case management preliminary hearing listed to determine whether the complaint of unfair dismissal should be dismissed. That hearing was subsequently listed for 10am on 16th August 2023 (today).
5. Notice of the hearing today, together with clear directions that the parties or their representatives must attend the hearing and that the parties must complete and return a case management agenda (which was attached) seven days before the hearing, was sent to the parties on 30th November 2022.
6. No completed agenda was returned by the Claimant.
7. The Claimant did not attend the preliminary hearing today and did not contact the Tribunal in advance of the hearing to ask for an adjournment of the hearing or to explain her non-attendance.
8. The Respondent confirmed that they had never had any contact from the Claimant, despite sending a draft preliminary hearing bundle to her in advance of today's hearing and asking her to agree it.
9. In light of her non-attendance, attempts were made today to contact the Claimant. The telephone number she provided on the claim form was called but the number is not recognised, and no updated contact telephone details have been provided by the Claimant. Additionally, the Claimant was e-mailed using the e-mail address that she provided on the claim form and which she had previously used to contact the Tribunal. An e-mail was sent to the Claimant asking for a response before 10:02am but by 10:34am no response had been received.
10. The Claimant has now made no contact with the Tribunal for almost a year since her last e-mail of 25th August 2022.
11. The preliminary hearing proceeded in the Claimant's absence.

12. As per the Respondent's response, and the contents of the Respondent's agenda, the Respondent applied to strike out both elements of the claim on the basis that they were vexatious and lacked prospects of success. In addition, in relation to the claim for unfair dismissal on the basis that the Claimant did not have 2 years qualifying service.

The Tribunal's conclusions

13. The Claimant has failed to comply with the Tribunal directions dated 30th November 2022 to complete and return the agenda and to attend the hearing.
14. The Claimant cannot bring a claim for "ordinary" unfair dismissal as she does not have 2 years qualifying service as required by s108(1) of the Employment Rights Act 1996.
15. If the Claimant is seeking to bring a claim of automatic unfair dismissal, it is wholly unclear on the claim form or in her subsequent correspondence on what ground it is brought. No specific actions either of herself, or of the Respondent, which could support one of the automatically unfair reasons for dismissal (which do not require a 2 year period of qualifying service pursuant to section 108(3) of the Employment Rights Act 1996) are set out in the claim or her subsequent correspondence with the Tribunal.
16. Additionally, she has given no particulars at all in relation to her claim for religion or belief discrimination. Her claim form did not specify her religion or belief and her subsequent correspondence has not identified any save to the extent set out above. Neither in her claim form or in her subsequent correspondence has she detailed any act of the Respondent other than her dismissal that she relies upon, and she has given no reason to explain why she thinks her dismissal is related to her religion or belief.
17. On the face of her claim as currently set out, it has no reasonable prospects of success. The Claimant has not attended today to give further information about her claims and there appears to be no reasonable prospect that further information will be forthcoming in future given her lack of engagement and particularisation of her claim to date. Having had regard to the overriding objective, the claim will be struck out for this reason pursuant to Tribunal Rule 37(1)(1).
18. Further, the Claimant has not contacted the Tribunal for nearly a year to check on the progress of her case. Nor has she responded to the Respondent's efforts to progress the case. Additionally, she has failed to update her contact details with the Tribunal, return a completed case management agenda, attend the hearing today or contact the Tribunal to explain why she is unable to attend.

19. Taking into account all of the circumstances, the Tribunal concluded that the Claimant had failed, without reason being given, to comply with the Tribunals orders and is not actively pursuing her claim. Having regard to the overriding objective, the Tribunal concluded that the claim should in any event be struck out for these reasons pursuant to Tribunal Rules 37(1)c) and 37(1)(d).

Employment Judge Clarke

Date: 16 August 2023

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