



EMPLOYMENT TRIBUNALS

Claimant: Mr S Ravindran

Respondent: Tesco Stores Limited

JUDGMENT

1. The Respondent's application for strike out is refused. The claim is not struck out.
2. The final hearing remains as listed.

REASONS

1. By a letter dated 5 December 2023, the Respondent's representative requested strike out of the claim. More specifically, the letter asked that a public preliminary hearing be arranged to consider strike out of the claim (and other orders, if the claim was not struck out) on the basis of the Respondent's representative's 10 August application.
2. Rule 37 of the Employment Tribunals Rules of Procedure states (in part):
37.— Striking out
(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;
 - (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
 - (c) for non-compliance with any of these Rules or with an order of the Tribunal;
 - (d) that it has not been actively pursued;
 - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
3. A party against whom strike is being considered has the right to a hearing before the decision is made. A party seeking strike out against another party has no such right to a hearing to consider the application.

4. The Claimant's representative's email of 6 December 2023 is clear that the Claimant objects to strike out, and that the Claimant does not seek a hearing. I am satisfied that the application can be determined on the basis of the correspondence, and that no hearing is required.
5. The Respondent's representative email refers back to its 10 August 2023 application. That application was made after a preliminary hearing at which case management orders had been made, but before the written version of the orders had been sent to the parties.
6. By orders sent to parties in letter dated 13 November 2023, EJ Ord acknowledged the strike out application (of 10 August) and various other correspondence. As well as varying the dates for compliance with some of his earlier orders, he expressed clearly what alleged acts/omissions that he considered to fall within the (unamended) claim. He gave clear guidance that if the Claimant was seeking to rely on alleged acts/omissions that did not fall within the (unamended) claim, then an amendment application would be required.
7. To re-emphasise the point, if a claimant is ordered to supply further information about an existing claim, then that does not act as permission for them to amend the existing claim, or to add new complaints to it.
8. The Claimant's representative's correspondence to the Tribunal makes clear that it is the Claimant's position that:
 - a. They have now supplied all of the required further information
 - b. That they have done so in the format required (that is, by filling in gaps in the draft the list of issues)
 - c. That they are not proposing to make an application to amend the claim, and that they do not think that the further information that has NOW been supplied purports to add new complaints or to vary the existing complaints.
 - d. That they accept that the allegation in paragraph 2 of the Further Particulars supplied on 2 August 2023 was not part of the original claim, and that there is no application to amend, and that, therefore, the allegations in that paragraph are not being pursued.
9. To the extent that that there remains a live dispute between the parties about whether the Claimant's version of the list of issues requires the Claimant to make an amendment application, the Respondent's representative should write to the Claimant (within 21 days) to clearly set out its position. It will then be a matter for the Claimant's representative to decide whether to make an amendment application, or whether to proceed on the basis that they will be able to persuade the tribunal, at the final hearing, that everything in the list of issues was already part of the unamended claim.
10. Given the stage that the matters have now reached in relation to the provision of further information, it would be disproportionate to strike out the claims for the (alleged) lateness in complying with the earlier orders, and I do not do so.

11. At paragraph 1.1, the draft list of issues makes clear (correctly) that time limit issues are a matter for the Tribunal to decide. To the extent that the Claimant's representative correspondence suggests that time limit issues have already been resolved (by EJ Ord, or at all), that is not correct. I am not aware that an application for time limit issues to be resolved as preliminary issues has previously been made (and refused), and I express no opinion on whether such an application would be granted if made. However, the Respondent's representative's application is that – because of the (alleged) time limit hurdle – the complaints should be struck out as having no reasonable prospect of success.
12. To the extent that there is a dispute about the date of any alleged incident, that is a factual dispute which would be resolved at final hearing, and it is not appropriate to conduct any mini-trial, on a strike out application, to determine (for example) whether the Respondent's Exhibit 2 (dated 7 October 2021) refers to the same instance of damage to property relied on by the Claimant.
13. That being said, it appears from the draft list of issues that the Claimant now accepts that the relevant date of that incident was around 5 October 2021. Thus the calculation of time limits in the Respondent's application may well be correct. To put it another way, in considering this application, I will assume (without deciding) that complaints about any act or omission that occurred on or before 23 November 2021 are out of time. I will also assume (without deciding) that the last specific act complained of occurred on or around 5 October 2021 (and no later than 7 October 2021).
14. I do not strike out the claims as having no reasonable prospects of success. There is no proper basis on which I could decide that there is no reasonable prospect of the Claimant persuading the Tribunal that it is just and equitable to extend time (even assuming that she is required to rely on that discretion).
15. For the avoidance of doubt, I express no opinion one way or the other about whether the Claimant is more likely to succeed on the time point, or to fail on the time point. That is not the test that applies for strike out purposes and the fact that my decision is that the Claimant's prospects are higher than "*no reasonable prospects of success*" should not be misinterpreted by the parties.

Employment Judge Quill

Date: 12 January 2024

JUDGMENT SENT TO THE PARTIES ON
31 January 2024

FOR THE TRIBUNAL OFFICE