



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105574/2023

Employment Judge: M A Macleod

5 **Mr C Mcdonald**

**Claimant
In Person**

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Ross's of Edinburgh Ltd

**Respondent
Represented by:
Mr J Anderson -
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the respondent's application for strike out of the claimant's claims is refused.

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REASONS

1. The claimant presented a claim to the Employment Tribunal on 2 October 2024 in which he complained that he had been unfairly dismissed and unlawfully deprived of pay in respect of annual leave accrued but untaken as at the date of termination of his employment.
- 25 2. The respondent submitted an ET3 in which they resisted the claimant's claims.
3. The claimant's claim was essentially that he suffered a serious injury at work due to "no safety being on a machine", on 28 August 2023 at 8.30am. He maintained that no training had been given, and that as a result of his injury he required surgery. He complained then that he had been dismissed, with no
30 warning or pay.

Strike-out Application

4. On a number of occasions, the respondent has raised with the Tribunal a request that the claim be struck out under Rule 37 of the Employment
5 Tribunals Rules of Procedure 2013.
5. The parties have now agreed that this application may be dealt with on written submissions only, and that no Hearing is required.
6. On 5 February 2024, the respondent wrote to the Tribunal complaining that they considered the comments in the ET1 to be “vexatious” given that they
10 are a food manufacturer with SALSA accreditation, where the premises are audited on a regular basis. They asked the Tribunal to give consideration to striking out the whole claim under Rule 37.
7. The claimant objected to the application by email dated 21 February 2024.
8. On 26 February 2024, the respondent confirmed that notwithstanding the
15 provision of certain information by the claimant they wished to insist on their application for strike-out.
9. On this occasion the application was based on their assertion that the claimant had not complied with the Tribunal’s Order dated 6 November 2023, despite being provided with additional time, resulting in the original Hearing
20 date being postponed.
10. The information which they complained that the claimant had not provided related to the issues of remedy sought and mitigation of loss.
11. They further requested strike out on the basis that the claimant had provided
25 documents and evidence which were scandalous, malicious and vexatious as they did not relate to the claim, or have anything to do with the Employment Tribunal. They accused the claimant of having misled the Tribunal.
12. By email dated that same date, the claimant once more opposed the application for strike out. He said he had complied with everything to his knowledge. He described his injury as a “life-changing one”, for which he

accused Mr Anderson of the respondent of taking no responsibility. He maintained that the purpose of the health and safety evidence was to demonstrate the lack of health and safety in the workplace.

- 5 13. On 11 March 2024, the respondent wrote again to the Tribunal to repeat their assertion that the claimant's raising of health and safety concerns were derogatory, vexatious and malicious, and had no reasonable prospect of success. They also repeated their request for strike out on that basis and on the basis of the manner in which the proceedings were being conducted by the claimant.
- 10 14. The claimant repeated his objections to the application, and asserted that he believed that the respondent was delaying the proceedings.

Discussion and Decision

- 15 15. Rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013 provides:
"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..."*
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16. Rule 37(2) provides:
"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."
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17. The application is made under Rule 37(1)(a) and (b).
18. Essentially, the application under Rule 37(1)(a) is that the claimant's claim is vexatious and has no reasonable prospect of success.

19. I referred to **Bennett v Southwark London Borough Council 2002 ICR 881 CA** and **Bolch v Chipman 2004 IRLR 140 EAT**.
20. **Bennett** establishes some principles which are of assistance in this case. It is not simply the manner in which the representative or party acts but how they conduct the proceedings; and “scandalous” in this context is not a synonym for “shocking”, but rather means either the misuse of legal process in order to vilify others, or the giving of gratuitous insult to the Tribunal in the course of the legal process; and where the conduct of proceedings is found to have been scandalous, the Tribunal must go on to consider whether striking out is a proportionate response.
21. **Bolch** requires the Tribunal to consider, if the conduct is scandalous, whether a fair trial is still possible; and even then to decide whether or not a lesser sanction may still be appropriate.
22. In this case, as I understand it, the respondent’s complaint is that the claimant has raised unjustifiable and malicious complaints about the health and safety precautions in place and enforced in the workplace overseen by the respondent. He considered that the accident which occurred to him to his injury was one which resulted from the respondent’s approach to health and safety matters.
23. The respondent is plainly upset and angry about this assertion, and has sought to refute it by pointing to the credentials obtained by their company in maintaining those standards. Further, the ET3 makes clear that they regard the claimant as being at fault for the incident.
24. In short, there is a significant factual dispute between the parties as to what happened and what caused the claimant’s injury, and significantly who was to blame for it.
25. One difficulty which arises is that reference appears to be made to legal advice being sought by the claimant in relation to the incident, and to an ultimatum being given to the respondent’s insurance company in respect of liability for the injuries he sustained. However, these are matters which are plainly outwith the jurisdiction of the Tribunal, and belong in personal injuries

litigation in the civil courts. It is plain that this is a separate process: the claimant makes reference to legal advisers, but continues to represent himself in these proceedings.

- 5 26. There is no doubt that the allegations which the claimant is making in his correspondence are potentially damaging to the respondent as a food production company which requires to satisfy the demands of a number of authorities in order to continue carrying out its day-to-day activities. As a consequence, it is in my judgment entirely understandable that the respondent considers that those allegations have no reasonable prospect of success, or may be regarded as vexatious.
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27. However, it is not clear to me that the high test for finding that a claim has no reasonable prospect of success is met in this case. The claimant's claim before this Tribunal, based on the ET1, is one of unfair dismissal and of unlawful deductions from wages. The claimant's complaint of unfair dismissal is very brief in its terms and does focus upon the incident in which his injury occurred. He suggests, in fairly general terms, that he was unfairly dismissed as a result, and appears to assert that he should have been paid for outstanding holiday pay and notice pay.
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28. The respondent's position is more detailed and quite clear, that there were sound reasons for the claimant's dismissal.
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29. In the final Hearing in this case, the respondent will lead its evidence first, setting out the reason for dismissal and the basis and procedure upon which that decision was taken. The Employment Tribunal hearing the case will be well capable of ensuring that the evidence is restricted to those matters within its jurisdiction, and at this stage, while sparse, the claimant has presented an unfair dismissal claim which can proceed on its current terms.
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30. It will be important for the claimant to understand that irrelevant evidence will not be heard, or if heard, will be disregarded by the Tribunal. He should understand, and take this Judgment as notice, that he will not be permitted to use the Tribunal process or Hearing to make sweeping criticisms about matters which are not relevant to the Tribunal's decision on the claim he has
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made. The Tribunal does not exist to carry out wide-ranging reviews on whether employers are meeting all of their legal obligations, nor indeed on whether they are good employers. In this case, the only issues will be whether or not they had sufficient grounds upon which to dismiss the claimant, and whether or not they made unlawful deductions from the claimant's wages.

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31. Accordingly, the claim as presented cannot be said to have no reasonable prospect of success, at this stage, without having heard any evidence as to the facts. Since the decision of the Tribunal will rest on the findings of fact which it makes following the evidence led, and since strike out is a draconian sanction only to be applied in the most extreme circumstances, I am not satisfied that it would be in the interests of justice to strike the claimant's claims out on the basis that they have no reasonable prospect of success. It is not possible to determine the factual disputes until evidence has been heard.

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15 32. The next issue is whether or not the claimant has conducted the proceedings in such a manner as to be scandalous, vexatious or unreasonable, and if so, whether his claims should be struck out on this ground.

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33. There are two criticisms made by the respondent here, as I understand it. Firstly, they complain that the claimant persists in making allegations about the respondent's "disregard" for health and safety, an allegation which plainly upsets and offends the respondent given its position as a food manufacturer; and secondly, that the claimant has not complied with Orders made by the Tribunal in relation to the remedy which he is seeking.

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34. Dealing with the allegations made by the claimant, it is plain that the claimant wishes to argue that his dismissal was unfair, and in doing so to criticise the respondent for the fact that he sustained what he maintains are significant injuries at work. He also alleges that certain conversations took place between himself and Mr Anderson of the respondent in which strong language was used. Again, this appears to be directed at persuading the Tribunal to find that the respondent treated him unfairly in the process leading to his dismissal. The respondent strongly denies the allegations.

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35. It is clear that the allegations cannot be determined by the Tribunal until evidence has been heard. It is not possible, as I have found above, to determine the dispute until factual findings can be made, and that can only be done once evidence has been heard. The opportunity will be given to both parties to give evidence in support of their respective positions, and the Tribunal will decide the case thereafter.
36. That the respondent considers that the allegations made against them are offensive is not an insignificant matter, but it does not mean, balancing the interests of both parties, that the Tribunal should not allow the case to proceed to a final Hearing.
37. I would reiterate, however, that it is important that the claimant understands that any allegations he makes will be subject to challenge in the Tribunal, and that they must relate to the issues for determination in this forum. The Tribunal will not hear evidence relating to a personal injuries claim which belongs in another court.
38. So far as the second aspect of this application is concerned, that the claimant has failed to comply with Tribunal Orders, I am not persuaded that the claimant has acted in a manner which can be regarded as vexatious or scandalous. The claimant has sought to provide some information about his losses; he has asked for extensions of time, which reinforces the understanding that he is attempting to comply with the Orders; and the claimant is an unrepresented party with no legal qualifications. Taking these matters into consideration, I am not persuaded that it would be proportionate or fair to strike the claimant's claim out. This is a case which requires evidence to be heard, and I find that there is no reason not to allow the claimant to proceed to a Hearing. If he has not complied with the obligation to provide evidence in support of his argument on remedy, that is likely to damage his own interests rather than the respondent's.
39. The respondent has argued that the claimant has misled the Tribunal in seeking an extension of time, by saying that an email went into his spam folder. This is clearly what the respondent believes, or perhaps more accurately suspects. The Tribunal cannot make any finding about this.

40. As a result, I do not consider that the application should succeed. Striking a claim out is a draconian sanction which should only be applied in circumstances where it is clear that the claimant has raised a hopeless claim, acted in a vexatious manner or shown disrespect to the Tribunal, none of which is clear. Further, I am of the view that a fair trial is still possible in this case, and that it should proceed to a final Hearing.

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41. Accordingly, while not unsympathetic with the respondent's application and concerns in this case, I am not prepared to grant their application for strike out.

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Murdo A Macleod
Employment Judge

16 May 2024
Date of Judgment

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Date sent to parties

20/05/2024

20 *I confirm that this is my Judgment in Macdonald v Ross's of Edinburgh Ltd and that I have signed the Judgment by electronic means.*