Case Number: 3303947/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr D Young

Respondent: Fresh Cut Video Limited

Heard at: Reading (by C.V.P.) **On:** 15 and 16 October 2025

Before: Employment Judge George

Appearances
For the claimant: Self-representing
For the respondent: Mr R Magara, solicitor

RESERVED JUDGMENT

1. The victimization complaint has no reasonable prospects of success insofar as the acts complained of are alleged to have occurred prior to 1 December 2023.

2. List of Issues paragraphs 20.1, 20.2, 20.3 are struck out on the basis that they have no reasonable prospects of success.

3. List of Issues paragraph 11.1 is dismissed because it has been determined as a preliminary issue that the claimant was not disabled by reason of depression and anxiety at the relevant time.

4. Other than as set out in paragraphs 1 & 2 of this reserved judgment, the respondent's application to strike out particular complaints is refused.

REASONS

1. The Employment Tribunals Procedure Rules 2024 include the following:

"38.— Striking out

(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 or response (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

..."

2. The power to strike out a claim on the ground that it has no reasonable prospect of success is a power to be exercised sparingly, particularly where there are allegations of discrimination and unlawful detriment on grounds such as protected disclosure or health and safety grounds.

3. In the case of Anyanwu v South Bank University [2001] IRLR 305 HL, the House of Lords emphasised that in discrimination claims the power should only be used in the plainest and most obvious of cases. It is generally not appropriate to strike out a claim where the central facts are in dispute because discrimination cases are so fact sensitive. The same point was made by the Court of Appeal in the protected disclosure case of Ezsias v N Glamorgan NHS Trust [2007] I.C.R. 1126 CA where Maurice Kay LJ said this at paragraph 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. In essence that is what Elias J held. I do not consider that he put an unwarranted gloss on the words "no reasonable prospect of success". 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."

4. Furthermore, there is a public interest in ensuring that allegations of discrimination are heard and determined after appropriate investigation of the circumstances because of the great scourge that discrimination, whether on grounds of race or other protected characteristic, represents to society. It is relevant to bear in mind that s.136 of the Equality Act 2010 provides for a shifting burden of proof. Therefore at this preliminary stage the question is whether the claimant has no reasonable prospect of establishing the essential elements of his claim, taking into account the burden of proof in respect of each of those elements and bearing in mind the danger of reaching such a conclusion where the full evidence has not

been heard and explore: see Underhill LJ in Ahir v British Airways Plc [2017] EWCA Civ 1392 para.16.

5. That said, where it is plain that a discrimination claim has no reasonable prospects of success (interpreting that high hurdle in a way that is generous to the claimant), then the tribunal does have and, in a plain and obvious case, may use the power to strike out the claim so that the respondent and the tribunal system are not required to spend any more resources on a claim which is bound to fail: Anyanwu para.39 per Lord Hope. Such an example is given in the quotation from Ezsias.

6. This reserved judgment should be read together with the Record of Hearing and Case Summary which set out a summary of the events of the hearing and the documents which I had available to me. I refer to but do not repeat what I said there. These reasons are merely to explain my judgment to strike out a limited number of complaints out of the extensive application to strike out elements of the claimant's claim. In summary, I was not satisfied that the high test of no reasonable prospects of success was satisfied in respect of any of the other particular parts of the claim which were the subject of the application and do not repeat what I said in my Case Summary about why I concluded that the test was not met.

7. In Section 6 of their written submissions on strike out, the respondent argued that certain alleged victimisation detriments pre-dated the alleged protected acts and there was consequently no reasonable prospect of them being found to have been done because of the alleged protected acts. This was said to apply to 6 alleged detriments (using the paragraph numbers from Employment Judge Codd's List of Issues RB page 149 – 150):

> "20.1. Initiating and/or intensifying covert/excessive monitoring (manual DM checks Aug 2023+, software Nov 2023+, CCTV 2023)
>
> 20.2. Unfair denial/obstruction of 2023 disciplinary appeal right/process (Nov 2023)
>
> 20.3. Withholding opportunities from C, isolating them from clients (2023)
>
> 20.4. Blocking access to all work platforms without notice (22 Jan 2024)
>
> 20.5. Inviting C to the 'informal check-in' meeting under false pretences, deliberately obscuring the nature / purpose of that meeting (Jan 2024).
>
> 20.6. Giving unreasonable notice (<30 mins) for a conduct meeting, and pre- meditatively obscuring its 'investigation' identity (30 Jan 2024)."

8. The argument that these alleged detriments pre-dated any protected act was predicated in part on another argument that LOI 19.1 should be struck out on the basis that there was no reasonable prospect of the claimant showing by an allegation that the respondent's solicitors were on notice of his intention "to initiate proceedings or a complaint about his employment" that the respondent believed that he intended to carry out a protected act within the meaning of s.27 Equality Act 2010 (see section 5 of their written submissions).

9. I reject that argument. The claimant plausibly argued that, in the context of detailed correspondence, and other procedures which were going on at the time, he had better than no reasonable prospects of showing that a statement that he was seeking legal advice – particularly given his short service –would cause the respondent to believe that he intended to complain about discrimination. I have decided that LOI 19.1 should not be struck out.

10. Nevertheless, the earliest date for knowledge of the intention to complain of discrimination in the List of Issues is 1 December 2023. LOI 20.1 to 20.3 all predate that date.

11. The claimant's answer to this argument was that, prior to disclosure, it was not possible to say there were no or little reasonable prospects of him successfully arguing that he was victimised even in respect of alleged detriments which pre-date any of his pleaded protected acts. This seems to me to be tantamount to arguing that I should accept there are better than no reasonable prospects of success because something may turn up in disclosure which shows that the respondent anticipated that the claimant would bring discrimination complaints prior to the acts alleged to be victimisation.

12. The claimant argues that a history of precluding access to evidence and limiting response to the Subject Access Request causes him to suspect that there is relevant evidence available. This is speculative. This is not the right time or type of hearing for me to decide whether or not there has been anything improper about the way the respondent has handled requests. However, it is clear that disclosure of documents has been contentious – to put it neutrally. Nevertheless, in order to have been than no reasonable prospects of these particular complaints succeeding, the claimant would have to argue that as far back as August 2023 the respondent believed that he would complain about discrimination. This is not presently how the claim is framed and appears fanciful.

13. The highest the claimant's argument came in oral submissions was that he stated that within the disciplinary process and appeal starting 23 October 2023, representatives of the respondent stated "you just know he's looking to sue" – he asked, rhetorically, what else could it be but discrimination?

14. Again, the pleaded case on when the respondent believed that the claimant would complain of discrimination is 1 December 2023. There are no reasonable prospects of these three complaints succeeding on the basis of the claim as presently pleaded taking the pleaded case at its highest because it is contrary to its internal chronology. There has just been an extensive application to amend which has been considered and determined

over the course of two preliminary hearings. Prior to today the claimant did not seek to argue that the respondent believed he would do a protected act prior to 1 December 2023 and that that was the reason why LOI 20.1 to 20.6 were acts of victimisation.

Approved by:

Employment Judge George

10 January 2026

JUDGMENT SENT TO THE PARTIES
ON 12 January 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/