



EMPLOYMENT TRIBUNALS

Claimant

Miss J Hughes

v

Respondent

Tesco Stores Limited

Heard at: Bury St Edmunds (CVP)

On: 30 January 2025

Before: Employment Judge Laidler

Appearances

For the Claimant: In person

For the Respondent: Ms C Page, Counsel

JUDGMENT on APPLICATION for STRIKE OUT and / or DEPOSIT ORDER

1. The claims are struck out as having no reasonable prospects of success.
2. Had the claims not been struck out, the Tribunal would have determined that the Claimant should pay a Deposit as a condition of continuing to advance the claim.

REASONS

1. The claim in this matter was received on 8 June 2024 following a period of ACAS Early Conciliation between 26 April and 7 June 2024.
2. The Claimant had been employed by the Respondent from 11 December 2001 to 16 March 2024 and brought a claim for a redundancy payment stating that the process had not been explained properly to her. In the ET1 Claim Form she stated she had lost out on approximately £5,000 by

deferring her redundancy and continuing to work on a Fixed Term Contract.

3. In its Grounds of Resistance, the Respondent defended the claim setting out the statutory and additional enhanced payment that had been made to the Claimant. It applied for Strike Out and / or a Deposit Order and this Hearing was listed to consider that Application.
4. After the Judge adjourned having heard the respective submissions of the parties, she indicated that her clerk would email the parties when she was ready to resume and give a decision. The Claimant never returned despite three emails being sent to her. As the Judge considered it would not be fair to give the decision solely to the Respondent, she advised Miss Page of Counsel that the decision would be sent out to both parties in writing.
5. In the break the Respondent's Counsel had, however, as requested by the Judge, found out more about the additional service pay which was paid to the Claimant and confirmed in her email that it was discretionary and not contractual and provided a table setting out the number of weeks' pay that were awarded depending on the length of service. For someone with 22 years' service it was 36 weeks' pay and this was in addition to the statutory award.
6. At this Hearing the Claimant explained that she believed there was another indicative redundancy statement showing a figure due to her of approximately £30,000. She does not have a copy and one was not in the Bundle, although the Tribunal had six sequentially numbered statements that were.
7. On the 1 March 2023 the Respondent wrote to the claimant following an announcement meeting on the 6 February 2023 where forthcoming changes were discussed. The letter advised the claimant that she was at risk of redundancy and invited her to her first formal consultation meeting on 13 March 2023. The tribunal saw three further such letters. They advised the claimant she had the right to be accompanied. Following the meetings Proposed and Indicative Redundancy statements were produced for the claimant.
8. On 30 April 2023, the Respondent wrote to the Claimant confirming that she had secured a Fixed Term Contract up until 26 October 2023. It was stated she would be required to work her notice period as part of that and would not therefore receive a payment in lieu of notice which had been included in the original indicative redundancy statement. The Claimant signed to confirm acceptance and that she understood the details in the letter which further stated that her redundancy entitlement would be calculated nearer to her date of leaving.
9. There was a further letter on 7 October 2023 confirming that the Claimant would remain with the Respondent until 28 April 2024, on the same terms

as had been indicated in the previous letter. Again, the Claimant signed her acceptance.

10. The Claimant now states that the deferment option was not adequately explained to her, that she thought she would still receive approximately £30,000 and would not have signed and taken the fixed term position if she had appreciated that. She signed when she was off sick and very unwell.
11. The Claimant ultimately left on 16 March 2024. In her final pay she received the statutory redundancy payment of £7,153.23 and the additional enhanced payment of £11,095.92 and £2,997.36 as set out in the indicative redundancy statement Version 6.
12. The Claimant told this Tribunal that she felt that she had not been treated correctly and felt cheated.

The Relevant Rules

13. Rule 38 of the Employment Tribunal Procedure Rules 2024 provides,

38. Striking out

- (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply 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;
 - (c) for non-compliance with any of these Rules or with an order of the Tribunal;
 - (d) that it has not been actively pursued;
 - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).
- (2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity

to make representations, either in writing or, if requested by the party, at a hearing.

- (3) Where a response is struck out, the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).
- (4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by [rule 26\(2\)](#) (replying to an employer's contract claim)

14. Rule 40 of the Employment Tribunal Procedure Rules 2024 provides,

40. Deposit orders

- (1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").
- (2) The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.
- (3) The Tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.
- (4) If the depositor fails to pay the deposit by the date specified by the deposit order, the Tribunal must strike out the specific allegation or argument to which the deposit order relates.
- (5) Where a response is struck out under [paragraph \(4\)](#), the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).
- (6) Where a reply is struck out under [paragraph \(4\)](#), the effect is as if no reply had been presented, as set out in rule 22, as

modified by rule 26(2) (replying to an employer's contract claim).

(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—

(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of [rule 74](#) (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order

Strike Out

15. The claim is struck out as having no reasonable prospects.
16. It is not clear to this Tribunal what the legal claim is that the Claimant seeks to bring. The Claimant has received a statutory redundancy payment and she has received the Respondent's enhanced payment. There is no evidence that the amount was ever to be approximately £30,000.
17. Further and crucially, the Claimant signed acceptance of her understanding about the deferment, that she understood the letter and agreed to it. Whilst appreciating she was off sick at the time, if she had any doubt she should have referred back to the Respondent or taken independent advice.

Deposit

18. Had the Tribunal not struck out the claim, it would have considered making a Deposit Order as the claim alternatively had little reasonable prospects. The Tribunal did not get the opportunity, however, to discuss with the Claimant her current financial position as she did not return to the Hearing.
19. It is known from the ET1 Claim Form that she obtained a new job on 13 May 2024 and said she earned £2,000 but it is not clear what period that was for. The Tribunal had intended to obtain further information from her. Rule 40(2) states that the Tribunal shall make reasonable enquiries into the paying party's ability to pay and have regard to such information when deciding the amount of the Deposit. The Tribunal was not afforded that opportunity as the Claimant did not return to the Hearing.
20. In the circumstances it could not assess an appropriate Deposit as an alternative finding but it would certainly have done so if the claim had not been struck out and the Claimant had returned to the Hearing.

Approved by:

Employment Judge Laidler

Date: 31 January 2025

Sent to the parties on: 15 February 2025

For the Tribunal Office.

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