



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000820/2025

Held by Video Conference Call in Aberdeen on 5 September 2025

Employment Judge J M Hendry

Mr A Onojah

Claimant
In Person

3D Leisure Limited

Respondent
Represented By
Mr J P Ramsey,
Managing Director
& Miss L Howells,
HR Manager

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

(One) the claims for race discrimination said to have occurred before the 6 November 2024 being time-barred, the Tribunal has no jurisdiction to hear them and they are dismissed.

(Two) the claims for race discrimination relating to the 26 December having no reasonable prospects of success are struck out.

(Three) the claim relating to three days underpaid wages for December 2024 shall proceed to a final hearing on the merits of the claims.

REASONS

1. The claimant in his ET1 sought findings that he had been racially discriminated against and was due holiday pay and arrears of pay. The respondent company opposed the claims.

2. The case proceeded to a preliminary hearing for case management purposes. At that point the respondent company had prepared a detailed note of the payments made to the claimant which seemed to show that no sums were outstanding. In relation to the claims for race discrimination it was not clear from the ET1 when these arose and there was an issue of time-bar. He seemed to indicate a course of conduct involving a line manager called Cherelle which culminated in a disciplinary hearing. He was aggrieved that CCTV which would have assisted him disproving the disciplinary allegations allegedly had been deleted.
3. The claimant also made reference to difficulties he had in taking paternity leave. This had arisen in 2023. I indicated that any such claim would now probably be time-barred.
4. The case proceeded to an open CVP hearing on 5 September 2025 to determine any amendment the claimant wanted to make to his pleadings, time bar and the respondent's application for strike out/deposit.
5. It had been suggested at the preliminary hearing the claimant set out his position more clearly in a document similar to a Scott Schedule which he lodged on 4 August. It was explained that this might require amendment of his claims. He set out a time-line of events both in relation to the issues revolving around payment of wages and separately of a document dealing with race discrimination. Whilst the respondent's managers agreed to speak to their payroll department and check the payments that had been made, a further preliminary hearing was arranged for 5 September. It was an open preliminary hearing to consider time-bar/reasonable prospects of success/deposit.
6. In the interim period they paid the claimant his salary which they indicated would cover any sum due for his disputed attendance on the 30 December and accrued holiday pay. The former employers set out their position before the PH wrote:
"In reference in the claimant's claim that he was not paid the last 2 weeks of his last month of employment, we can confirm the claimant tendered their resignation on the 29th December 2024 with short notice, requesting their last working day as 9th January 2025. The claimant was contracted to provide 4 weeks' notice [see appendix 24-contract], the claimant provided less than 2 weeks' notice. The company accepted the short notice as this seemed reasonable given site closure. It is recognised the company should have paid the claimant Statutory Guarantee Pay (SGP) for the duration of the claimant's notice period due to the site being temporarily closed and the claimant not having sufficient accrued holiday (4 days at £39.00 per day for: 2nd, 3rd, 6th, and 9th Jan = £156 total). The company recognises outstanding holiday

should have been paid to the claimant for holiday accrued between 1st Jan – 9th Jan (total 3hours at £11.44 per hour = total £34.32)."

7. There were some events which were not in dispute.
 1. The claimant started work with the respondent company as a cleaner on the 7 July 2023.
 2. The claimant applied for early conciliation on 5 February 2025.
 3. The certificate was granted on 11 March 2025 and the claim raised on 4 April 2025.
 4. The claimant's last day of work was 30 December 2024.
8. The claimant in his two schedules sets out his position in relation firstly to what he describes as Wage Discrimination and then Race Discrimination.

Wage Discrimination

9. The claimant sets out from his point of view an unsatisfactory position in relation to the payment of wages. Two claims seem to arise. The first is that he claims that he was refused Paternity Leave (paragraph 4) and told that the company was too busy to allow him leave. His manager "Gethin" asked him to defer his leave which he did.

10. The claimant writes:

"The verbal discussion I had with Gethin around November 2023 was him telling me to take the leave later dates when other staffs are back from leave as several staffs will be on leave that period. I repeatedly remind him each month of the said leave, and the response was I should wait for confirmation which I never got. It was after the reminder again on 03/03/2024 that he sent me a fresh mail on 04/03/2024 to adjust the form to the new dates I require and ended it with paternity can only be taken after receiving confirmation from him. Respondents also claiming I "Mr Onojah emailed HR admitting that he himself made the request to management for the paternity leave to be postponed" is false. I don't know the details of their evidence on this but the only thing I remember saying to Gethin during his request for postponement of my leave was assurance that the leave can be taken in later times which he agreed"

11. There is a factual dispute. The respondents say that the claimant asked for the postponement and was out of time when he finally requested the leave in March 2024. The respondent produced an email from the claimant that seems to support this interpretation. Any claim under for Paternity leave is considerably out of time. It seems to have been overlooked that by the point the claimant asked for paternity leave (9 or 12 October) the claimant had not

been working for the respondent company for the required 26 week period that entitled him to Paternity Leave.

12. The other claim related to payment of wages for the 30 December and two earlier days where he was counted as being absent. The respondent's position is that the wages paid covered this period. It was clear that there had been some dispute at the time but that the respondent had regularised the position. The claimant produced no calculation showing why or how he was due any outstanding sums and said that he had not had an opportunity of considering the supporting documents lodged by the respondent. I found this difficult to accept and concluded that the claimant did not seem to be able to show why any sums were still due to him.

Race Discrimination

13. The claimant gives little detail of the race discrimination complaint he wants to make in his ET1. He refers to "targeted intimidation and different treatment from Cherelle" who was his supervisor.
14. The claimant encountered a number of situations at work where he believes that he was treated unfairly. These appear to mostly relate to interactions with "Cherelle". In paragraph 7 he narrates an incident on the 30 July 2024 that he says takes place. He writes:

"I was framed severally for using phone at work and the only time I used my phone at work is for work related stuffs. Most times Cherelle, Kamila and co will tell me to cover the desk for them and instruct I hold my phone while in case they need to call me while they are away. I was confused several times and discussed with Gethin why I was told not to use phone, and same people will blame me for not responding to my phone while at work when they are sending message/call my phone."

15. The incidents detailed cover the period of the claimant's employment from asking for paternity leave in October until his resignation in December. The claimant approached ACAS on the 5 February. There doesn't appear to be any alleged discriminatory incidents in September although the paternity leave issue is raised again. The incident before this is in August and the claimant says:

"This is one of their malicious acts, I came to work that day thereafter. It was circumstances beyond my control as it skipped my mind but came to work immediately I was alerted. The SPA timesheet will prove this (if this is not one

of the times tampered with or kept out of sight deliberately), The timesheet for submitting key in the main office may also confirm this.”

16. The final incident he narrates is 30 December and appears to be a disciplinary hearing. The previous entry for 26 December says this:

“I resumed back to work and Cherelle arranged a meeting. She recorded our conversations. She asked me about my mail, and I informed her I am trying to recover it. She also informed me of adding shift of Tuesday 31/12/2024 and Wednesday 01/01/2025 to my shift. I challenged her why as my working days are Mondays, Thursdays and Fridays and why adding it without me agreeing to it. She said its management stuff, so I told her I am not a party to that and its subject to my schedule and festive bus times if I will be available. We were arguing back and forth on this as well as my holidays. I knew what she was trying to do and told her I am not comfortable with these discussions right now and will like to take my leave to resume my duties. She handed me a sheet of paper which I collected in other to leave her place before she manipulates something thereafter.”

17. The claimant gave evidence. He is an able and intelligent young man. He knows that an employer has to act fairly and that discriminating against someone is wrong and against the law. He believes that if he were white and British he would not have been so badly treated by his Supervisors as he was. He is particularly upset at what he sees as contradictory instructions in relation to the use of his telephone and the failure by Cherelle to check CCTV to confirm that he worked certain shifts. These appear to be honest perceptions.

Submissions

18. The respondent's position was straightforward. They sought strike out of the claims on the grounds that the claimant had been fully paid his wages and that nothing in his Schedule suggested race was the reason for his treatment. In addition the claims were out of time.

19. The claimant accepts that he received payment from the respondent company of accrued holiday pay and to cover January but complains that he was not shown as working on the 26 December despite CCTV showing that he would have been there and that two other days in December are unaccounted for and still due. He believes he was treated differently from other staff and was monitored more closely. He believes that he was treated unfairly because of his race and that the claims should be allowed to proceed.

Discussion and Decision Law

20. The Tribunal is required to have regard to the overriding objective contained in the Employment Tribunal Rules. The Rule provides:

“2. Overriding objective”

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable - (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

21. The power of strike out is contained in Rule 37:

“37. Striking out”

At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds - (a) that it is scandalous or vexatious or has no reasonable prospect of success.....”

22. The process of striking out has been said to be one that requires a two-stage test (**Hassan v Tesco Stores Ltd** UKEAT/0098/16). The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the Tribunal to decide as a matter of discretion whether to strike out the claim.

23. Considerable care must be taken when considering the striking out of a claim for race discrimination. In **Anyanwu v South Bank Students Union** [2001] IRLR 305, a House of Lords case, Lord Steyn stated at paragraph 24:

“For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.”

24. In the same case the former Lord President, Lord Hope of Craighead stated at paragraph 37:

“... discrimination issues of the kind which have been raised in this case should as a general rule be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The tribunal can then base its decision on its findings of fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence.”

25. It is however competent to strike out a discrimination claim where appropriate to do so (**Ahir v British Airways plc** [2017] EWCA Civ 1392), in which Lord Justice Elias stated that:

“Employment Tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context.”

26. In the case of **Mechkarov v Citi Bank NA** [2016] ICR 1121 the EAT summarised the current law as follows:

“(a) only in the clearest case should a discrimination claim be struck out; (b) where there were core issues of fact that turned on oral evidence, they should not be decided without hearing oral evidence; (c) the claimant’s case must ordinarily be taken at its highest; (d) if the claimant’s case was ‘conclusively disproved by’ or was ‘totally and inexplicably inconsistent’ with undisputed contemporaneous documents, it could be struck out; (e) a tribunal should not conduct an impromptu mini-trial of oral evidence to resolve core disputed facts.”

Discrimination Claims

27. Claims for discrimination must be lodged within three months of the Act complained of starting with the date of the act to which the complaint relates, or from such other period as the Employment Tribunal thinks just and equitable (Section 123 Equality Act 2010). If there are a series of acts then the time limits starts from the last act.
28. The first difficulty the claimant faces is that acts before 6 November 2024 appear time-barred. The later incidents do not appear to be part of any continuing state of affairs or part of any continuing act. The incidents appear to be discrete incidents. The last contentious matter occurred on the 30 July. It’s not obvious what connects the incidents as some relate to Gethin and some to Cherelle and appear to involve that the sort of matters that occur in

workplaces. I considered whether there were good reasons for the claimant not taking action further. He had been clear in his evidence that he was aware that race discrimination was wrong. He does not appear to have raised that concern with his employers or taken advice about his rights. He is able to use a computer/smartphone and if as he says he was concerned at this disparity of treatment he could have carried out some research into his rights. The first incident that he complains about occurs on the 9 October 2023 almost a year and a half before he contacts ACAS and that is the deferral of his paternity leave. I struggle to find a basis on which an application for the use of the just and equitable power to extend time could succeed. These incidents are therefore time-barred and shall be dismissed.

29. The incident on the 26 December does not appear from the papers to have any obvious racial element. The next difficulty the claimant faces is that he has to set out a *prima facie* case of discrimination. He gives no actual comparators but suggests that white British employees would have been treated differently to the way he was treated. Even taking this at its highest he gives no reason for the assertion and suggests no evidence to support this view. A disparity in treatment is not enough to demonstrate any particular type of discrimination. He does not answer “the reason why” he believes race discrimination was occurring. The case of ***Madarassy v Nomura*** (as approved by the Supreme Court in ***Hewage v Grampian Health Board*** (2012) UKSC37) requires that he pleads something more that points to race being a reason for his treatment.
30. I concluded that the claims made had no reasonable prospects of success. The earlier claims do not seem to have the character of claims relating to discrimination on the grounds of race. In addition, they are out of time. The incident on the 26 December is in time but does not say what the discriminatory behaviour was and why the claimant believes that race discrimination was at issue. Even taken at its highest what is said is not enough to advance a *prima facie* case. The claimant was given an opportunity to provide further details of his claim after the first case management hearing.
31. I then considered if strike out was appropriate. While I have sympathy for the claimant and take account of the fact that he is a party litigant he had been given time to consider his position and to set out facts from which the Tribunal could recognise that race discrimination could have occurred. He had been unable to do so. I considered if a Deposit Order might be appropriate but rejected this. The claims have no reasonable prospects of success. The claimant is unable to pay anything more than a token sum by way of a deposit. I must also consider that allowing these claims to proceed will take up judicial time and be a time consuming and expensive exercise for the respondent

company. My conclusion is that this is a case where strike out is appropriate and the claim for race discrimination shall accordingly be struck out.

Wages Act claims

32. The claimant accepts that the remaining dispute relates to three days in December. He has been unable to demonstrate why any other sums are due to him. I would record that he had produced no calculations showing what he believes he is due by way of sums of money. He has not engaged with the material produced by the respondent which seems to show that he had been fully paid wages and accrued holiday pay.
33. I take the view that I cannot say that they have no real prospects of success. The reason for that conclusion is that there is a factual dispute and I have not heard evidence about the calculations from the respondent's payroll. The claimant says he is still due three days' pay and the respondents say he is not.
34. I regret that I will have to hear evidence from someone in the respondent's payroll to allow me to make findings in fact as to whether the respondent or the claimant are in the right. This should not be a lengthy process perhaps a couple of hours. I do not believe that a deposit order is appropriate given this factual dispute.
35. Finally, I apologise for the delay in preparing this Judgment. This was due to a combination of events particularly annual leave and workload.

Date sent to Parties

03 December 2025