



EMPLOYMENT TRIBUNALS

Claimant: Natalia Pytel

Respondent: Harrods Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: London Central Employment Tribunal **On:** 28th August 2024

By CVP (Audio only)

Polish Interpreter: Anna Gleb

Before: Employment Judge Gidney

Appearances

For the Claimant: Natalia Pytel (in person)

For the Respondent: Sam Way (Counsel)

JUDGEMENT

It is the Judgment of the Tribunal that:

- All of the Claimant's claims presented in her Claim Form (number 2216167/2023) on 10th October 2023 are dismissed, namely:**

- 1.1 The Claimant's claim of 'ordinary' unfair dismissal pursuant to s98(4) Employment Rights Act 1996 ('ERA') is dismissed;
- 1.2 The Claimant's claim of 'automatic' unfair dismissal for making a public interest disclosure, pursuant to s103A ERA is dismissed;
- 1.3 The Claimant's claim of detriment for making a public interest disclosure pursuant to s47B ERA (if it was made) is dismissed;
- 1.4 The Claimant's claim of harassment, pursuant to s26 Equality Act 2010 ('EqA') (if it was made) is dismissed;

REASONS

Introduction

2. This matter has been listed to determine the Respondent's application to strike out the Claimant's claims. The Claimant represents herself. The Respondent is represented by Daniel Way of Counsel.
3. The Claimant is Polish and asked if she could avail herself of Polish Interpreter. The Tribunal wishes to express its gratitude to Anna Gleb for interpreting the proceedings on behalf of the Claimant.

Factual Background

4. The factual background to this Claim is as follows:
5. The Claimant commenced employment with (and was employed by) Luxe Associates Ltd ('Luxe') from 17th February 2023. Luxe is a brand partner of the Respondent. It operates a concession within the Respondent's Perfumery Hall. Luxe products its own products to sell within the concession and its own staff to sell them. Luxe staff report to their own Business Manager, Wioleta Bogalecka, who in turn reports to Terence Pearce, Luxe's Director of Sales. Luxe operates its own Human Resources function. Luxe assigned the Claimant to work in its Harrods concession on her first day of employment, 17th February 2023.
6. On 13th June 2023 there was an incident between the Claimant and an individual known as Evie, employed by Edeniste, another concession brand situated with the Respondent's department store. In box 8.2 of her Claim Form, the Claimant describes the incident in the following terms:

'I struggled to work with one of the girls from a neighbour brand. Every day she was making spiteful comments about my brands and was aggressively behaving towards me. On 13th June she threw a PDQ card reader machine at me. I felt unsafe working around her so I decided I would ask for help'.
7. Details of the incident, with observations regarding the Claimant's own conduct and behaviours was relayed to Ms Bogalecka (Luxe). On 22nd June 2023 the Claimant wrote to Shanika Wickramasinghe, a Retail Manager employed by the Respondent, to complain about the incident.
8. On 29th June 2023 Ms Wickramasinghe (Harrods) replied to the Claimant seeking more information. On the same day Mr Pearce (Luxe) also contacted Ms Wickramasinghe to confirm that he had raised a grievance from the Claimant arising out of the same 13th June incident. Ms Wickramasinghe also forwarded

details of the incident to Edeniste, the Brand concession that employed Evie, the other individual involved in the incident. Ms Wickramasinghe also requested CCTV of the incident, but upon review the Respondent's Security Team leader reported that nothing untoward could be seen on the CCTV footage.

9. Counter allegations were made against the Claimant by Evie. There were a number of communications between both concession brands and Ms Wickramasinghe. On 11th July 2023 Ellen Schiavone, a Retail Manager at the Respondent, arranged for a room to made available to Luxe for the purposes of determining the Claimant's grievance. The Claimant attended that meeting with a partner, Grzegorz Porada.
10. On 24th July 2023 Ms Bogalecka (Luxe) wrote to Ms Wickramasinghe (Harrods) and requested the immediate cancellation of the Claimant's staff card. The Claimant was thus prevented by Luxe from returning to the Respondent. Luxe terminated the Claimant's employment on that day, 24th July 2023. The Claimant had accrued 5 months and 1 weeks' service with Luxe.
11. By a Claim Form dated on 10th October 2023 the Claimant presented claims of 'ordinary' unfair dismissal, pursuant to s98(4) Employment Rights Act 1996 ('the ERA') and automatic unfair dismissal for making a public interest disclosure, pursuant to s103A **ERA**. In respect of the Claim Form:
 - 11.1 In box 4.1 of her Claim Form the Claimant confirmed that she did not work for the Respondent;
 - 11.2 In box 8.1 of the Claim Form the Claimant ticked the boxes to present a claim of Unfair Dismissal;
 - 11.3 Also in box 8.1 the Claimant ticked the box for a Whistleblowing Claim (dismissal or detriment for making a public interest disclosure);
 - 11.4 In box 8.2 of her Claim Form the Claimant describes her dismissal in the following way:

'Four days after 24th July I received a phone call from my director Terence Pearce who said that he had received an e-mail from the Harrods floor managers Shanaka Wickramasinghe and Ellen Schiavone claiming that I did not fit in to perfumery and was rude to a customer, therefore he decided to terminate my contract. Allegedly I had served a customer who needed a managers help. I asked Shanika to assist me and talk to the customer. She was extremely rude to him and didn't process the refund that he had initially requested'.

11.5 She also states in box 8.2:

'Between April 2023 and July 2023 I experienced harassment and bullying in Harrods by the shop floor managers Ellen Schiavone and Shanaka Wickramasinghe'.

12. By its ET3 and Grounds of Resistance the Respondent confirmed that it was and never had been the Claimant's employer, that she did not have sufficient service to present any of her claims, and that her claims provided no specific allegations against its employees that it could reasonably respond to.
13. The matter was first case managed by Employment Judge Anderson on 24th January 2025. The Judge issued a 'show cause' warning as to why the Claimant's unfair dismissal claim should not be struck out on the grounds that it appeared that she was not the Respondent's employee and in any event did not have two years' service.
14. On 27th March 2024 the Respondent submitted the 3rd iteration of its application to strike out the Claimant's claims. It took the following points:
 - 14.1 The Claimant replied to the 'show cause' warning by email dated 29th February 2024. She accepted that her Claim should have been issued against Luxe, but gave no reasons why the Claim against the Respondent should not be struck out;

- 14.2 The Claimant's dismissal for making a public interest disclosure claim could not be responded to. It did not identify a disclosure or set out the basis that it would qualify for protection under s43B **ERA**.
- 14.3 The Respondent was not the Claimant's employer for the purposes of a public interest disclosure claim.
- 14.4 No other claims had been identified in box 8.1 of the Claim Form.

The Legal Principles when considering striking out claim.

15. The following legal principles guide Tribunals in the correct approach to such applications, as follows:
- 15.1 It is important that care is taken to analyse the pleadings to gain a fair understanding of the claim that the claimant is seeking to advance **Cox v Adecco Group UK & Ireland and Others** [2021] ICR 1307 at para 79.
- 15.2 The strike out power should only be exercised in rare circumstances **Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly** [2012] IRLR 775 at para 30;
- 15.3 Cases should not, as a general principle, be struck out on this ground when the central facts are in dispute **North Glamorgan NHS Trust v Ezsias** [2007] IRLR 603;
- 15.4 The correct approach for a tribunal to adopt is to take the claimant's case at its highest, as it is set out in the claim, unless contradicted by plainly inconsistent documents **Ukegheson v London Borough of Haringey** [2015] ICR 1285, EAT at para 21;

- 15.5 As a general principle, discrimination cases should not be struck out except in the very clearest circumstances **Anyanwu v South Bank Students' Union** [2001] IRLR 305, HL;
- 15.6 The above guidance is not to be taken as amounting to a fetter on the tribunals' discretion **Jaffrey v Department of the Environment, Transport and the Regions** [2002] IRLR 688 at para 41, EAT;
- 15.7 Whilst striking out discrimination claims will be rare, where there is a time bar to jurisdiction, or where there is no more than an assertion of a difference of treatment and a difference of protected characteristic, strike out may well be appropriate **Chandhok v Tirkey** [2015] IRLR 195, EAT, paras 19 & 20.

Conclusions

16. I took some care with the Claimant to ensure that I understood her Claims and what had happened to her. The Claimant did not attend the hearing with a prepared witness statement. She took the oath and I asked a number of open questions, based on the Claim Form to establish what happened and what she wanted to claim. At the end of my questions Mr Way had the opportunity to question the Claimant but chose not to do so. I then heard submissions from both sides.
17. For the purposes of the Respondent's application I have interpreted the Claimant's Claim Form and what it asserts at its highest. Taking each of the claims in turn, my conclusions are as follows:
- 17.1 **Ordinary Unfair Dismissal.** The Claimant accepted, quite candidly, that the Respondent was not her employer, and that she only acquired 5 months and 1 weeks' service with Luxe. Both of these points were fatal to the Claimant's claim of unfair dismissal. Section 94(1) **ERA** gives employees the right not to be unfairly dismissed by their employer.

S108(1) ERA disappplies the right not to be unfairly dismissed in s94(1) unless the employee has been continuously employed for a period of two years. The Claimant does not qualify under either provision. Her unfair dismissal claim can fairly be said to have no reasonable prospects of success and, as such, will be struck out.

17.2 **Public Interest Disclosure** (automatic unfair dismissal and detriment).

Both these claims require the Claimant to make a qualifying public interest disclosure, as a gateway to progressing, as defined in s43B **ERA**. The Claimant has not identified a disclosure in her Claim Form and could not articulate one when I asked her to in evidence. The Claim Form reveals that the Claimant made a complaint about Evie, another sales assistant from a different brand concession. Contrary to the guidance in **Cox** the Claimant has not set out the information she disclosed, what it tended to show, which 'gateway' provision it engaged, why, how it qualified for protection or why it was in the public interest. The Claimant has not identified whether it was disclosed to her employer, or other responsible person, or other prescribed person. In the circumstances it is my judgment that the Claimant has no reasonable prospect of establishing either her whistleblowing dismissal or whistleblowing detriment claim, if the same was actually presented by the Claimant.

17.3 **Harassment**. Box 8.2 makes no reference at all to a discrimination claim.

It is only possible to even consider the possibility that such a claim might have been raised because the Claimant does refer harassment in Box 8.2 in the following context: '*Between April 2023 and July 2023 I experienced harassment and bullying in Harrods by the shop floor managers Ellen Schiavone and Shanaka Wickramasinghe*'. In discussion with the Claimant it became clear that she meant the word 'harassment' in a colloquial or 'layman's' way, such that it was interchangeable with the word bullying. The Claimant did not suggest that the bullying conduct of Ellen Schiavone and Shanaka Wickramasinghe was in any way related to a protected characteristic of hers. This is a qualifying requirement of s26(1)(a) **Equality Act 2010**. In the circumstances it is

my judgment that the Claimant has no reasonable prospect of establishing any claim for harassment, as defined by s26 **EqA**.

18. There is, simply put, no reasonable prospect of the Claimant establishing her complaints against the Respondent, and accordingly, I strike the Claimant's claims out.

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Employment Judge Gidney

7th November 2024

Sent to the Parties on:

14 November 2024

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For the Tribunal: