



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4105194/2023

Ms M Kennedy

Claimant

We Buy Any Car Ltd

Respondents

JUDGMENT

The claim for unfair dismissal under s94 of the Employment Rights Act 1996 is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that it has no reasonable prospect of success in terms of rule 37(1)(a).

REASONS

1. The claimant lodged an ET1 raising a number of claims against the respondent. One of those claims was unfair dismissal under s94 of the Employment Rights Act 1996 (ERA).
2. It is not in dispute that the claimant does not have the two years' service which is normally required for the Tribunal to hear a claim of unfair dismissal in terms section 108(1) ERA. Further, the ET1 does not, on the face of it, plead a claim of "automatic" unfair dismissal for which the two year rule is disappplied.
3. At a case management hearing held on 25 October 2023, the Tribunal indicated to the claimant that it was, of its own motion considering striking out the claim for unfair dismissal under Rule 37(1)(a) of the Tribunal Rules of Procedure on the basis that this claim did not have reasonable prospects of success. Specifically, that the Tribunal did not, on the face of the ET1, have the jurisdiction to hear the unfair dismissal claims.

4. As required by Rule 37, the claimant was given the opportunity to object to the unfair dismissal claim being struck out. The Tribunal made directions that any such objections should set out the basis on which the claimant considered the Tribunal had jurisdiction to hear the unfair dismissal claim.
5. The claimant replied to this direction by emails dated 20 & 22 November 2023. She also sent emails on 23 November 2023 attaching her earlier case management agenda and screenshots with no explanation of what these were or why they were being sent.
6. The correspondence from the claimant simply asserts the right not to be unfairly dismissed under s94 ERA (and makes reference to the statutory provisions under which her other claims are brought) but does not address the issue that she did not have the necessary length of service to pursue such a claim.
7. In circumstances where the claimant does not have the necessary length of service to pursue a claim for unfair dismissal under s94 ERA nor does she set out any claim for which the two year rule is disapplied then the Tribunal has no jurisdiction to hear the unfair dismissal claim and that claim as no reasonable prospects of success.
8. For these reasons, the claim of unfair dismissal under s94 of the Employment Rights Act 1996 is struck out under Rule 37(1)(a).
9. For the avoidance of doubt, the remaining claims for holiday pay and sex discrimination are not affected by this decision and remain live.

Employment Judge: P O'Donnell
Date of Judgment: 27November 2023
Entered in register: 27November2023
and copied to parties