EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000481/2025

Open Preliminary Hearing held in Glasgow on 21 July 2025

Employment Judge Campbell

Mr J Salaj	**Claimant** **In Person**
GXO Logistics UK Limited	**Respondent** **Represented by:** **Mr A Collington - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent's application to strike out all or part of the claim is granted to the extent it covers complaints not related to work allocated to the claimant following his return to work from absence in July or August 2022;

2. The remainder of the claim proceeds; and

3. The respondent's application for a deposit order is refused.

REASONS

Introduction

1. This was an open preliminary hearing in the claim of Mr Salaj against his current employer, GXO Logistics Limited. He works as a warehouse operative in East Kilbride and deals with the movement and storage of stock of a major supermarket.

2. Mr Salaj ('the **claimant**') states in his claim form that he began working in his role in August 2007, that his original employer was DHL, and that his employment transferred to the respondent in July 2023. He alleges discrimination based on race under the Equality Act 2010 ('**EqA**'). He is of Slovakian nationality. English is not his first language, although he was able

to communicate today without an interpreter provided technical legal terms were not used.

3. The purpose of this hearing was to decide:

    a. Whether all or part of the claim should be struck out because it had no reasonable prospect of success, under rule 38 of the Employment Tribunal Procedure Rules 2024 (the **'rules'**); or

    b. Whether the claimant should be ordered to pay a deposit before being able to continue with all or part of his claim under rule 40 of the rules.

4. I had available to view the electronic case file which included the claim and response form, the note and orders issued after a case management hearing on 17 April 2024, the respondent's application for strike out dated 23 May 2025 a number of documents submitted by the claimant such as medical documents, shift rotas and grievances, a note of further particulars of claim prepared by the claimant dated 8 May 2025 (the **'further particulars'**), a proposed set of amended grounds of resistance to the claim submitted by the respondent, a further version of that document with the claimant's comments added and a draft list of issues.

5. Ms Collington also submitted a hearing bundle which contained a number of the above documents as well as other items.

6. At this hearing I asked the claimant a number of questions on oath and Ms Collington put a number of cross-examination questions to him. Both parties were given a break in order to consider any closing comments they wished to make, which were provided when we resumed. Ms Collington prepared and circulated a written note of her submissions. I reserved judgment.

Relevant Law

7. An employment tribunal may strike out a claim for one or more reasons permitted in rule 38 of the rules which reads as follows:

Striking out

38.

(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).

Alternatively, a tribunal can order that a party pay a deposit before carrying on with their participation in a claim:

Deposit orders

40.

(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.

Review of the claimant's case

1. In his original claim form the claimant indicated that he wished to make a complaint of race discrimination. He provided short particulars of claim which narrated that he had begun experiencing issues around seven years before, after he formed a friendship with a Polish colleague. He suggested that this led to him being unfairly treated by various managers who were the friends of a member of the training staff who may have had a relationship with the Polish colleague. He said that the consequence was that he could not get trained to perform other duties, could not work in other parts of the business and was treated like a dangerous person.

2. The claimant provided a note of additional particulars of claim headed 'My brief story' in advance of a case management hearing on 17 April 2024. To the basic information in the claim form this added that instead of being allowed to work in other areas, he was assigned to pick heavy goods and suffered a

hernia in September 2021 which was operated on in June 2022. At the time of the operation he was told that he had a further hernia on his opposite side which had not progressed as far. He mentioned that the respondent took over from DHL on 31 July 2023 but as the same people were involved, the situation did not improve. He ended up contacting the police, who suggested he raise an employment tribunal claim.

3. On or around 8 May 2025 in response to a case management order the claimant submitted his further particulars document.

4. Based on the discussion which took place at the preliminary hearing it was believed that the claimant wished to make complaints of direct discrimination under section 13 of EqA and harassment under section 26.

5. Considering both the claimant's documents submitted to the tribunal and his oral evidence his claim can be summarised as follows. It is important to note that this is a summary of the claimant's case, and not findings made by me of what actually happened – the facts of what happened can only be established by agreement between the parties or as decided by a tribunal in the future after considering all relevant evidence.

    a. **Situation 1** (as he describes it) – since shortly after he started his job in August 2007 he had asked for training in order to be able to do a greater variety of work. The main duties of a warehouse operative involved breaking down large pallets of incoming stock and/or moving large quantities of stock around the warehouse. It is physically demanding, repetitive and tedious. He was finally allowed to start training for new duties related to 'intake' on 10 April 2020, but was taken off that after two days. The manager overseeing it suggested he was not able to follow simple instructions or communicate effectively, and would have difficulty carrying out the new duties. He returned to carrying out warehouse work only. He believed he was capable of the new duties and that he had been unfairly stopped from training.

    b. **Situation 2** – his enhanced sick pay ceased in December 2018 as a result of the length and timing of absences leading up to that date. The claimant believed this was unfair on him as he saw at least some of his absences being the result of his health being affected by having to switch between cold (chill section) and warmer (ambient section) areas of the premises, as he was ordered to do. He raised a grievance on 3 January 2019. There was an appeal process which the claimant followed by calling a general manager named Alison McCue but a receptionist would not connect the claimant to her. He sought trade union advice and ultimately spoke to another manager named David Wilson, and his sick pay was reinstated shortly after.

c. **Situations 3 and 4** – these were closely connected and said to involve events following on from Situation 2, and therefore from early 2019 onwards. Firstly, the claimant complained about being sent between the ambient and chill sections, as the variation in temperature had contributed to his past absences. This was accommodated but meant that he was only working in the chill section again. Further, he continued to ask managers for training so he could work in areas other than the chill section, but that was not progressed. Thirdly, he was frequently assigned to areas of the chill section where goods requiring handling were especially heavy, such as juices and yogurts. This was tiring and, given his history with hernias, a risk to his health. He experienced pain in his back and in February 2021 made a complaint to Stephen Panton, a chill section manager about being assigned such heavy duties. In September 2021 a further hernia was diagnosed and the claimant waited for an operation via the NHS before travelling to Slovakia and having the operation there in June 2022. He underwent a short programme of rehabilitation and returned to work in July or August 2022. He passed relevant medical documents to managers so they were aware of his circumstances and could adjust his work appropriately. For the majority of his shifts he was assigned to picking in areas of the chill section with products which were easier to handle. Occasionally Mr Panton would allocate him to a section with heavier goods and he would have to remind Mr Panton that he should not be working there. When this happened Mr Panton acted surprised and said he had forgotten about the claimant's requirements. He then moved the claimant to an easier area. The claimant believes that Mr Panton was fully aware of his condition and 'feigning ignorance'. He believes that Mr Panton was trying to take advantage of him as a non-Scottish person who would be less likely to be aware of his rights and speak up in support of himself. He raised a grievance about this after the first occasion, on 25 August 2022.

6. The claimant provided a list of dates when he said he was scheduled to work in more demanding areas (normally 'grid 9' as it was described) where Mr Panton knew he should not be put. Those were a date in August 2022 (which prompted the grievance), 15 December 2022, 14 January 2023, 6 April and 16 September 2024, and 22 January, 24 February and 4 May 2025.

7. The claimant said that the acts of race-related discrimination were as follows:

a. Since 2010, not providing him with (or denying his requests for) the opportunity to train so as to be able to work in other areas of the premises;

b. Using unfair methods and reasons to keep the claimant in the chill section, where he was forced to carry out physically demanding work;

c. Sending him to work alternating between the chill and ambient sections, with the result that this affected his health and caused absences (noting here that this stopped around February 2019);

d. Since his return in July or August 2022 from his hernia operation, Mr Panton repeatedly on occasions scheduling him to work in areas which involved moving heavy products at risk to his health.

8. He believes that the treatment he complains of was related to race because he comes from central Europe and from a different cultural, social and working background to Scottish workers who he works alongside. He suggests that non-Scots such as him would take longer to become aware of their rights, or would be perceived as not being so aware of them or willing to exercise them. He says that Mr Panton tries to manipulate him as he is 'a foreigner' who is believed to be 'naïve'. He appears to suggest a real comparator, a John Maschinsky, who suffered a hernia and was then given training as a step towards an office-based role. He also says that other colleagues who are predominantly Scottish in the chill section are (and have been) given easier areas to work in and better opportunities for training than he has. All report or reported to Mr Panton.

9. The claimant said he was unaware of anti-discrimination employment rights and the function of employment tribunals until being told about them by the police after he contacted them about suspected staking at the end of 2024. He did not know about ACAS or their role in the process of raising a claim.

Discussion and decision

10. Without repeating them in full, Ms Collington's points in support of the applications to either strike out the claim or issue a deposit order, were in summary:

a. The complaints went back as far as 2010 and were outside of the time limit for discrimination claims under EqA;

b. Additionally, the passage of time rendered it practically more difficult for the respondent to reply to them, including because not all of the individuals referred to were still employed by the respondent, documents were likely to have been destroyed and there had been a business transfer from the claimant's previous employer DHL to the respondent in the interim;

c. Despite a number of opportunities the claimant had not set out in a sufficiently clear and detailed way the key aspects of the discrimination

complaints he wished to make – in short there was no prima facie case which at least potentially could succeed at a future hearing. In particular, there was no evident connection between the conduct the claimant complained about and his race; and

d. It was not just and equitable for time to be extended in order to allow the complaints to be accepted and proceed to a future hearing.

11. I indicated that I would need to give all matters some thought and have now done so. The respondent's position is understandable given that it could potentially have to respond to some fairly historic complaints without access to all of the individuals or documents it might normally wish to have available.

12. Undoubtedly also, parts of the claim are unclear if not contradictory. For instance, the claimant complained about not being allowed training around 2010 but on his own evidence was trained some time after to work in the ambient section, only to find that it was not good for his health to switch between section with different temperatures. Similarly, he refers to his sick pay stopping but the culmination of his complaint about that at the time was that it was reinstated.

13. However, I am satisfied based on what the claimant has now provided that there are the necessary aspects of complaints of direct discrimination and harassment. Those are in relation to the allegations of Mr Panton disapplying agreed measures designed to protect the claimant's health following his hernia operation by scheduling him to work in areas which were known to be physically demanding and a risk to him. Those occasions are said to have fallen between August 2022 and May 2025. As such, potentially there could be a continuing act involving some or all of them, but even if there is not, some of the later alleged occasions would be within time as separate acts. However they are relevantly assessed, the backstop date would seem to be August 2022.

14. Whether Mr Panton did treat the claimant less favourably than a real or hypothetical comparator colleague on some or all of the occasions suggested by the claimant because of race is a matter for evidence and cannot be decided today. But equally I cannot say on the basis of the information currently presented that such a claim would have 'no reasonable prospect of success' as applies under rule 38 or even 'little reasonable prospect' as rule 40 requires. It is not for me to decide today which party is more likely to succeed were the claim to be decided on its merits. Ms Collington is aware of the binding case law in this area and the power to strike out being described as 'draconian' in ***Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684***. This applies particularly to claims brought by litigants in person who may not set out their arguments in a way more conventionally used by those

dealing with employment tribunals on a regular basis and, it could be said, doubly so when English is not the claimant's first language.

15. The test is by its nature less stringent when deciding whether to make a deposit order. More leeway is given to a tribunal to weigh up the comparative merits of each side's case, for example. However, there must still be 'a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence' - ***H v Ishmail UKEAT/0021/16***. At this early stage in the claim it is quite possible that the claimant's allegations would be supported by evidence at a full hearing.

16. The same comments above apply to a harassment complaint, assuming that the events relied upon are the same.

17. By contrast, I am not satisfied that any of the earlier complaints have any reasonable prospect of success. That includes any complaints relating to the provision or non-provision of training up to 2010 or the treatment of the claimant's sick pay in 2018 and 2019. The former is too historic and in any event the claimant appears to say that he did later receive training in order to work in ambient, but unfortunately that led to health problems and was not a long-term solution. Both points tend to undermine the validity of his argument now. In relation to sick pay, again this is historic and appears to have been resolved to his satisfaction at the time. He did not explain that it had originally stopped for a reason connected to his race. It appeared that a process based on duration and recency of absence had been neutrally applied to him. It would not be just and equitable to resurrect any further issue he may have then had (and did not take up) some five years later when his more recent complaints appear unconnected. This does not appear to be a situation where the claimant has been unable to put a potentially valid claim into clear words. I am conscious that the test is stringent as the Court of Appeal reminded parties in ***Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330***, but I note equally that there is no apparent dispute over the key facts in this case. I have taken the claimant's own evidence at face value, and even doing that he has not been able to describe a claim which the tribunal could now determine.

18. Based on the above analysis, complaints of direct race discrimination and harassment related to race, in each case based on the allegations against Mr Panton following the claimant's return to work in July/August 2022, cannot be struck out under rule 38. The remainder of the claim has no reasonable prospect of success and will be struck out.

19. In terms of next steps, it appears to me necessary that the remaining parts of the claim are clarified and that this best be done along with other case management steps at a case management hearing, which I will ask to be

arranged. It appears also that the claim as it is now being put forward by the claimant is worded differently enough from his original claim form that it would need to be amended in order to go forward to a full hearing in that state. The parties are encouraged to communicate directly about that and in particular the respondent may wish to further revise the grounds of resistance to the claim and draft list of issues in advance of that hearing so that the matter can be dealt with in a more focussed and efficient way.

Date sent to parties : 30 July 2025