



EMPLOYMENT TRIBUNALS

Claimant: Mrs Jane White

Respondent: Mr Martin George

Heard at: Bury St Edmunds Employment Tribunal

On: 21 July 2023

Before: Employment Judge Michell (sitting alone)

Appearances:
For the claimant: No appearance or representation
For the respondent: Emma Bateman (operations director)

JUDGMENT

Pursuant to r.37(1)(a) of Sch.1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the claimant's claim of constructive wrongful dismissal is struck out, on the grounds that it has no reasonable prospect of success.

The claimant's claims of unfair dismissal and age discrimination having already been struck out/dismissed on the bases explained in the letter of the tribunal dated 4 November 2022, the entire claim therefore stands dismissed.

REASONS

Background

1. The claimant worked as a personal assistant to the chairman of Whitworth Brothers Ltd, Mr Martin George, from 12 May 2021 until March 2022. On 1 March 2022 she resigned on notice. Her last day at work was Thursday 31 March 2022. She started work elsewhere on Monday 4 April 2022.
2. By a claim presented to the tribunal on 6 July 2022, and following completion of the early conciliation process in which only Mr George was named as a prospective respondent, the claimant asserted that she had been unfairly

constructively dismissed and discriminated against on grounds of age. The claim does not appear to contain any notice pay claim. The only respondent to that claim is Mr George.

3. Both her unfair dismissal claim and her age discrimination claim were struck out/dismissed, as explained by the tribunal in its letter to her dated 4 November 2022. That letter followed earlier correspondence from the tribunal dated 8 September and 18 October 2022, to which it seems the claimant did not substantively respond, in which she was invited to explain why the claims ought not to be struck out.
4. Under cover of a letter dated 18 December 2022, the tribunal wrote again to the claimant asking her if she had worked out and was paid for her one month's notice period. The tribunal asked for a response within seven days. No such response was apparently forthcoming. The claimant was asked again to respond, under cover of the tribunal's letter dated 18 February 2023. Once again, it seems she failed substantively to do so.
5. Under cover of a letter dated 19 March 2023, the claimant was told that the tribunal was considering striking out her constructive wrongful dismissal claim, or making a deposit order. She was told to send any objections by 3 April 2023.
6. The claimant then made application under cover of an email dated 29 March 2023 to amend the claim to add "a claim against harassment bullying and intimidation due to Martin George's vexatious behaviour". She also sent another email a few minutes later, saying "...I would also like to appeal against your proposal to strike out this case. I have been advised following my phone call to the Tribunal office today to seek independent advice and representation in order to move forward with this matter and push for a hearing. I trust this will halt the strike out proposal in order that I can produce the information that is required". (There is no sign that an appeal to the Employment Appeal Tribunal was ever made by her.)
7. Both those matters were dealt with by Employment Judge Quill, who under cover of a letter dated 16 June 2023 rejected the amendment application, and stated that the claimant's second email would be treated as an application for a preliminary hearing to determine whether or not the breach of contract claim should be struck out as having no reasonable prospect of success.
8. In the ET3, it is explained that the claimant resigned on 1 March 2022 but remained at work until 31 March 2022, serving out the one month's notice period for which her contract provided.

Today's hearing

9. Today was a remote hearing on the papers, which has not been objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and all issues could be determined at a remote hearing.
10. The claimant failed to attend the hearing. Inquiries were made by the tribunal, and it was established that she had been sent the notice of hearing. The clerk of court also telephoned the claimant in order to try and establish if she was going to turn up (and if not, why not). She did not answer the phone.
11. We therefore proceeded in the claimant's absence. This seemed appropriate to me, in the light of para 10 above, the issues at stake, and the claimant's history of non-engagement.
12. Ms Bateman gave evidence. She had been Group Head of HR at the time. She explained that the claimant's contract of employment was with Whitworth Bros Ltd, not Mr Martin. She told me that the claimant gave notice in writing on 1 March 2022, and in the resignation letter had asked if she could leave early pursuant to a "mutually agreed exit plan". She was told by Ms Bateman that an early exit would be possible, but only if a replacement could be sorted out for her in time. No such replacement was forthcoming, so the claimant worked through until 31 March 2022. The claimant was paid her full usual month's salary on 31 March 2022 -it being the respondent's usual practise to pay monthly salary for the calendar month in arrears on the last day of the month.

Conclusion

13. I accepted Ms Bateman's evidence. Leaving aside the fact that the claimant has sued the wrong entity in respect of any contract claim -it ought to have been Whitworth Bros Ltd- in circumstances where she worked out her entire notice period, there is no reasonable prospect of her succeeding in a claim against either that company or Mr George for unpaid notice.
14. It follows that the entirety of the claim now stands dismissed, the breach of contract claim (insofar as it can be said to be contained within the pleadings at all) having been struck out as having no reasonable prospect of success.

Case Number: 3309102/2022 (CVP)

Employment Judge Michell

21 July 2023

Sent to the parties on:

3 September 2023

For the Tribunal:

GDJ