



EMPLOYMENT TRIBUNALS

PRELIMINARY HEARING

Claimant Ms A Adjei-Agyekum
Represented by In person
Respondent Benugo Ltd
Represented by Ms E Afriyie, Consultant
Employment Judge Ms A Stewart (sitting alone)
Held at: London Central by CVP **on:** 24 May 2024

JUDGEMENT

1 Under Rule 37(1)(a) of Schedule 1 of The Employment Tribunals (Constitution and rules of Procedure) Regulations 2013, the Claimant's claim is struck out because:

- (i) It has no reasonable prospect of success and/or**
- (ii) Is an abuse of process and accordingly vexatious.**

Employment Judge A Stewart

Date 24 May 2024

Judgment sent to the parties on:
31 May 2024

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FOR THE TRIBUNAL OFFICE

THE EMPLOYMENT TRIBUNALS



Claimant Ms A Adjei-Agyekum

Respondent Benugo Ltd

REASONS

1 The Respondent's application to strike out this claim is made under **Rule 37(1)(a) of the Tribunal Rules** on the following grounds:

- (i) It could and should have been brought before the Tribunal as part of one of the Claimant's 2 previous claims and is therefore an abuse of process and vexatious and should be struck out under the rule in **Henderson v Henderson 1843 3 Hare 100 PC**.
- (ii) Further and alternatively, it has no reasonable prospect of success.

2 The Claimant has brought 2 previous claims before the Tribunal, (Case numbers: 2200821/2023 and 2209558/2023), relating to her 14 month period of employment with the Respondent, including complaints of discrimination and victimisation. The presentation of both of these claims pre-date the termination of the Claimant's employment on 13 June 2023. However, no application was made, after the termination of the Claimant's employment, to amend either of these claims in order to add a claim for notice pay, although the Schedule of Loss in the second claim purported to include an element for notice pay.

3 Both of these previous claims were struck out by the Tribunal on 23 January 2024 because their conduct was found to have been scandalous, vexatious and unreasonable.

4 This current claim was lodged with ACAS on 24 January 2024. By it, the Claimant seeks 4 weeks notice pay for wrongful dismissal. She said that she did not think to include it/seek to get it included in either of her previous claims, although she was chasing it in the background, because she, as a

litigant in person, was learning as she went along and had a lot of mental health issues at the time.

5 The Respondent contends that the Claimant is, vexatiously, simply trying to bypass the strike-out of her earlier Tribunal claims and it says that she has also lodged a County Court claim on 29 June 2023 and that there is a further letter before action.

6 The Claimant accepts that she resigned from her employment by email on 13 June 2023 because she was sick of the Respondent's behaviour towards her. She did not give any notice of her termination. The Respondent accepted it as an unequivocal termination with immediate effect.

7 The Claimant accepts that she does not have the requisite 2 years service to allow her to make a complaint of constructive unfair dismissal (**section 94 Employment Rights Act 1996**) and says instead that her claim is for wrongful dismissal, the Respondent being in breach of her contract term entitling her to 4 weeks notice/pay in lieu.

8 However, her complaint of 'wrongful dismissal' faces the insuperable difficulty that the Respondent did not dismiss her but that she resigned. On the facts as pleaded by her own case, she has no reasonable prospect of succeeding in persuading a Tribunal that the Respondent is under a contractual duty to pay her notice pay, when it did not give her notice of termination of her employment. Accordingly, her claim is struck out as having no reasonable prospect of success.

9 Further, it is an abuse of process to begin another, separate claim against the Respondent, immediately after 2 previous claims, which could have been amended to include this latest head of claim, have been struck out under **Rule 37(1)(a)**. The **Rule in Henderson v Henderson 1843 3 Hare 100, PC** prevents a party from raising and litigating an issue, even for the first time, at a future date, when they could and should have raised it as part of their previous proceedings. The Claimant had from June 2023, when she resigned, until 23 January 2024, when her claims were struck out, to raise her notice pay claim as part of those previous claims. Instead, she lodged this new claim the day after the previous claims were struck out.

10 For the above reasons the Claimant's claim is struck out.

Employment Judge A Stewart

Date 24 May 2024

Case Number: 2201562/2024

Reasons sent to the parties on

31 May 2024

FOR THE TRIBUNAL OFFICE