



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Fiaz

V

The Home Office

Heard at: Birmingham

On: 7 February 2025

Before: Employment Judge Robin Broughton

Appearances:

For Claimant: in person

Respondent: Mr K Mills, counsel

JUDGMENT

The respondent's application for strike out of the claims or, in the alternative, for a deposit order is refused.

Summary Reasons

1. The claimant claimed constructive unfair dismissal and the basis of his claim was set out in detail at the previous preliminary hearing.
2. The majority of the claimant's complaints related to his perceived treatment and what he considered to be bullying in 2020.
3. The respondent's application was based on a belief that the last act relied on by the claimant dated from March 2021, the last alleged act of bullying.
4. Before me, the claimant suggested he had raised a grievance in September 2021, but the details were very unclear and did not appear to have been referenced before in these proceedings. He appeared to get partial resolution, a change of management, but said other matters remained unresolved, although he appeared to put the blame for that on his union.
5. The claimant did not resign until January 2023, after he had secured alternative employment at a higher grade and rate of pay in a different government department, which he commenced immediately after his employment with the respondent ended on 23 March 2023.

6. There were significant disputes about the factual background which it was rightly conceded could not be determined, or even meaningfully assessed in the context of today's hearing.
7. Accordingly, the respondent submitted that, even if, historically, the claimant had some arguable points, his claim was, nonetheless, destined to fail because he had affirmed any alleged breach of his contract by continuing to work, accept pay and delaying too long. In addition, it was suggested that the real reason for his resignation was that he had secured alternative, better paid work elsewhere.
8. Both of those are strong points.
9. It was difficult to get a clear understanding of the claimant's case. He referenced a number of matters, such as regarding union or GP advice, that could not be attributed to the respondent.
10. However, it was recorded that the claimant had, since the principal events complained about, sought alternative work and / or promotions within the department unsuccessfully, such that, ultimately, he started to also look for opportunities elsewhere.
11. He believed that his internal applications were hampered by adverse perceptions of him and that, on occasion, he received unjustifiably low scores in the sift process. He also says that he was denied feedback.
12. In particular he focussed on his application(s) for a role as a Technical Specialist between September 2022 and December 2022 and his unexplained lack of success in that application was, eventually, confirmed as his alleged "final straw".
13. Waiting to secure an alternative role does not, automatically, invalidate a constructive dismissal claim. An individual may, for example, continue to work under protest and / or the reason for resignation could still be the alleged breach of contract.
14. The claimant's contentions regarding what, eventually, became clear as his alleged final straw, whilst challenging for him, could not be said on a summary assessment to have no reasonable prospect of success.
15. The respondent's arguments about anonymous sifting will need to be tested in evidence.
16. As a result, I cannot say that either of the respondent's two main submissions today mean that the claimant has little reasonable prospect of success.
17. That is before consideration of the fact that the claimant said that he is in debt, has no assets and has to provide for his wife, children and mother

out of his £38k salary such that any deposit order may act as a bar to him being able to proceed.

18. In those circumstances, the claims may proceed.
19. However, the claimant should be aware that it is often difficult to be able to meet the burden of proof on claimants in constructive dismissal cases and, it seems to me, that he will have significant difficulties in this case, not least for the reasons already given.
20. If it transpires that he has no evidence to challenge the fact that his application for the technical specialist role failed at an anonymous sift, then his alleged final straw is unlikely to add anything to his previous complaints, meritorious or otherwise.
21. In addition, if it transpires that
 - a. There were no material alleged breaches of trust and confidence and / or
 - b. None since March 2021, or earlier and / or
 - c. There is no evidence of impropriety in the claimant's application for the technical specialist role and / or
 - d. That the real reason for his resignation was simply having secured better, alternative employment

And that the claimant ought reasonably to have known the same, then proceeding with his claim could still be considered to amount to unreasonable conduct, potentially resulting in a costs award against him.

22. The fact that the claim is listed for 3 days and the claimant's potential recovery would, it appears, be limited to a modest basic award, only supports that view from a proportionality perspective.

Employment Judge Broughton

Date: 7 February 2025

Note:

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.