



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000104/2025

Held in Aberdeen via Cloud Video Platform (CVP) on 18 September 2025

Employment Judge Campbell

Ms A Bruce

**Claimant
In Person**

CG Beauty (Scotland) Ltd

**Respondent
Represented by:
Ms C Graham -
Managing Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant's application to amend her claim, made on 3 May 2025, is not granted; and
2. The respondent's application to strike out the claim and for an award of expenses, made on 28 April 2025, is not granted.

REASONS

Background

1. This was an open preliminary hearing to decide two applications, one made by each party. The claimant represented herself and the respondent was represented by Ms Graham, its Managing Director.
2. In this claim it was agreed between the parties that the claimant was employed by the respondent between 18 June and 6 November 2024, that the respondent operates a spa, that the claimant's role was as a Senior Skin Specialist, that the claimant was dismissed and that she received a payment in lieu of an entitlement to one week of notice.

3. The claim form was presented on 14 January 2024. The claimant ticked the boxes to indicate she wished to make claims for arrears of pay and 'other payments'. She also ticked the box to indicate she was making 'another type of claim which the Employment Tribunal can deal with', and added that she was still on probation at the time of her dismissal, and so could not claim for unfair dismissal but this was the case. She submitted a note at the same time, setting out her grounds of complaint in a narrative style.
4. On 14 March 2025, in response to a request by the respondent for further particulars of her claim, the claimant said that she again accepted she could not claim unfair dismissal, but that she believed she had been wrongfully dismissed due to clients and work being taken from her, which negatively affected her ability to meet performance targets during her probationary period.
5. On 28 April 2025 the respondent intimated an application for strike out of the claimant's case and an award of costs.
6. On 3 May 2025 the claimant submitted an application to amend her claim in light of the respondent clarifying its own position its response form and other documents, the tribunal issuing a letter in which it was clarified that her complaints would only about her pay, and also seemingly in recognition of the respondent's strike out application. She said that she wished to provide further and better particulars of her case following legal advice received shortly before.

Claimant's amendment application

7. The application itself was set out in a document with four sections – 1- pay related; 2 – breach of contract; 3 – other types of claim and 4 – wrongful dismissal.
8. At the outset of this hearing I explained that my objective was (i) to understand the terms of the original claim and particularly the legal complaints which had been made, then (ii) to review the terms of the application to understand what changes the claimant intended to make to her case, so that (iii) I could identify which aspects were properly an application to amend her claim as opposed to providing further particulars and finally (iv) to the extent there was any application, whether it should be granted.
9. I made sure the parties were aware of the difference between providing further particulars of their claim or response, and amending their claim or response to introduce new legal complaints or lines of defence.

10. I asked the claimant to explain her original claim and the amendment application on this basis. She confirmed and/or in that discussion it was agreed as follows in relation to the original claim form (ET1 form):
 - a. She is making complaints of unlawful deductions from wages and also breach of contract, both in relation to non-payment of wages or payment of less in wages than was believed to be due;
 - b. She originally wished to raise 'other' complaints, such as bullying, failure to deal adequately with grievances or breach of confidence, but accepts that those are not claims which the tribunal has the power to decide; and
 - c. She explicitly stated in her claim form that she realised she could not make a claim of unfair dismissal because of her short service, but believed her dismissal was nevertheless not fair. She only added by email on 13 March 2025 that she believed she had been wrongfully dismissed.
11. Similarly she confirmed the following in relation to the amendment application of 3 May 2025:
 - a. What she said in '1 – pay related' was merely further particulars in response to developments since the claim form was submitted, particularly the respondent conceding that she had been paid short on three occasions. It did not seek to raise a new complaint;
 - b. The contents of '2 – breach of contract' were provided because the claimant believed on receipt of the tribunal's letter a few days before that her pay claims were only being treated as a complaint of unlawful deductions from wages and not also breach of contract. The claim had originally been categorised as one of both unlawful deductions and breach of contract by the tribunal during its initial consideration of the claim. Again, the claimant was not asking to include a new complaint;
 - c. Under 'Part 3 – other type of claim' she added that she had received advice since submitting her claim and realised that the way she had presented her points may not have been the most helpful. She accepts now that none of the criticisms or complaints she raised within this section is a competent claim that the tribunal can decide;
 - d. In relation to 'Part 4 – wrongful dismissal' the claimant said she only realised an unfair dismissal claim for a person with less than two years of service could be pursued as wrongful dismissal instead when she carried out some legal research. What she understands in this respect

may apply in some cases but not all. She believed that there was enough detail in the claim form to foreshadow this complaint, but if not asked for it to be included by way of amendment. I explained that the limit on damages for a wrongful dismissal complaint is normally the amount of notice pay the individual was entitled to, and that she agreed she was entitled to one week's notice and had been paid for it, therefore potentially leaving no further amount to be claimed irrespective of the merits of such a complaint. The claimant replied that she did not accept she had received the correct amount of notice pay. With reference to her final payslip, which the respondent had previously submitted to the tribunal, she could not say for definite that she had been paid short and if so by how much, but that the entries were confusing as there were sums not included in earlier payslips.

12. I then gave Ms Graham the opportunity to comment on these matters. She accepted that the only aspect of the claimant's amendment application which potentially involved amendment in the proper sense was the wrongful dismissal claim. She maintained that the claimant had been paid the correct amount, that the complaint was not included in the claim form and that it had little merit. She added that the respondent's position was that it had fairly dismissed the claimant during her probationary period for valid reasons and to defend this complaint along with those already part of the claim would be a further distraction and demand on the time of the business.
13. I then indicated that we would move on to deal with the respondent's application for strike out and an award of costs.

Respondent's application for strike out and costs

14. The terms of the respondent's application were set out with reference to the 2013 version of the procedure rules for employment tribunals. Their current equivalents in the Employment Tribunal Procedure Rules 2024 are:
 - a. Rule 38 and in particular rule 38(1) on striking out; and
 - b. Rules 72, 73, 74 and 77 in relation to the circumstances where a preparation time order may be granted, and the amount of such an order.
15. The specific grounds for seeking strike out were:
 - a. The claim had no reasonable prospect of success – Ms Graham said that once the respondent had identified three instances of unintentionally paying the claimant short, it had calculated the amount she was due and had offered to pay this. At the time it was understood

that the claimant was only seeking payment of outstanding wages and that she should therefore have agreed to receive payment of this amount. There were no other sums due to her. The claimant could not allege with any reasonable prospect of success that she had been underpaid because the written contract issued to her contained provisions allowing for lay-off and short-term working, which were exercised towards the end of her period of employment as there was not enough client demand to occupy her for her normal number of weekly hours; and

- b. The conduct of the claim was scandalous, unreasonable or vexatious – the claimant appeared to have the ulterior motive of causing the respondent reputational damage, for example by obtaining statements of other individuals which were critical of the business, approaching an employee to act as a witness, and generating large volumes of documentation and correspondence in the case, all of which needed to be read, considered and responded to. This had been a time-consuming and stressful distraction for Ms Graham.
- 16. Ms Graham sought a preparation time order covering 30 hours of work on her part. She estimated that she had spent more time than this overall. She said the claimant had sent around 50 emails during the course of the claim so far.
 - 17. In reply, the claimant said that it was not her intention to cause Ms Graham stress or inordinate time away from the business. She was left to raise her claim as a last resort, having tried to resolve her claim directly and then via ACAS. She had also spent considerable time in preparing documents and considering correspondence from Ms Graham. She accepted that she had prepared a large volume of documents, but believed she was pursuing her claim on essentially four different fronts, which she now appreciates is not the case. She recognises in particular that she will not need to rely on other witnesses to support complaints which the tribunal cannot hear, and that in essence her claim is about her right to pay and that the main area of dispute is whether she was guaranteed a weekly amount or whether the respondent had the right to ask her to work less.
 - 18. At the end of the discussion I decided to reserve my decision and issue it in writing. I also said that I may issue some case management orders if the claim was to continue. My decisions in relation to the application are as follows.

Amendment application

- 19. The claimant did not explicitly include a claim of wrongful dismissal in her claim form. She clearly recognised that she could not make a claim of unfair

dismissal. She did not include details in her claim that reasonably suggested her contract was breached in connection with her dismissal, as opposed to her right to receive pay. She was clearly unhappy at being dismissed but her narrative conveys a more general sense of unfairness or injustice at having her probation ended and being treated as not meeting targets, rather than a breach of her contract being involved. She said nothing about her right to notice being unfulfilled, whether in terms of not working her notice period or not being paid for it.

20. I did not accept that the claimant had not included a complaint of wrongful dismissal in her claim form. For one to proceed, it would therefore need to be by way of amendment. I therefore considered the normal relevant factors when deciding whether amendment of a claim should be allowed. Those included:
- a. The tribunal's overriding objective as set out in rule 3 of the Employment Tribunal Procedure Rules 2024, particularly the need to deal with cases proportionately to their complexity and the importance of the issues, avoiding delay and saving expense;
 - b. What would be the benefit or hardship to each party, depending on whether the application is granted or not – and what is the fairest balance of those effects;
 - c. Whether the proposed new complaint is out of time, and if so why it was not raised within time, and what are the effects and consequences of a complaint being accepted later than it normally should have been;
 - d. In particular for a late claim, is the test for extending time based on whether it is just and equitable to do so, or whether it was not reasonably practicable to have raised the claim within time;
 - e. The timing and manner of the application to amend, including for example whether it has been raised early in the claim and involves less disruption to any existing case management directions or hearings, or whether there would be more adverse consequences if it were to be allowed, such as the postponement of a hearing;
 - f. Whether the new complaint would be based on facts and events which are additional to those already referred to in the claim, and if so to what extent and what would be the effect on things such as the length of a final hearing, the evidence involved and the witnesses required.
21. The above is not an exhaustive list, and in each case some factors will be more relevant and important than others.

22. The amendment would involve adding a claim of wrongful dismissal. According to the claimant's email of 14 March 2035, that would be based on an allegation that the claimant was deliberately not allocated sufficient clients to be able realistically to meet her targets, and that this plus potentially other factors such as her criticising what she saw as unfair practice and speaking up about her employment rights, were the reason why she was dismissed. This would require potentially lengthy evidence of new events to be part of the hearing of the claim. It appears that the claimant wishes to call other witnesses in support of it. That would be to the disadvantage of the respondent, which otherwise would have a relatively self-contained claim about monetary payments and the applicability of some of the terms of the written contract to deal with.
23. If the application is not granted then the claimant would not be able to argue that her contract was breached, but looking at the remedy she would be seeking, little if anything would be lost to her in that sense. The extent of her loss would be the amount of notice pay she was entitled to, which she agreed was one week. The respondent argues that it paid her this amount. She accepts that there was a payment, documented by way of her final payslip, but queries whether the amount was correct. This relatively narrow issue also falls within her existing 'pay' complaints of unlawful deductions and breach of contract. In other words, she would not lose out on the right to any remedy were the amendment not granted. Weighing all relevant factors, including these in particular, my view was that it would not be consistent with the tribunal's overriding objective to allow the amendment and, in the process, have the parties' and the tribunal's time taken up with an essentially academic debate.

Strike out application

24. A tribunal must approach an application for strike out in two stages:
- a. Do any of the alleged circumstances within rule 38 exist?;
 - b. If so, is it appropriate to strike out all or part of the claim or response as requested?
25. The first ground put forward was that the claim has no reasonable prospects of success under rule 38(1)(a). The respondent argues that there was a clear contractual power to require the claimant to work fewer hours, or not at all, in any given week. The claimant queries aspects of the contract and suggests that if there were such powers, they were not exercised reasonably and that separately she was not paid for all the hours she did work. It is not for me to decide today which party is more likely to succeed were the claim to be

decided on its merits. The Court of Appeal has stated that it will only be 'very exceptionally' appropriate to strike out a claim before a full hearing where there are facts in dispute - ***Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330***. The bar is set high for establishing that there are no reasonable prospects of success since the consequences of striking out are recognised as 'draconian'. 'No reasonable prospect of success' equates to a case weaker than merely 'more likely to lose than to win'.

26. I had more sympathy with the respondent in relation to its position on the claimant's 'other claims' as they had been described, but as discussed above they are now recognised not to be competent legal complaints and will not be going forward to a hearing anyway.
27. The second ground relied on in support of strike out was that the claimant's conduct of her case was scandalous, unreasonable or vexatious under rule 38(1)(b).
28. On reflection I did not find that the claimant's conduct of her case reached that high threshold. As an unrepresented claimant without detailed knowledge of employment law or tribunal procedure she had pursued her claim vigorously and at times inconveniently to the respondent, but not so far as to overstep the mark. It is hoped that now the case is better focussed, and as a result of case management directions I will separately issues, the parties' conduct of their cases will be more proportionate and appropriate.
29. It follows that the granting of a preparation time order was not merited. None of the circumstances required in rule 74 had so far arisen.

Conclusions

30. I did not think it appropriate to allow the claimant's application to amend her case or the respondent's application to strike out the claim or make an order for preparation time based on the conduct of the case to date.
31. I will separately issue some case management orders which I hope will allow the claim to proceed to a hearing in a more orderly and less onerous fashion.

Date sent to parties : 4 October 2025