



EMPLOYMENT TRIBUNALS

Claimant: Mr D Anderson

Respondent: SBFM

JUDGMENT

1. The claimant's claim of unfair dismissal is **struck out** for lack of jurisdiction.
2. The claim of unauthorised deduction from wages is **dismissed** on withdrawal by the claimant. (Alternatively, it is **struck out** because it is not being actively pursued.)

REASONS

1. The Claimant presented a claim against the respondent on 4 October 2024 alleging unfair dismissal and unauthorised deduction from wages.
2. On 20 November 2024, Judge Heap issued a Rule 27 notice (under the old rules) indicating that she considered the tribunal did not have jurisdiction to hear the complaint of unfair dismissal and that it would stand dismissed unless that claimant explained in writing within 14 days why that part of the claim should not be dismissed. The reason was explained as the doctrine of res judicata on the basis that the claimant had presented the same claim previously, and that earlier claim had been struck out. She also noted the respondent accepted in its ET3 that it owed the claimant the sum of £2227.78 in unpaid wages and asked the claimant to confirm whether that was accepted.
3. The claimant had until 4 December to respond in writing. On 3 December, a Mr Selvin Reid of Care and Education Group replied by email to Judge Heap's order in his capacity as the new representative for the claimant. In respect of the unfair dismissal claim, the attachment (itself dated 1 December 2024) simply asserted that the claim of unfair dismissal was rooted in severe and substantiated allegations and urged the tribunal to permit it to continue. It did not engage with the jurisdiction issue generally nor the doctrine of res judicata specifically raised by the order. In respect of the unauthorised deduction from wages claim, it confirmed the claimant accepted the sum owed was accurate and attached correspondence from an ACAS conciliator on that point, albeit that fell short of a COT3 settlement

of that claim. The response does not explicitly withdraw the claim but does make clear the wage issue is being resolved independently and then makes clear that the claimant's focus was on "the more serious unfair dismissal claim with which the claimant was proceeding".

4. In the meantime, the respondent had emailed the tribunal on 21 November 2024 stating that it had now paid the outstanding sum to the claimant. The email was copied to the claimant and did not prompt any disagreement to the facts stated.
5. On 13 December 2024 Judge Welch wrote to the parties.
 - a. In respect of the claim of unfair dismissal, she noted the Claimant's representative's response concerning the unfair dismissal claim, stated that it provided no grounds on which to satisfy the tribunal that it has jurisdiction and that, therefore, the complaint of unfair dismissal stands dismissed.
 - b. In respect of the claim of unauthorised deduction from wages, she clearly had before her the recent correspondence concerning the apparent settlement of the unauthorised deduction and invited the claimant to confirm by 18 December 2024 whether he wishes to withdraw the unpaid wages claim.
6. No further reply has been received to that correspondence.
7. Two matters now arise from that history that this judgment seeks to resolve in respect of each claim.
8. In respect of the unfair dismissal claim: -
 - a. Judge Welch's correspondence states that the unfair dismissal claim "stands dismissed". Judge Welch did not herself issue a judgment. That is because Judge Heap's earlier rule 27 order was expressed as an unless order and non-compliance with an unless order has the automatic effect of engaging the sanction the order imposes. In this case that was strike out of the unfair dismissal claim. However, the terms of the unless order were such that the claimant's response received on 3 December 2024 amounted to material compliance with that order in substance. The defect is one of quality, not compliance. As a result, the claim did not stand dismissed.
 - b. However, the quality of the response fails to engage with the fundamental obstacle to jurisdiction identified by Judge Heap which is that this is a claim that has already been presented and struck out. For that reason, and against that background, I do now strike out the claim of unfair dismissal on the ground that the tribunal lacks jurisdiction to hear it.
9. In respect of the deduction from wages claim: -
 - a. There is enough in the claimant's representative's correspondence to infer a withdrawal albeit that has not been confirmed, as directed by Judge Welch. I dismiss it accordingly.

- b. However, the fact that the claimant or his representative has not engaged with the tribunal's correspondence on that point also leads me to conclude, in the alternative, that this is a claim that he is not, in any event, actively pursuing for the same reasons. In the alternative, I strike it out for that reason.
10. This claim therefore comes to an end by this judgment.

Employment Judge **Clark**

Date: **22 February 2025**