



EMPLOYMENT TRIBUNALS

Claimant: N Chukwu

Respondent: Colt Technology Service

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL following A PRELIMINARY HEARING

HELD AT: London Central (By CVP)

On: 2 April 2024

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: No attendance

For the respondent: Mr A Edge (Counsel)

JUDGMENT

1. The correct respondent is Colt Technology Services

2. The claims for disability discrimination; sexual orientation; arrears of pay and other payments and any other claims brought by the claimant in these proceedings are struck out under The Employment Tribunal Rules of Procedure Rules 2013, Rule 37 (1) (a) - on the ground that they have no reasonable prospect of success.

REASONS

Background

1. This was a public preliminary hearing (PH) ordered by EJ Hodgson at a Case Management preliminary hearing held on 14 December 2024. The purpose of the PH was to consider the following:

-any amendment application made by the claimant;

- to identify the claims;
- to consider whether any claims should be struck out and/or
- to consider whether there should be a deposit order.

2. In Schedule A of the Case Management Order of December 2024, EJ Hodgson summarised the claims as recorded in the ET1 lodged on 3 October 2023 (disability discrimination; discrimination on grounds of sexual orientation and outstanding sums owed) and made observations on the claims as expressed in that ET1.
3. EJ Hodgson noted (at paragraph 2.2 of that Schedule A) that the claimant had failed to attend the Case Management hearing and that his late request for an adjournment on grounds of ill-health (namely constipation) had not been supported by medical evidence and was accordingly refused. EJ Hodgson also stated (paragraph 2.11) that *"I am not satisfied that the claimant has presented any arguable claims. I am not satisfied that the claimant is actively pursuing this claim."*
4. As the claimant was not present at the Case Management hearing, EJ Hodgson very properly noted that there should be a public preliminary hearing at which the claimant could be heard both as to how his claims are presented and expressed and his representations against any order for strikeout/deposit order.
5. EJ Hodgson also recommended that the claimant should consider answering the respondent's request for further and better particulars, consider any amendment needed for his claim, filed any relevant medical evidence, and provide details of his financial situation for the purposes of any potential deposit order (paragraph 2.13).
6. The claimant did not attend the PH on 2 April and did not provide any explanation for his non-attendance, nor did he make any application for a postponement. Given the situation at the December 2024 hearing, I had specifically asked my clerk to carefully check the Tribunal's inbox for any such messages or communication from the claimant. No communication from the claimant was presented to me.
7. The claimant did not comply with any of the orders made by EJ Hodgson in December 2023 for provision of medical evidence, nor did the claimant communicate with the respondent's solicitors concerning the responses to further particulars.
8. I was concerned that the claimant may have changed his email address (by which the Tribunal corresponded with him). I asked the respondent whether there had been any communication with the claimant over the period December 2023 to date using that email address. At my request, the respondent provided copies of email correspondence with the claimant at that email address: the latest being as at 2 February 2024. The claimant has not communicated at all with the respondent's solicitors, although he was notified *by email on 13

February 2024 – page 83) that the solicitor representing the respondent had changed from Baker & Mckenzie to Lewis Silkin.

9. I also noted that the claimant would have received the Joining Instructions for today's video hearing at that email address. I am therefore satisfied that the claimant would have had notice of the PH and had been given an opportunity to attend to make his representations or to indicate that he could not attend and to give reasons or to request a postponement. The claimant had done this for the Case Management Hearing in December 2023 and so is familiar with the process. Alternatively, the claimant could have made any representations against strike out/deposit orders in writing.
10. As there was no communication from the claimant, the PH hearing continued in the claimant's absence.
11. The Tribunal was presented with the following documents (in electronic form) at the PH: a bundle of 83 pages containing the pleadings, Tribunal correspondence and orders, contractual and policy documents, and correspondence between the parties. Pages references in these reasons are to that bundle. There were also witness statements from Janice Thomas (HR manager of the respondent) and Keri Gilder (CEO since May 2020). The Tribunal did not hear oral evidence from the witnesses. The Tribunal was also sent during the course of the hearing, copies of emails regarding the medical assessment of the claimant as part of the provision of payments under the respondent's PHI policy with Canada life. The Tribunal was also assisted by Mr Edge's written submissions and by a bundle of supporting legal authorities.
12. **Note:** The bundle contained (pages 55 -65) the claimant's contract of employment, which commenced on 16 July 2018. This was in the name of Malcom James, which is the name by which the claimant was formerly known. The respondent (at my request) provided copies of emails from the claimant indicating that he wished to be known as Nnaetoo Chukwu. I accept that this is the contract of employment applicable to the claimant.
13. The hearing concluded at 3 pm and I reserved my decision which I now give with written reasons. I shall consider each matter which was scheduled for consideration at today's PH

Amendment application/Identify the claim

14. The claimant's particulars of claim (page 8) contain the totality of his claim. I set out the entire text below for clarity.

"1. Own music royalties' payment since request to transfer to Keri Gilder for the amount of one hundred million pounds.

2. My return to work from sick leave started since 15/12/2021 and has been faced with incessant requests for the last 21 months. Two occupational health assessments completed with Colt partner AXA and fit note given by GP. Recently asked to complete further health assessment as with earlier unlimited requests which seems unlawful.

3. *Currently on income protection for less than fifty percent of annual pay and have faced multiple financial challenges this year.*

4. *I have been met with sexual advances by Keri Gilder (married), ` Rosie Chambers and other female colleagues which I ignored as unprofessional by my own ethics. Now faced with a form of vendetta by ignominy on my return to work from sick leave and not in receipt of full pay (royalties, salary and benefits). My private relationships have now been threatened by these females and they scare my partner away from dwelling safely by me.*

5. *Two years in Colt and my bodily phone was not activated, I was no.t advised to be keyed(spin), and currently looking to be lit. My bodily phone is now active, am not yet keyed due to distractions by colt females employees and I am yet to be lit. I was cast away to a near death experience by Colt team members. This affected my mental health and resulted in my long term absence and sick leave from 30/08/2020 to 14/12/2C)21. Discharged from NHS care on 14/12/2021. Disappointed Colt confidently continues to contact and act on recommendations from `a phantom mother and family members detrimental to myself. Both my parents are deceased and I do not know any family members in UK and abroad.”*

15. I agree with EJ Hodgson’s observations that as expressed (above) do not show any arguable claims. The claimant does not specify the nature of his disability or identify the acts of discrimination he alleges. He makes no mention at all of his sexual orientation, or the acts of discrimination/less favourable treatment alleged. He refers to sexual advances from (two named) female employees of the respondent but gives no further details of times; the exact nature of the advances etc. Furthermore, he has not included sex discrimination/harassment as part of his claim. This was one of the areas in which EJ Hodgson suggested that amendment should be considered.
16. The claim for unpaid music royalties does not make any sense, given the nature of the respondent’s business and the claimant’s role within that business. The claimant appears to be complaining that he has been receiving payments under the respondent’s PHI Policy with Canada Life of 50% of his salary and to be claiming the remaining 50%, though this is not specifically set out.
17. The Tribunal is encouraged to take a non-technical approach (especially where the claimant is unrepresented) when assessing claims made in an ET1 and giving them a broad interpretation. However, even when taking this approach, the ET1 must include the basic elements of the cause of action being pursued in order for the claims to proceed. (**Housing Corporation v Bryant [1998] ICR 123**)
18. The claimant did not respond to the request made in November 2023 for Further Particulars (page 38- 42). The claimant has made no request to amend this claim, despite being encouraged to do so by EJ Hodgson. Accordingly, the claims as expressed above must stand as the claims currently brought by the

claimant for discrimination on ground of disability; sexual orientation and arrears of pay and other sums owed.

Respondent's application for Strike Out

19. This application was brought under rule 37 of the ET Procedural Rules 2013 (The ET Rules):

(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) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

20. The respondent's application was made on the grounds underlined above – I shall deal with each in turn.

No reasonable prospect of success

The case law

21. The Tribunal's power to strike out on this basis was considered in **Ezsias v North Glamorgan NHS Trust [2007] IRLR 603**. This held that only in exceptional cases involving "core" disputes of fact should strike out be considered on this ground. Further, extra caution should be exercised in cases involving discrimination claims (**Anyanwu v Southbank Student Union [2001] ICR 391 HL**).

22. Tribunals should not strike out claims easily or without careful consideration. Recently cases (**Mechkarov v Citibank NA [2016] ICR 1121** and **Cox v Addecco UKEAT/0339/19**) have said that the Tribunal should take the claimant's case at its highest and only where the case is conclusively disproved (for example by inexplicable inconsistency with contemporaneous documents)

should the power to strike out be exercised. Also, particularly in cases involving a litigant in person, the Tribunal should carefully consider the claim as pleaded (and taking into account any relevant documents) and consider allowing the claim to be amended (applying the usual principles) before striking out. I shall deal with each of the claims as set out in the ET1.

Music Royalties

23. The claim for the £100m of music royalties appears to be misguided given the context of the claimant's employment relationship with the respondent. Ms Gilder confirmed in her witness statement that no part of the respondent's business was concerned with music or music royalties, and she had never made any request for Mr Chukwu to transfer any such royalties to her nor had she knowingly received any such royalties.
24. The claimant (despite being given opportunities to do so) has failed to explain or provide any further details of this element of his claim.
25. Further it is not clear on exactly what basis this claim would be made in the Tribunal. The claimant's contract (pages 55-65) makes no reference to music royalties, so this cannot be a claim for unlawful deduction of wages. The definition of wages at section 27 (2) e of the Employment Rights Act 1996 excludes any payment which is made other than in the worker's capacity as a worker. This would, therefore, exclude a payment relating to royalties as no part of the claimant's employment related to music. If this was intended to be a breach of contract claim, the claimant remains employed and so cannot bring a claim in the Tribunal until the contract has been terminated.
26. If the claim is based on other causes of action, it should not be brought in the Employment Tribunal. Accordingly, this claim must be struck out as having no reasonable prospect of success.

Sick Pay

27. The claimant's contract contains no entitlement to sick pay other than under the Statutory Sick Pay Scheme. Any payments are made at the respondent's discretion. The claimant is covered by the PHI Scheme with Canada Life.
28. The claimant commenced his long-term sickness absence on 6 August 2020. In June 2021 the claimant himself made an application under the PHI policy; had a medical assessment and has received payments under the PHI policy (of 50% of his salary) from 1 July 2021. The claimant was paid his full salary (at the respondent's discretion) from 6 August 2020-30 June 2021.
29. The claimant appears to say in his ET1 that he has been fit to return to work since 14 December 2021. The respondent said that since then it has been attempting to arrange for the claimant to attend an independent medical assessment to confirm his fitness to return to work, but that the claimant was not co-operating with this.

30. However, the claimant did attend (on 19 March 2024) an examination with an Independent Psychiatrist appointed by Canada Life. The full report was not available at today's PH, however, at my request, the respondent provided a copy of an email (dated 21 March 2024) from Canada Life to Ms Thomas (respondent's HR manager) which said that the Psychiatrist had "indicated" that the claimant is "unwell and unfit for work". This was confirmed by a further witness statement from Ms Thomas. Whilst this is not conclusive evidence, it shows (on a balance of probabilities) that the claimant would not be immediately available for work and therefore he does not have a viable claim for unlawful deduction of wages for sick pay.
31. This claim is struck out as having no reasonable prospect of success. As the claimant is still employed, if his health situation changes, it would be open to him to bring a fresh claim for unlawful deduction of wages at that stage.

Sexual Advances

32. The claimant has not provided any further details of his claims against Ms Gilder and Ms Chambers, despite being requested to do so in November 2023. The questions asked by the respondent's solicitors were couched in straightforward and non-legal language.
33. In her witness statement Ms Gilder said that she had never met the claimant. Ms Chambers left the respondent's employment in March 2023 and there is no information available from her. Mr Edge noted that the claimant has been on sick leave since August 2020, which may well mean that any such claims would be out of time in any event.
34. I also note that the claimant has not brought a claim for sex discrimination (to include harassment). As EJ Hodgson properly pointed out in his Case Management Order of December 2023, this claim would require an amendment to proceed. The claimant has been offered but has not taken the opportunity to make such an amendment.
35. I raised with Mr Edge the possibility of asking the claimant (with the sanction of an Unless Order) to provide the further details of his allegations of sexual harassment. Mr Edge said that to do so would simply prolong this case (and increase costs for the respondent and the Tribunal). The claimant's conduct to date showed that he would be unlikely to comply with such an order or may do so in a manner which would raise further complication and would necessitate further hearings. I accept that the claimant has been given opportunities to explain his claims and to make representations against strike out. I agree that an Unless Order would not necessarily be a useful step in these circumstances.
36. As it currently stands, I find that this claim has no reasonable prospect of success, and it is struck out.

Sexual Orientation

37. There is no mention whatsoever in the ET1 of any allegations which may form part of this claim. Again, the claimant has been given the opportunity to provide

further details/amend his claim. He has not done so. This claim is struck out as disclosing no reasonable prospect of success.

Disability Discrimination

38. The claimant does not specify the nature of the alleged disability in the ET1. The Grounds of Response refer to diagnoses relating to the claimant's mental health made by the respondent's Occupational Health provider, but the Tribunal was not presented with any copies of these and so can make no findings on this matter.
39. The claimant has not identified the acts of discrimination which he alleges as being on the grounds of any disability. He does not identify the nature of the claims ie direct, indirect discrimination, reasonable adjustments etc. This is despite being given the opportunity to do so. The claim as currently pleaded by the claimant gives no indication as to even the most basic elements of the cause of action. As currently pleaded (given that the claimant has not provided any further and better particulars and has made no contact whatsoever with the Tribunal) the claim cannot properly proceed.
40. This claim is struck out as disclosing no reasonable prospect of success.
41. In striking out these last three claims, I bear in mind the principles expressed in the cases listed above. **Ezsias** and **Anyanwu** say that only exceptional cases should be struck out. I find that this is such a case, in that no feasible facts have been pleaded by the claimant to justify the claims continuing.
42. I also take on board **Mechkarov** and **Cox**. However, even taking the claimant's case at its highest, there appears to be no reasonable case put forward. The claimant has been given the opportunities to explain his case and to make amendments but has chosen not to do so and has also failed to engage with the Tribunal and/or the respondent's solicitors.

Other Claims at paragraph 5 of the Particulars of Claim

43. I accept Mr Edge's submissions (and EJ Hodgson's observations) that these claims/allegations make no sense. The claimant has not explained his references to his "bodily phone". There do not appear to be any arguable claims put forward which can be pursued.

Failure to actively pursue the claim

44. As I have struck out all the claims on the other ground, I do not need to consider the alternative ground in any detail, and I do not strike out the claims on this ground.
45. I note Mr Edge's submissions and his reference to the case of **Khan v LB of Barnet EAT 0002/18** where the EAT upheld a decision to strike out a claim after just under seven months since its presentation. He maintained that there was no need for the "inordinate and inexcusable delay" giving rise to the substantial risk that a fair hearing would be impossible as set out in the more established

cases of **Evans v Commissioner of Police of the Metropolis [1993] ICR 151** and **Birkett v James [1978] AC 297**.

46. I accept that the claimant has not engaged in the process of providing further particulars; applying to amend his claim nor has he communicated with the Tribunal or the respondent's solicitors. I note that he has been able to communicate with the respondent itself as regards receiving his 50% salary and eventually as regards attending a medical assessment as requested by Canada Life. This suggests that he is able to undertake such communication when he chooses to do so.

Deposit Orders

47. As I have struck out the claims, I do not need to consider the application for a Deposit Order.

Capacity

48. I asked Mr Edge to make submissions on the issue of lack of capacity in a claimant to bring or pursue claims. He helpfully made reference in the authorities bundle to **Jhuti v Royal Mail Group Ltd [2018] ICR 1077** and the relevant section from the IDS Brief of 2024.

49. Mr Edge also made clear at the outset that the respondent was not raising any issue with regard to the claimant's capacity in this case. From the Tribunal's point of view, I was presented with no medical evidence of the claimant's medical condition (other than the reference to the independent psychiatrist's indication that he was unfit to return to work). I accept that the claimant has been diagnosed with mental health issues. As the claimant has not attended any of the Tribunal hearings, I am unable to make any observation as to whether any mental health issues he may have means that he appears to be having difficulty understanding the process. He has made minimal (and no recent) communication with the Tribunal so I cannot observe whether he appears to have any problems with communication.

50. Therefore, in accordance with the guidance given by Simler J (as she then was) in **Jhuti**, I must assume that the claimant has mental capacity to proceed as I have no evidence to make an assessment that he does not have such capacity.

51. I note the case of **Royal Bank of Scotland v AB (EAT 0266/18)**, which said that there are circumstances in which an employment tribunal must order an assessment of a claimant's mental capacity; however, the facts before the tribunal in that case were very different to those before me. In that case, there was extensive medical evidence available, but the question related to the timing of the various medical assessments of capacity. That is simply not the case here.

Employment Judge Henderson

JUDGMENT SIGNED ON: 8 April 2024

JUDGMENT SENT TO THE PARTIES ON

17 April 2024

.....
AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL OFFICE

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