



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr S Venkatesan**

**v**

**Nationwide Building Society**

**Heard at:** London South Employment Tribunal (by CVP)

**On:** 03 January 2025

**Before:** Employment Judge Taylor

**Representation:**

**Claimant:** In person

**Respondent:** Mr Oliver Isaacs, Counsel

**JUDGMENT** having been sent to the parties on 6 January 2025 and written reasons having been requested by the Claimant in accordance with Rule 60(3) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

## **The Hearing**

1. This was a public preliminary hearing to consider an application to strike out the claims or for a Deposit Order and to consider an application for costs. The Claimant attended in person and the respondent was represented by Mr Issacs of Counsel. The Respondent prepared a bundle of documents comprising 171 pages for the hearing, a witness statement of Mr Graham Perkins, of Nationwide Building Society and skeleton arguments.

2. On 14 October 2024 a preliminary hearing was held presided over by Judge Cline. The Claimant did not attend that hearing and clear orders and directions were made for this strike out/deposit hearing and costs. These included that any evidence upon which the Claimant wishes to rely at the hearing, together with a summary of his position in response to each element of the Respondent's application, shall be sent to the Tribunal and to the Respondent by 4pm on 29th November 2024. The Claimant did not provide a written summary or provide any information in compliance with that order.
3. This was a strike-out application and therefore the application has been made and considered wholly on submissions made by the parties.

## **The Claim**

4. The Claimant presented a claim on 15 November 2021 by which he made the following claims: unfair dismissal (including automatic unfair dismissal), whistleblowing detriment, race discrimination, disability discrimination and a claim for other payments.
5. The Claimant's engagement with the Respondent ended on 16 May 2023. Any claim for unfair dismissal (including automatic dismissal) and/or whistleblowing detriment should have been presented before the end of the period of three months beginning with the effective date of termination as extended by the relevant ACAS Early Conciliation Period. The Claimant should have contacted ACAS by 15 August 2023.

## **The Application**

6. On 20 January 2024, the Respondent made an application under Rule 54 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the ET Rules) for a preliminary hearing to be held in this matter to consider:
  1. whether to strike out the claim under Rule 37; or, in the alternative
  2. for a Deposit Order to be made under Rule 39; and
  3. for a Cost Order to be made against the Claimant under Rule 76.
7. The Respondent made this application to strike out the claims or for a Deposit Order because, it contends, there are no reasonable prospects that it will be found to be within time and the Claimant had presented a claim for unfair dismissal while at no time having been an employee of the Respondent.
8. The Respondent also submits that any claim for race/disability discrimination is out of time as all pleaded acts/omissions which the Claimant seeks to rely upon took place more than three months prior to the presentation of his claim to the Employment Tribunal.
9. The Claimant's claim form included an application for interim relief. A date of hearing was sent to the parties. In a letter dated 10 January 2024, the Respondent informed the Claimant that the Employment Tribunal had no

jurisdiction to consider this application. The letter included a cost warning, requesting that the Claimant obtain urgent legal advice and withdraw his application for interim relief by 12 January 2024. The Claimant failed to respond to this correspondence or subsequent follow up telephone calls. The hearing was subsequently vacated by the Employment Tribunal the day before it was due to take place. The Respondent incurred costs in preparing for an interim relief hearing.

10. The Respondent argues that the Claimant's conduct was unreasonable and therefore requests that the Tribunal exercise its powers in accordance with Rule 76 of the ET Rules 2013. The Respondent enclosed a copy of its costs schedule, in the amount of £12,657.
11. At a preliminary case management hearing, held on 14 October 2024 it was ordered that the Tribunal will deal with the Respondent's application to strike out the claim or, in the alternative to make a deposit order, as set out in their letter dated 29th January 2024. The costs application made on the same date will also be considered if there is sufficient time to do so.
12. The claimant did not attend that hearing. The hearing proceeded in his absence. The claimant was informed that the Respondent's letter of 29th January 2024 shall stand as the full application and the Claimant is encouraged to consider that letter carefully when preparing his response to the application for strike-out and / or a deposit in respect of the issues to be determined.

## **The Applicable Law**

### **Strike Out/deposit**

13. Rule 37 of the Employment Tribunals Rules 2013 sets out the Tribunal's power to Strike Out. It provides:
  - (1) At any stage of 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 ... has no reasonable prospect of success;
14. Rule 39 sets out the Tribunal's power to order a Deposit Order. It provides
  - (1) Where at a preliminary hearing (under Rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospects of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.
15. The EAT gives guidance that a two stage approach be applied to an application for strike out. The Tribunal must consider whether, on a careful consideration of all the available material, the tribunal can properly conclude that the claim has no reasonable prospect of success. Secondly, the Tribunal should then consider

whether it should exercise its discretion to strike the claim out. (Balls v Downham Market High School and College [2011] IRLR 217 (EAT).)

## Costs

16. Rule 76 of the Employment Tribunal's 2013 Rules of Procedure provides that a costs or time preparation order may be made and a Tribunal shall consider whether to do so, where it considers that:

(a) a party (or that party's representative) has acted .... unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success...

## The Factual Background

17. The following summary to the background of this case is taken from the case management order of 14 October 2024:

'...the Claimant's claim relates to the period during which he says he was acting as a business analyst who was employed by Tata Consultancy Services (TCS) in India but was "on deputation" to the UK since 2016 and, after finishing his previous engagement with another bank in February 2023, he says that he commenced his role with the Respondent in March 2023 after a selection process had been completed. The Claimant says that, shortly after commencing in this role, he pointed out to his managers that the project to which he was allocated was reporting inconsistent data and suggested a resolution to the issue, following which he was instructed to do more manual data-entry work which was, in effect, the work of someone less qualified than him. He then discovered that there was "extreme and unnecessary proliferation of card data" in the Respondent's system and, when he reported this to the Respondent, "they only intensified their discrimination and harassment" and he subsequently received a call to "intimidate" him and threaten to send him back to India if he did not follow instructions. The Claimant says that he then took time off work for health reasons and sent an email to the CEO of TCS setting out his concerns, with the response simply being that they did not understand what was being said; he was then told to return to India as his engagement with the Respondent had ended after this, he discovered that there had been negative feedback about his performance, which came as a shock to him, and also asserts that he was subsequently threatened in a call not to raise an issue with TCS as his IT career would effectively be finished if he did....'

18. In their ET3 response and grounds of resistance, the Respondent denies any liability to the Claimant for various reasons, which, in summary, include the following:

'...(iii) The Claimant was not, in any event, employed by the Respondent as

he was, at all relevant times, employed by TCS and was (in my words, not theirs) effectively contracted out to the Respondent.

(iv) For the purposes of any claim for whistleblowing detriment, the Claimant was not a worker, there was no qualifying protected disclosure made, the Respondent was not the Claimant's employer, and, in any event, no detriment was suffered as a consequence.

(v) The Claimant had performed poorly in his role and, when he took time off, his work had to be passed to someone else because it was time-critical such that there was then no work for him to do.

(vi) When the Claimant raised a complaint with the CEO of TCS by way of an email on 29th April 2023, he was told in a reply on 5th May 2023 to raise any formal concerns via the appropriate channel or, if he preferred, this would be done for him, but he did not respond to this email;

(vii) No detail is provided in respect of any suggestion of disability discrimination; and

(viii) The one conversation alleged to constitute race discrimination is denied and, in any event, was not related to his race and was also not conducted by anyone for whom the Respondent was responsible.'

19. Mr Perkins was employed in the role of Business Designer within Data and Analytics (D&A). In his witness statement he sets out that the Respondent worked with suppliers to bring in third-party contractors who complete work such as TCS. In respect of contractors such as the Claimant, there is no contract in place between them and the Respondent. No payment is made to them from the Respondent. TCS raise invoices for the number of hours spent by their contractors on a project (91-92 and 100-104). Payment is only made in respect of actual hours worked, and contractors such as the Claimant will not receive payment from the Respondent in respect of any sickness absence or annual leave. For the purposes of managing a project, we are asked to be informed if a contractor is not going to be in work and this will be recorded on their timesheet as "third party not available for work." TCS also remain responsible for any income tax or National Insurance payable. The contents of his statement were not disputed by the Claimant.'

## **The Submissions**

### **The Respondent's submissions**

20. The Respondent relies on the application made on 29 January 2024 and its Skeleton Arguments provided for this hearing.

21. In summary, the claim was issued on 15 November 2023. The Claimant indicated he was employed 24 Feb 2023 to 4 May 2023 (5). He was engaged for

slightly longer. He made a claim for interim relief (13, 14-16). He claims he made a protected disclosure and was dismissed.

22. On 29 January 2024 the Respondent made an application to strike out the claim, or for a deposit order and for costs for the interim relief application. That application was made a year ago. The Claimant has had time to consider that letter and set out what his response is. He has chosen not to do so and has only on the morning of the hearing, at 9.36am, sent an email with information, making a different type of claim.

### **No prospect of success**

23. At the case management hearing on 14 October 2024 a case management summary was served on the Claimant. Various guidance was provided to the Claimant and indicated he needed to serve any response by 29 November 2024. He was reminded of this and still has not until today at 9.36am said he is attaching his disclosures and says he was constructively dismissed on 29 April 2023. That is not a claim made in the claim form. It is contrary to the information in the claim form and it does not answer the Respondent's application.
24. This application is not about whether the Claimant made protected disclosures or not. The application is made on two fundamental issues.
25. Any claim for race/disability discrimination is out of time as all pleaded acts/omissions which the Claimant seeks to rely upon took place more than three months prior to the presentation of his claim to the Employment Tribunal.
26. Where such a claim is presented out of time the Claimant needs to show why the claim was not brought within the primary period. Or within a short time thereafter. The Claimant's fit note does not cover the whole period. They do not go to his functional abilities at the time. They do not go to reasonable practicability. The various fit notes are at documents 140 – 145. It will be noted that they suggest the Claimant was not fit for work from August 2023 because of (a) tongue concern (b) joint pains, general pain, stress (c) ongoing investigations (d) intermittent claudication (limping). These sick certificates/fit notes do not show that the Claimant could not have presented a claim or why it was not reasonably practicable for him to present his claim within the primary time limit or within a short time thereafter.
27. The Claimant should have put some evidence before the tribunal as to why time should be extended. Absent any compliance with the order of EJ Cline and absent any evidence it is manifestly clear that the Claimant:- (a) has no prospect of establishing that he was an employee (b) has no prospect of establishing that time should be extended to bring a claim and (c) no prospect of establishing that the Tribunal has jurisdiction to consider any of his claims.

**No prospect of success - Employment Status**

28. The Claimant is not an employee of the respondent. The Claimant was employed by TCS. Even with the extended definition of employment – the Claimant was not an employee under the Equality Act at the material time.
29. The Tribunal is referred to the witness statement Mr Perkins who is the individual who managed the relationship between the Claimant and Tata Consultancy Service (TCS), during the Claimant's time with the Respondent.
30. There is no clear evidence to show the Claimant might be a worker under section 47B of the Employment Rights Act 1996 or under the extended definition of worker under section 43K of the Act.
31. Absent any compliance with Tribunal's order, the Claimant has no chance of persuading an employment tribunal that he is a worker, and his claim therefore has no reasonable prospect of success.

**No prospect of success - Race discrimination, disability discrimination and other payments**

32. The Claimant has not included any information in his claim or since to particularise what these three claims are. His claims are focused on the allegations of whistleblowing and these appear contrary to the Claimant's contentions as to the reason for "dismissal."
33. The claims have no reasonable prospect of success.

**Costs**

34. In respect of costs the Tribunal is referred to paragraph 10 -13 of the skeleton argument. The Claimant was unreasonable in bringing the proceedings and the application for interim relief (IRF). An IRF needs to be presented within 7 days. A Tribunal has no right to extend time. It was unreasonable for him to present the application because he was not an employee and it was brought outside of the 7 day time limit. The Claimant must have done research before presenting the application and it must have been the case that he knew it was presented late.
35. On 10 January 2023, the Respondent wrote to Claimant explaining why the application was misconceived and why it had no reasonable prospect of success. The Claimant was acting wholly unreasonable by continuing after receiving that letter. (Doc 32-38).
36. The claim had no reasonable prospect of success.

## **The Claimant's submissions**

### **No prospect of success**

37. The Claimant believes two crimes had been committed by middle management and the Respondent were trying to sweep it up under the carpet. He had made disclosures and submitted evidence about those crimes.
38. He had already submitted the medical evidence showing numerous unrelated symptoms that he had that prevented him from bringing his claim within three months. The Respondent are not questioning the information provided by the doctors. All of the evidence has been given and the Respondent are trivialising his health conditions. His health did not allow him to present his claim. When he felt better, he presented the claim. The Claimant is now seeking help for mental health. In June or July 2023 he had a suspected stroke. He was taken to hospital in an ambulance to be examined. He was not fit to present a claim. Up to September he lost his speech and still finds it difficult. These medical conditions are aftereffects of the treatment received by the Respondent. The Claimant is not able to do day to day activities and by extension that provides sufficient medical grounds to allow his claim to continue.

### **Employment Status**

39. The Claimant submitted that he was a worker and also a contractor with a valid right to work for the Respondent. Therefore, he was qualified to present claims of whistleblowing against the Respondent.
40. The Claimant accepts that he was employed by TCS and conceded he was not an employee of the Respondent.

### **Race discrimination, disability discrimination and other payments**

41. The Claimant submitted he was discriminated against after he made a protected disclosure. The act of discrimination concerns being prevented from attending daily stand-up meetings and/or being told to remain silent in those meetings, from the beginning of April 2023. Noone is superior to him, so when someone says he cannot attend meetings that is something to be investigated. The Claimant is not saying conclusively whether these were acts of race discrimination but whatever it was, it manifested in his dismissal. If the matter proceeds to a hearing more information can be revealed through disclosure of further emails, messages and chats.
42. The Claimant submitted that the disability discrimination claim concerned the effect on his health of his treatment by the Respondent. By their treatment they were making him disabled. His stress levels had increased. His speech levels had been affected by their actions. He had become disabled. He now had high blood pressure levels and was at risk of having a stroke.



43. The Claimant accepted and confirmed he had not provided any information or other evidence in support of his submissions in response to the directions of the Judge of the last preliminary hearing.

## **Costs**

44. The Claimant accepted that the Respondent had sent him a costs warning in respect of his claim for IRF. He considered that it was not for him to withdraw his claim. The Respondent should defend themselves even if the claim should not have been brought.
45. The Respondent have to defend their argument that he is not a worker. They have not done that. They should have to produce their evidence and they need to answer all of the points that they have made.
46. The Claimant can present all of the evidence to a Tribunal. The Claimant has also written to the Home Office about this.
47. The Claimant submitted that he accepted he was expected to respond to the employment tribunal. However, it is not his obligation to answer the Respondent. He received a notice that said the claim will be heard by a Tribunal. He respected the ET hearing notice informing him that his application will be heard. He did not accept that he was expected to respond to the Respondent's letter before that hearing date. He could not be expected to respond to the Respondent who are trying to hush up his whistleblowing claim. The Claimant submitted that he did not need to respond to the Respondent that is why he did not respond.
48. The Claimant read the Employment Tribunal's Presidential Guidance when making his application for IRF. He believed that a judge does have a right to extend time. The application was admitted and accepted, and he had no reason to believe it would not proceed to a hearing. Receiving a letter of hearing from the Tribunal suggested to the Claimant that the application was in time and any necessary matters would be decided by a judge at the hearing. The Claimant could not afford to get advice from a solicitor because he does not have any financial resources. Therefore, he could not taken advice. He was dismissed. Both parties, TCS and the Respondent had colluded together to put him out of work.

## **Tribunal's conclusions**

### **No prospect of success**

49. Any claim for unfair dismissal (including automatic dismissal) and/or whistleblowing detriment should have been presented before the end of the period of three months beginning with the effective date of termination as extended by the relevant ACAS Early Conciliation Period.

50. Any claims for discrimination or whistleblowing detriment are out of time because the Claimant's engagement with the Respondent ended, at the latest, on 16 May 2023. For the claim to have been presented in time, the Claimant should have contacted ACAS by 15 August 2023, however he did not contact ACAS until 12 October 2023. The Claimant's claim should therefore have been lodged by no later than 16 August 2023. The claim was not lodged until nearly 3 months later and the application for interim relief was made on 15 November 2023.
51. The claim of unfair dismissal was withdrawn at this hearing.
52. Having considered the available evidence and submissions the Tribunal is satisfied that the Claimant has no prospect of showing that he could not have presented the claim in time. Taking the case of the Claimant at its highest, he has shown that he was unwell for some periods of ill health but he has not sought to provide any medical or other evidence as to how he claims that these periods of ill health prevented him from presenting his claim on time.
53. The Tribunal considered whether it should exercise its discretion to strike the claim out. The Tribunal bear in mind that the Claimant is a litigant in person. The Claimant was given clear guidance by the tribunal about the issues to be decided at this hearing and what to do before this hearing to prepare for the matters that would be decided. The Claimant has not complied with the Judge's order to provide a written summary or provide any information focused on the respondent's strike out/deposit application.
54. Having considered all of the submissions the Tribunal concludes that even if all the facts were as pleaded, the complaint would have no reasonable prospect of success because of the time point. In the circumstances, the Claimant has no prospect of establishing that time should be extended to bring a claim and no prospect of establishing that the Tribunal has jurisdiction to consider any of his claims.
55. Accordingly, the entire claim is dismissed as having no prospect of success.

### **Interim Relief Costs**

56. The Claimant made a late application for interim relief (IRF). In a letter dated 10 January 2024, the Respondent notified him that the claim for IRF and other claims had no prospect of success and should be withdrawn in advance of the hearing. The Claimant took no steps to withdraw the claim for IRF in response to the Respondent's costs warning. He submitted that he understood that the matter had been listed to be heard by a tribunal and that a Judge would decide the application one way or the other. The Claimant did not believe that he was under any obligation to withdraw his claim just because the Respondent requested that he do so.

57. The IRF hearing was removed from the list by the Regional Judge the day before the hearing, notifying the parties that the tribunal had no jurisdiction to consider the application as it was presented out of time and the Tribunal had no jurisdiction to extend time.
58. The Respondent had by then incurred costs of preparing for that hearing. The Respondent made an application dated 29 January 2024 for the Claimant to pay the Respondent's costs.
59. The Claimant was reminded that the overriding objective of the Tribunals Rules includes an obligation on the parties, and the Tribunal, to avoid delay and to save expense. The Claimant could have carefully considered the content of the Respondent's letter, he could easily have found out that the claim was out of time and he could have withdrawn the IRF application, saving the Respondent costs.
60. The Tribunal is satisfied that the Claimant understood the content of the costs warning but deliberately chose not to co-operate with the Respondent. He had received a date of hearing and was determined to have the IRF application decided by the Tribunal. The Claimant did not want to respond in any way he thought might be helpful to the Respondent.
61. The Tribunal considered that the Claimant behaved unreasonably in continuing the application after receiving the costs warning and that he met the threshold at which a Tribunal could decide to make an award of costs in favour of the Respondent.
62. The Tribunal considered whether to make such an award. The Tribunal bears in mind that the Claimant is a litigant in person and accepted his submissions that he considered that he was entitled to have his claim decided by the Tribunal. The Tribunal also bears in mind that that the Claimant understood he had an obligation to the Tribunal and thought the claim would proceed to a hearing, because a hearing of the IRF application had been listed. The Tribunal bears in mind that Tribunal proceedings can be challenging for litigants in person and accept the Claimant thought he was entitled to wait for a hearing. In the circumstances, the Tribunal considers it would not be in the interests of justice to make an order for costs.

Employment Judge Taylor

Date: 17 January 2025

REASONS SENT TO THE PARTIES ON

20 January 2025

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

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**Employment Judge Taylor**  
**Date:**

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**Date Issued:**

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For the Tribunal Office