



# EMPLOYMENT TRIBUNALS

**SITTING AT: LONDON CENTRAL**

**BEFORE: EMPLOYMENT JUDGE F SPENCER BY CVP**

**CLAIMANT MS J WILLIAMS**

**RESPONDENT MINISTRY OF JUSTICE**

**ON: 21 NOVEMBER 2024**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Ms C Jennings, counsel**

## JUDGMENT

The Judgment of the Tribunal is that:

- (i) The Claimant's claim of age discrimination is struck out as having no reasonable prospect of success.
- (ii) The Claimant's claim of gender reassignment discrimination is dismissed on withdrawal.
- (iii) The Claimant's claims of unfair dismissal, breach of contract, holiday pay and wages are not struck out and will proceed to a hearing, subject to compliance with the unless order made today.

## REASONS

1. The purpose of today's preliminary hearing was to consider the Respondent's application dated 20 June 2024.

- a. "To strike out the Claimant's age discrimination claim on the grounds that it has no reasonable prospect of success or, in the alternative, to make a deposit order as a condition of continuing her claim on the grounds that it has little reasonable prospect of success; and
  - b. To strike out the gender reassignment discrimination claim, holiday pay, notice pay, and other payments claims on the grounds of the Claimant's failure to comply with the Tribunal's order of 29<sup>th</sup> April 2024.
2. The Claimant had difficulty joining the hearing by video and, after some delay, joined by telephone so that she could be heard but not seen. No objection was taken to this course of action for the Respondent.
3. The provisions for strike out are set out in Rule 37 of Schedule 1 of the Employment Tribunal Rules of Procedure 2013, which provides that a Tribunal may strike out all or part of a claim on the basis that it has no reasonable prospect of success. (Rule 37(1)(a), or for non-compliance with the Rules or any Order of the Tribunal (Rule 37(1)(c)).
4. In Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL, the then House of Lords highlighted the importance of not striking out discrimination claims, except in the most obvious cases, as they are generally fact-sensitive and require full examination to make a proper determination. In such cases, the tribunal should consider the claimant's case at its highest. This means examining the pleaded facts and for the purposes of the strike-out consideration assuming (unless there is a compelling reason not to) that the claimant's version of any key disputed facts is correct.
5. A claim may also be struck out for failure to comply with orders of the Tribunal.
6. The test for the ordering of a deposit is that the party has *little* reasonable prospect of success; as opposed to the test under Rule 37 for a strike-out (*no* reasonable prospect of success).
7. The Claimant was dismissed by the Respondent in August 2023 ostensibly for medical incapability. The Claimant's claim, as identified today and at the case management hearing in April, is that this was unfair as she had broken her clavicle, would recover and was not incapable of working for the Respondent long-term. She says that the Respondent had falsely claimed that her return dates were not clear. They had agreed dates of return once her clavicle had healed.
8. In respect of the Claimant age discrimination claim, the particulars of claim state that "on age discrimination I made clear I wanted to retire age ca 70 but they stated that the pension fund et cetera did not support my age." This claim was discussed at the April case management hearing and it is recorded at paragraph 6 of the April case management order that the Claimant's claim is that the Respondent's policy on ill-health retirement was not available to her owing to her age and that this was discriminatory. Today

she said that this was her claim “in part” and that she was also claiming that she should have been allowed to work until 70 and that she had suffered loss in that she had not been allowed to work until she was 70.

9. As to the former, (that the ill-health retirement policy not being available to her) there can have been no detriment to the Claimant as it is her case she was ready to return to work in the short-term. This means that she would not have been entitled to ill-health retirement. Further and in any event, the Claimant was already entitled to access her pension without actuarial reduction as she was 67 at the point of dismissal, so the ill health provision would have provided no additional benefit. When asked about this the Claimant simply said the policy was discriminatory.
10. Secondly insofar as the Claimant is effectively saying she should have been allowed to work until she was 70 so as to accrue more pension, this is properly a remedy issue. If the Claimant succeeds in her claim that she was unfairly dismissed, any lost pension will, subject to the statutory cap, be taken into account in assessing the appropriate remedy.
11. I conclude that the age discrimination claim, as pleaded, has no reasonable prospect of success.
12. As the gender reassignment claim has been withdrawn we are left with a claim for ordinary unfair dismissal and other payments. Ms Jennings submits that the Claimant has failed to comply with orders of the Tribunal which required her to clarify her money claims for holiday pay and/or other salary no later than 10<sup>th</sup> June. She had not done so either in time or at all, notwithstanding being aware of the Respondent’s application to strike out her claim for non-compliance with orders.
13. The Claimant explains that her claim for breach of contract is for three months notice pay, so that claim is clear. The Claimant has not complied with orders requiring her to state how much is being claimed by way of holiday pay, nor how much is being claimed by way of unpaid wages. We made no further progress today, the Claimant simply telling me that her wages had been stopped without explanation
14. Nonetheless, I did not think it appropriate to strike out those claims. There is time to rectify matters, but the Claimant should be aware that orders of the Tribunal must be complied with. If there are particular difficulties in achieving compliance a party may apply to the Tribunal for an extension of time explaining the reasons why the order cannot be complied within the time limit. There has been, to date, a significant lack of active pursuit of these claims.
15. I have given the Claimant another chance to explain her claims for holiday pay and unpaid wages but unless she does that by the (generous) time limit those claims will stand dismissed without further order.

16. A separate case management order, including the unless order is enclosed with this judgment.

\_\_\_\_\_  
Employment Judge Spencer  
21 November 2024

JUDGMENT SENT TO THE PARTIES ON

27 November 2024

.....

.....  
FOR THE TRIBUNAL OFFICE