



EMPLOYMENT TRIBUNALS

Claimant: Mr D Redmond

Respondent: Selfridges Retail Limited

Heard at: London Central (by CVP)

On: 15 January 2025

Before: Employment Judge Davidson

REPRESENTATION:

Claimant: did not attend

Respondent: Ms M Wooding, Solicitor

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

Dismissal of claim

1. The claim is dismissed under Employment Tribunal Rule 28 because it has no reasonable prospect of success.

Strike out of claim

2. The claim is struck out under Employment Tribunal Rule 38(1)(a) because it is scandalous or vexatious and because it has no reasonable prospect of success.
3. The claim is struck out under Employment Tribunal Rule 38(1)(b) because the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.

4. The claim is struck out under Employment Tribunal Rule 38(1)(e) because it is no longer possible to have a fair hearing in respect of it.

REASONS

The hearing

5. Today's hearing had been listed by EJ Peer at a case management preliminary hearing on 12 November 2024. The purpose of the hearing was
 - a. to consider any written representations of the claimant in accordance with Rule 27 (now Rule 28);
 - b. to consider the respondent's application for strike out under Rule 37 (now Rule 38).
6. The claimant was unable to attend the hearing as he did not have sufficient data on his phone and did not have access to wifi without travelling to the town centre. He informed the tribunal clerk that he was content for the hearing to proceed in his absence.
7. I noted that the claimant had failed to attend the last hearing. He had been given sufficient notice of this hearing to arrange to be in a place where he could access the CVP room. I also noted that the hearing had been converted to a remote hearing from an in person hearing at his request. I considered it in accordance with the overriding objective to continue with the hearing in the claimant's absence.
8. As the claimant did not attend the hearing, I have set out my reasons for reaching the Judgment set out above.
9. In these Reasons, I have set out the original Tribunal Rule number under the 2013 Rules to avoid confusion, as this numbering has been used in the documentation up to now. I have also included the new Tribunal Rule number in brackets for the sake of accuracy.

Previous claim

10. The claimant presented a claim on 29 December 2021 in the West Midlands Employment Tribunal (No 1305282/2021) against 'Selfridges and Co' in respect of his period of employment from 15 April 2016 to 10 December 2017 as a Kitchen Porter. He claimed unfair dismissal, disability discrimination, arrears of pay and other payments. The details of his claim ran to three lines.

11. In its grounds of resistance to that claim, the respondent clarified that its correct name was Selfridges Retail Limited and defended the claims on the grounds that it had no record of the claimant working there, the claims were significantly out of time (based on the claimant's own information) and he did not have sufficient service for an unfair dismissal claim (based on the claimant's own information).
12. The claimant withdrew those claims and they were dismissed on withdrawal as recorded in a Judgment dated 22 February 2022.
13. In March 2022, the claimant applied for his claims to be reinstated. EJ Camp considered the application and determined that the tribunal had no power to revive or reinstate a withdrawn claim. The claim stood as dismissed, confirmed by EJ Camp on 23 May 2022.

Current claim

14. On 1 March 2024, the claimant submitted a claim form against the respondent in London Central Employment Tribunal. Due to defects in the ACAS early conciliation process, the claim form was deemed to have been lodged on 1 July 2024.
15. The claimant referred to his period of employment from 1 July 2016 to 1 January 2017 as Kitchen Porter. The claim was for unfair dismissal, disability discrimination and arrears of pay. The details of the claim ran to just over one line.
16. In its grounds of resistance, the respondent applied for the claim to be struck out for failure to comply with ACAS early conciliation (later rectified) and under Rule 27 (now Rule 28) and Rule 37 (now Rule 38). The respondent alleged that the claimant was relitigating the first claim which was an abuse of process. The respondent also relied on the late presentation of the claim, the lack of employee or worker status and the lack of service for an unfair dismissal claim.
17. A case management preliminary hearing took place on 12 November 2024 before EJ Peer, by video. Shortly before the hearing was due to take place, the claimant requested a postponement. The request was refused and the hearing went ahead. The claimant did not attend.
18. EJ Peer considered that either the tribunal had no jurisdiction to consider the claim, or the claim had no reasonable prospects of success and issued a Rule 27 Notice (now Rule 28). He relied on the previous proceedings, the lack of qualifying service and the late presentation of the claim.
19. EJ Peer was unable to deal with the strike out application at the case management hearing held in private and therefore listed today's hearing as a preliminary hearing in public to consider the strike out application under Rule 37 (now Rule 38).

20. The Rule 27 Dismissal of Claim notice dated 18 November 2024 gave the claimant until 11 December 2024 to present written representations explaining why the claim should not be dismissed.
21. On 2 December 2024, the tribunal received a hand-written note from the claimant submitting that his case should be heard for the following reasons:
 - a. The kitchen porter job had been misrepresented to him;
 - b. He was not given days off at Christmas;
 - c. He was paid £7.00 per hour instead of £11.00 per hour.

Determination of the Issues

Rule 27 (now Rule 28)

22. Under Rule 27 (now Rule 28), I must determine whether the claimant's representations amount to an explanation why the claim should not be dismissed. Giving the benefit of the doubt to the claimant that he has made the required representations, I must then consider the representations at this hearing.
23. The Notice of Dismissal of Claim identified the reasons why the Employment Judge made the order (as set out in paragraph 17 above). The claimant, in his representations did not engage with any of those issues, simply repeating the basis of his claim (relying on new matters) without addressing the jurisdictional hurdles that had been identified.
24. I am satisfied that it is appropriate to dismiss the claim under Rule 27 (now Rule 28) on the grounds that the tribunal has no jurisdiction to consider the claim and because the claim has no reasonable prospects of success.
25. The claimant litigated his claims previously. That case was dismissed on withdrawal. Despite the claimant's attempt to revive it, the tribunal found that it could not be revived and the claim stood as dismissed. It is not open to the claimant to present another claim on substantially the same grounds.
26. In an event, the claimant does not have sufficient service for an unfair dismissal, assuming he has any service at all, the respondent having no record of him working for them or any of their concessions.
27. If that were not sufficient reason, the claims were filed significantly out of time (approximately seven years). In the absence of any explanation from the claimant, I find that there is no reasonable prospect of the claimant being able to show that the claims should be accepted out of time. In relation to the unfair dismissal and money claims, he cannot say it was not reasonably practicable to present the claims before 2024 as he presented them in 2021. As regards the disability claim,

there is no reasonable prospect of the tribunal finding it would be just and equitable to extend time in all the circumstances.

Rule 37 (now Rule 38)

28. The respondent also makes an application under Rule 37 (now Rule 38) which I will deal with notwithstanding my decision under Rule 27 (now Rule 28).
29. The respondent relies on subsections
 - a. (1)(a) (scandalous or vexatious or has no reasonable prospect of success),
 - b. (1)(b) (manner of conducting the proceedings has been scandalous, unreasonable or vexatious) and
 - c. (1)(e) (no longer possible to have a fair hearing).
30. I consider that it is an abuse of process for the claimant to present a new claim, seemingly arising out of the same complaints as his previous claim where that claim was dismissed on withdrawal. There must be finality in litigation and parties (and the tribunal) should not be faced with relitigating old claims.
31. In any event, the claim is significantly out of time. The claimant has provided no explanation for the late submission of the claim. He will be aware from the issues taken in respect of the late submission of his first claim that this is a matter which must be addressed. Even if there might have been an explanation for the delay from 2017 to 2021 (although nothing has been suggested), nothing has been put forward in relation to the further delay to 2024.
32. The respondent has no record of employing the claimant. The claimant was aware from the first claim that this was the respondent's position, yet he has not provided any evidence to substantiate his position that he was employed by the respondent.
33. Even on the claimant's own information, he does not have sufficient service for an unfair dismissal claim. The claimant was aware from the first claim that this was a point being raised by the tribunal and the respondent.
34. The claimant has failed to set out the details of his claims. He was aware from the first claim that this was a point being raised by the respondent.
35. Taking these factors into account, I find that it is appropriate to strike out the claims as
 - a. being scandalous and vexatious and having no reasonable prospect of success
 - b. being conducted in an unreasonable, scandalous and vexatious manner
 - c. there being no prospect of a fair hearing in light of the delay and the lack of particularisation of the claim.

Conclusion

36. The claims are therefore dismissed and, in the alternative, struck out.

**Employment Judge Davidson
15 January 2025**

Judgment sent to the parties on:

21 January 2025

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For the Tribunal: