



EMPLOYMENT TRIBUNALS

Claimant: Miss A Madden

Respondent: Home Office

Heard at: Manchester (by CVP)

On: 11 June 2025

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: Did not attend and was not represented

Respondent: Ms C Brooke-Ward, counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claim is struck out under rule 38(1)(a) of the Employment Tribunal rules of procedure because it has no reasonable prospect of success.

REASONS

Introduction

1. This was a hearing listed to consider the respondent's application for an extension of time to submit its response, the respondent's application to strike out the claim because it was contended it has no reasonable prospect of success, the respondent's application for a deposit order, and to clarify the claim and make case management orders.

Procedure

2. The hearing was conducted by CVP remote video technology.
3. The claimant did not attend the hearing. We were not informed in advance that she would not be attending. The clerk endeavoured to contact the claimant shortly after the hearing had been due to start but was unable to do so using the contact details provided.

4. A bundle of documents was provided prepared by the respondent. A bundle of legal authorities was also provided. I understood that the bundle of authorities had been sent to the claimant in advance of the hearing and she had responded indicating that she did not believe that it was meant for her.

5. The respondent was represented by Ms Brooke-Ward, counsel.

6. Mr Peter Bell, a casework delivery manager, also attended the hearing. A witness statement had been prepared in advance of the hearing for him and was provided. I read the witness statement. As the claimant did not attend and therefore his evidence was not challenged, I did not require him to be sworn in and give his evidence under oath.

7. I determined the matters confirmed below at the hearing. As the claimant did not attend, I decided that brief written reasons would be provided in any event so that she understood the decisions made.

Application for an extension of time to submit a response

8. The response was due to have been submitted to the Tribunal by 11 February 2025. A draft response was only submitted on 19 February 2025 (eight days late). It was accompanied by an application for an extension of time to submit the response.

9. I granted the respondent the extension of time sought. The key factor in making such a decision, is the balance of prejudice between the parties. If I did not grant the extension of time sought, the respondent would be unable to defend the claim. There appeared to be no prejudice to the claimant, as a result of the response being submitted eight days late. I also noted that an explanation had been provided for the late submission of the response (as evidenced by Mr Bell). A potentially meritorious defence had been entered.

Application to strike out the claim

10. The only claim which the claimant had brought was one of unfair dismissal. That was the only box which she ticked on the claim form. A claimant must have two years' service with a respondent to be able to pursue an unfair dismissal claim.

11. According to the claimant's own claim form, she was employed from 29 August 2023 until 16 December 2024. She did not have the length of service required.

12. Whilst there are certain specific types of unfair dismissal claim for which the two years' service is not required, there was nothing in the claim form which indicated that one of those claims (for automatic unfair dismissal) was being pursued.

13. Whilst I would have preferred to have heard what the claimant had to say before deciding to strike out her claim and I was mindful of the fact that I was doing so without her in attendance at the hearing, I could not envisage anything which she could say which would show that her ordinary unfair dismissal claim had any prospect of success, where she did not have the length of service required to pursue such a claim.

14. As the claimant did not have the service required for the only claim which she had entered, her claim had no reasonable prospect of success. I decided it should be struck out.

15. I did raise with the respondent's counsel, whether the claim was one of unfair dismissal only (and heard her brief observations on the question). That was certainly what was indicated by the boxes at section eight of the claim form (although, in contrast, what was said at box nine referred to the remedy in a discrimination claim). The respondent's counsel emphasised what was said in the case of *Moustache v Chelsea and Westminster Hospital NHS Foundation Trust* [2025] EWCA Civ 185 and, in particular, in paragraph 56 of the Judgment in that case. She emphasised that the claim form submitted did not shout out that the claimant had some other claim. I agreed with that submission. Whilst I noted that the matters referred to might have included what could be described as references to disability, it did not expressly refer to that protected characteristic and the claim form did not shout out that the claimant was pursuing a disability discrimination claim (or any particular type of disability discrimination claim).

Employment Judge Phil Allen

11 June 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 July 2025

FOR THE TRIBUNAL OFFICE

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