



EMPLOYMENT TRIBUNALS

Claimant: Mr B Aro

Respondent: Commsec Security Ltd

JUDGMENT WITH REASONS

Heard at: Manchester (via CVP)

On: 15 December 2025

Before: Employment Judge Bunting

Appearances

For the claimant: In Person

For the respondent: Mr R Lyons, consultant

JUDGMENT

1. The respondent's application to strike out the claim fails.

REASONS

Introduction

2. This case was listed on 15 December 2025 for a 3 hour open preliminary hearing to decide the respondent's application to strike out the claimant's claim or, in the alternative, to make a deposit order.
3. The case is listed for a final hearing listed for three days on 31 March 2026.
4. The claimant was employed as a Security Officer from 29 April 2022 until 18 March 2024 when his resignation took effect.

5. He brings a number of claims:
 - Race discrimination
 - Automatic unfair constructive dismissal
 - Protected disclosure
 - Unpaid holiday pay
 - Unauthorised deduction of wages
6. The claimant states was working in an unsafe work environment in that the office was beset by mould, with grass growing inside.
7. Although he raised this with the respondent on a number of occasions between October and December 2023, nothing was done. As a result he states that this amounted to a breach of the implied term to provide a safe work environment which entitled him to resign, which he did on 18 March 2024.
8. This is also put in the List of issues as being also a breach of the implied term of trust and confidence, although it appears that this is the same point.
9. The claimant also states that the principal reason for the dismissal was that he made a protected disclosure in relation to the health and safety issues. These were to Mr Scott (his Line Manager) in September/October 2023, and to Marie Dunn by letter of 01 December 2023.
10. The claimant states that he is Black African / British Nigerian. During the course of his employment he was racially abused by a customer but, when he raised this, neither Mr Scott nor Ms Dunn did anything.
11. He also states that he was given 12 days holiday entitlement whereas others in his position were given 28 days.
12. There are also claims for holiday pay (only being paid for 12 days rather than the 20 plus 8) and for a further 3day underpayment in each of November and December 2023.

Procedural History

13. Following an early conciliation period of 02 April 2024 to 07 June 2024, the claimant presented three separate claim forms, all presented on 07 June 2024. These were consolidated by EJ Batten on 16 July 2024.
14. There was a Preliminary Hearing listed in front of EJ Butler on 07 February 2025 where the final hearing was set.
15. At that hearing a list of issues was drafted that covered the above claims, as well as the question of time limits in relation to all claims. In addition, directions were made to ensure that the case was ready for a final hearing.
16. Following that, an application was made on 20 March 2025 for a further preliminary hearing, to be held in public, to make an application to strike out the claims.
17. It was said that the claims for race discrimination and whistleblowing were 'opaque'.
18. The race discrimination claim was based on an alleged phone call with Donna Karim (denied by her) which was not mentioned until the Preliminary Hearing. It is said that it does not make sense that this would cause the respondent '*to suddenly fail to address his complaint about the call (they did), or interfere with the claimant's holiday entitlement (which was in issue well before the Donna Karim telephone call)*'.
19. In relation to the whistleblowing claim it was said that the photographs provided by the claimant were taken in a corridor separate to the working environment
20. Further, the claimant had raised a grievance and, whilst this was being investigated, had had a 'walk through' with Ms Dunn where he confirmed that there were no health risks to him.
21. In addition, whilst some issues were raised by the claimant, most of these had been resolved before his resignation.
22. The holiday pay claim should also be struck out as being based on a misunderstanding as to his entitlement and, in any event, was out of time.

23. Although the respondent requested a full day preliminary hearing, it was only listed for three hours by EJ Allen. As a result of the preliminary hearing being listed, it is unclear that all the directions of EJ Butler have been complied with and the case ready for trial. This will need to be resolved in the further Preliminary Hearing that is listed for 26 January 2026.

Evidence and hearing of 15 December 2025

24. I was provided with a bundle of 342 pages. In addition, I heard evidence from the claimant himself.
25. As noted, the hearing was listed for three hours.
26. On 15 December 2025 there were a number of difficulties that arose. Although it appears that the agreed bundle had been sent in good time to the Tribunal, it had not been tied up to the digital file. This took some time to resolve, which ate into the available time for the hearing.
27. During the hearing, the claimant made reference to an audio file of the grievance hearing. This was said to have been emailed to the respondent, but the respondent had no record of receiving it.
28. I asked the claimant to play the audio file. He did this, and it was clear that it was the audio of the Grievance Meeting. There was not enough time to listen to it all in the hearing.
29. The claimant had previously stated that he had raised the issue of racial abuse at this meeting. However, this was not apparent from the audio. He was asked if he could identify anywhere in the recording where he had made reference to racial abuse from the customer (as opposed to general abuse). He accepted that he could not, although he had not been able to listen to all of it.
30. It was clear that there would not be sufficient time to determine the application. I was also concerned that whilst it was clearly unsatisfactory for the audio of the meeting to be produced on the day, this was an incontrovertible piece of evidence as to what happened on what was a significant part of the case.

31. The claimant stated that he had sent the email to the respondent, although the respondent said that it had not been received. Even if it was sent, that does not explain why the claimant had not requested it be included in the joint bundle, or raise its absence with the respondent.
32. However, as stated, I did not consider that it would be fair to exclude it as an independent record. For that reason, whilst I heard oral submissions from both the claimant and respondent I stated that I would not make a decision at that point.
33. Instead, the case was adjourned to allow for a transcript of the Grievance Meeting to be produced, with a view to either concluding the case on the papers, or reconvening the Preliminary Hearing on 26 January 2026 if that was necessary in the interests of justice.
34. Directions were set for the transcript to be provided by 17 December 2025 followed by any representations from the respondent in writing by 19 December 2025.
35. After that, the claimant was given until 22 December 2025 to make any further submissions on the strike out or deposit order point that he would wish, as well as any submissions as to whether the hearing should either be reconvened in front of me or (as I was sitting remotely on the Virtual Region) re-heard by a new Employment Judge in person.
36. The claimant was provided links to the cases that had been discussed at the hearing.
37. Subsequently, I was given a transcript of the Grievance Meeting which ran to 92 pages.
38. There was also a 7 page transcript of a telephone call between the claimant and Les Bowden (a possible witness) provided by the claimant.
39. In addition, there were further submissions from the respondent (5 pages) as well as an email attaching submissions that gives further representations, as well as a 'Guide' to the transcript.

40. In response, the claimant has provided a letter (2 pages) dated 20 December 2025. This gives reasons why his health & safety claim and holiday pay. There is no reference in that to the race discrimination claim.

The Law

The test for striking out

41. The Tribunal has power, under r38 Tribunal Rules 2024, to strike out a claim if one of the grounds in r38(1)(a) to (e) are met. At issue in this case is (a) – whether the claim has ‘no reasonable prospect of success’.
42. There are a number of cases that were referred to at the hearing. All are under the 2013 Rules which are in similar terms. It is not suggested that the change in the Rules makes any difference to the outcome in this case.
43. I start by reminding myself that a decision to strike out is a draconian one. In **ZEB v Xerox (UK) Ltd & Anor (Practice and Procedure: Striking-out/dismissal) [2016] UKEAT 0091 15 2402**, Simler J summarised the law as follows:

3. The Employment Tribunal’s power to strike out a claim at a preliminary stage is derived from Rule 37(1)(a) of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**. That Rule enables a Tribunal to strike out a claim that has “no reasonable prospect of success”. This power has rightly been described as a draconian one, and case law cautions Employment Tribunals against striking out a claim in all but the clearest cases, particularly where that claim involves or might involve allegations of discrimination. Cases in which a strike out can properly succeed before the full facts have been found are rare. As Lord Steyn explained in **Anyanwu v South Bank Students’ Union** [2001] IRLR 305:

“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. ...”

In the same case at paragraph 37 Lord Hope made the following observations:

“37. I should like first to say that, if I had reached the view that nothing that the university is alleged to have done could as a matter of ordinary language be said to have aided the students’ union to dismiss the appellants, I would not have been in favour of allowing the appeal. I would have been reluctant to strike out these claims, on the view that 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. ...”

4. In **Ezsias v North Glamorgan NHS Trust** [2007] ICR 1126 in the Court of Appeal, Maurice Kay LJ said:

“29. It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the employment tribunal to decide otherwise. ... It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the

undisputed contemporaneous documentation. The present case does not approach that level.”

44. Further guidance, which is of particular relevance in cases where there are is a litigant in person, was given by HHJ Tayler in **Cox v Adecco UKEAT/0339/19** at paras 28-34.

45. There is a helpful summary at para 28 which I shall set out in full:

1. No-one gains by truly hopeless cases being pursued to a hearing;
2. Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;
3. If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;
4. The Claimant’s case must ordinarily be taken at its highest;
5. It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can’t decide whether a claim has reasonable prospects of success if you don’t know what it is;
6. This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;
7. In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;
8. Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;

9. If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

46. However, notwithstanding that caution, there are cases where it is appropriate to strike out a case, although these will be rare in discrimination cases; **Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT** (para 33).

47. If the condition in Rule 38 is met, then strike out is not automatic. It remains a discretionary order, although it 'may be a relatively short step' from one to the other (**Bahad v HSBC Bank Ltd [2022] EAT 83** at paras 38-39, per HHJ Tayler).

ANALYSIS

Race Discrimination

48. The claimant's case on race discrimination is on two bases. Firstly that he was racially abused by a customer of the respondent and the respondent failed to take action in relation to two.

49. Secondly, he states that the respondent failed to pay him holiday pay whereas other employees, who were not of the same race as him, were paid the correct amount.

50. It is important to see how the claim developed. In a 'Greviency Letter' dated 01 December 2023 (page 225) the claimant raised health and safety issues, as well as issues surrounding unpaid wages and holiday pay. However, there is no mention there of any acts of racial discrimination.

51. When the claimant resigned, he submitted a letter dated 11 March 2024. In this he raises issues surrounding his holiday payment, as well as health and safety. Again, there is no reference to racial abuse or discrimination.

52. When the claims were lodged (on 07 June 2024), the claimant ticked the box for racial discrimination in all three ET1s. However, the details of his claim at para 8.2

(pages 12, 24 and 36) do not contain any reference to anything that would amount to race discrimination.

53. The only reference appears to be in the second ET1 submitted (page 24) where, when asked to set out the background to his claim, he says 'RACIAL ACT' with no further details given.
54. The respondent raised this at paras 19-21 ET3 (page 64), but the claimant did not respond to this.
55. However, there does not appear to have been any particulars given until the 10 February 2025 at the Preliminary Hearing. This was recorded in the List of Issues (question 19, page 89) as follows:

19. What are the facts in relation to the following allegations:

(1) Following the claimant raising with Mr Scott in October 2023 and Ms Dunn on 01 December 2023 that he was being racially abused by a customer (the claimant says that the customer swore at him and used racial language, including telling the claimant to "take your black ass off the phone" and "I do not want to see your face, fuck off", words which he says he repeated back to his managers) neither Mr Scott or Ms Dunn took any action to protect him. The claimant says that had he been of a different racial group then his managers would have taken some action.

(2) Was the claimant given 12 days holiday entitlement whilst other were given an entitlement of 20 days + 8 days for bank holiday?

56. The Judge noted (para 25 CMO, 07 February 2025) that it was 'not entirely clear how the claimant argues causation' in respect of his race discrimination claim.
57. For the purpose of these proceedings, the claimant provided a witness statement dated 28 March 2025 (page 311).
58. In this he again refers to the various health and safety breaches alleged, as well as to his holiday pay and unpaid wages.

59. The claimant again makes reference to the abuse he received from a customer, saying :

There's a particular client that always ring up for footage to be sent direct to her mobile, of which decline, I tried to explain to the client that I am not allowed to do so, I can only send it to my manager, and he will send it to you as soon as possible, since then, the client have been abusing me on the phone whenever I pick up her phone, calling me all sort of names , and swearing at me

60. Again, it can be seen that there is no reference to her racially abusing him. Further, there is no reference to there being any issue of racial discrimination in relation to the holiday pay issue.
61. There was nothing produced by the claimant prior to the Preliminary Hearing to elaborate on, or substantiate, any claim for discrimination on the grounds of race.
62. This was raised with him at the hearing. The claimant stated that he had raised this in the grievance meeting. However, we have the audio of that meeting and the claimant did not mention race at all during it.
63. He then did go on to say that he had mentioned it to Scott Bamford in conversation two weeks before the Grievance Hearing (where Mr Bamford was present). That is not accepted by the respondent.
64. I have set out above the test to be applied on a strike out application.
65. In relation to the first allegation of discrimination, the case will revolve around whether a conversation was had between the claimant and Mr Bamford prior to the Grievance Meeting.
66. Mr Lyons relied on evidence that would be called by the respondent from the person that was alleged to have racially abused the claimant that strongly denied that she had done so.
67. Whilst I understand his argument, it seems to me that that is open to the response that '*[s]he would [say that], wouldn't [s]he?*'. I do not consider that it would be open

to me to strike out the claim on the basis that the evidence from the respondent was strong, and likely to be preferred in due course.

68. it is clear that the respondent can make number of strong points as to why the claim should fail. These include:
 - 68.1 There is no mention at the grievance hearing of any racial abuse
 - 68.2 There is no mention in the ET1s of any details of the racial abuse
 - 68.3 There is no mention in the claimant's witness statement of any racial abuse
 - 68.4 The submissions provided by the claimant dated 20 December 2025 make no mention of the racial discrimination claim
69. However, I do not consider that I can ignore the fact that there is a direct factual dispute between the claimant and respondent that needs to be resolved. Whilst it is possible to strike out such a case in some circumstances (**Shestak v The Royal College of Nursing & Ors [2008] UKEAT 0270 08 1408**), the number of cases where that is appropriate will be rare.
70. In this case, I did not hear evidence from the respondent's witnesses and have, necessarily, an incomplete picture of the facts. To strike the case out would be to, in effect, accept the respondent's account without cross-examination.
71. In those circumstances, I do not consider that this is a case where I could properly strike out the claim as having *no* reasonable prospect of success.
72. The respondent also relied on the question of time limits in relation to all the claims. There are many cases where it is appropriate to determine this at a Preliminary Hearing, but I do not consider that this is such a case.
73. Assuming the claimant succeeds on the merits, the issue as to when the discriminatory act occurred (and whether it was ongoing for a period) is not straightforward and may turn on the oral evidence.
74. In relation to both the discrimination claims, the question of whether an extension of time should be granted if required overlaps with the evidence that would be called at a final hearing.

75. For those reasons, it seems to me that questions relating to time limits are best resolved by the Tribunal at the final hearing.

Health and Safety and wages claims

76. In relation to the other claims made by the claimant, whilst I can see the points raised in Mr Lyons's arguments, it seems to me that the remainder of the claims that the claimant seeks to bring are ones where the resolution of them may turn on the oral evidence (including the oral evidence of the respondent), and a careful analysis of the material provided.

77. For example, in relation to the whistleblowing claim, in his final written submissions on behalf of the respondent (para 4) Mr Lyons sets out a clear path that a Tribunal could follow that would lead to the conclusion that the claim is without foundation.

78. It may be that the Tribunal will agree with him, but that may depend on what oral evidence is heard to explain the written material that has been provided. The test for strike out is a high one and I do not consider that I could properly conclude at this stage that the Tribunal would be bound to reject the claimant's account in full, or to conclude that there was no reasonable prospect of success.

79. As opposed to the race discrimination case, I do not consider that I can accurately, and confidently, assess the merits and conclude that there is little prospect of success either.

80. That is also the case in relation to the time limit points. Whilst resolution of that issue involves two different tests (one under the Employment Rights Act and one under the Equality Act), I consider that the evidence in relation to this is a matter that is required for determination at the final hearing having heard all of the evidence.

81. For those reasons, I would not strike out the remaining claims, nor would I make a deposit order in relation to them.

CONCLUSION

82. For the above reasons I conclude that it is not appropriate to strike out the claim for race discrimination as having no reasonable prospect of success.

83. However, for reasons set out separately, it is a case where a deposit order should be made in relation to both heads of claims.
84. It is not a case where a strike out, or deposit order, should be made in relation to the other claims.
85. The case remains listed for a full merits hearing, starting on 31 March 2026.
86. In the circumstances of the case, it is appropriate to retain the further Preliminary Hearing on 26 January 2026. It is currently listed face to face in front of any Employment Judge, which should remain the case. It will be necessary to consider case management directions to ensure that the case is ready for trial on 31 March 2026.

Employment Judge Bunting

DATE: 27 December 2025
Revised on 22 January 2026

Sent to the parties on:
13 February 2026

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For the Tribunal Office: