



EMPLOYMENT TRIBUNALS

Claimant: Mrs Niculena Banu

Respondent: Karali QSR Ltd

Heard at: London South (in public by videolink)

On: 26 June 2026

Before: Employment Judge R S Drake

Appearances

For Claimant: In Person

For Respondents: Ms Sophie Sheerin (of Counsel)

JUDGMENT

1. The Claimant's claims of Public Interest Disclosure detriment under Section 47B of the Employment Rights Act 1996 as amended ("ERA"), of Breach of Contract under Section 3 of the Employment Tribunals Act 1996 (as amended ("ETA")) and the Employment Tribunals Extension of Jurisdiction Order 1994 ("ETEJO"), of withholding/deduction from pay under Section 13 ERA and failure to pay holiday pay under Regulation 16 of the Working Time Regulations 1998 (WTR") are all **struck out** under Rules 38(1)(a) to (d) inclusive of the Employment Tribunals Rules of Procedure 2024 as amended ("the Rules") because they have been found to have no reasonable prospect of success, they have been conducted by the Claimant unreasonably and in non-compliance with Case Management Orders as to evidence disclosure promulgated by the Tribunal on presentation of the Claim Form, and because the Claimant has not actively pursued the proceedings by such non-compliance.

SUMMARY REASONS

2. I refer to the parties as "C" and "R" respectively. I refer to documents in a 71 page Bundle prepared by R as "P1 – 71".
3. I took detailed account of a number of things as follows:-
 - 3.1 C is of Romanian extraction and English is not her first language. She did not seek the assistance of an interpreter but nonetheless I took special care to ensure and was satisfied that she could

understand the procedure and understand everything said during the hearing;

- 3.2 There was no evidence filed or served on R by C and she had not served and filed a witness statement, but I felt it was in the interests of justice that she be permitted to ask questions of R's witness Mrs Joanna Drumm even if she could not give oral testimony herself in the absence of a disclosed statement;
4. In this hearing, which was scheduled as a Final Hearing, I heard detailed argument from both C as a "Litigant in Person" and from Ms Sheerin for R. I recognised and noted that though C needed detailed explanation by me of the law underpinning her claims and its limitations with regard to her sense of grievance against R, she had not taken legal advice during preparation for presenting her claims.
5. After full submissions and guidance from me as to the matters for C to concentrate upon and focus, I reached my conclusions after deliberation before giving reasons orally in short form. These reasons are therefore summary and take precedence over what I explained orally on the day. I heard oral evidence from Mrs Joanna Drumm, who is R's head of HR. I allowed brief cross-examination. I found Mrs Drumm's testimony to be honest and compelling.

Findings

6. I base my findings on the bundle of documents (Pages 1 to 71 inclusive) produced to me today referred to by their page numbers which includes from C only her ET1. Because this hearing was in public and was scheduled to be a Final Hearing I was able to consider the full extent of the evidence which enabled me to have a fuller basis than usual as would have been the case at a Preliminary Hearing to consider the that part of the Strike Out application which relied on Rule 38(1)(a) in particular.
7. I recognise that it is difficult for C to understand that though she harboured a strong sense of grievance about the way she was dealt with by R's staff, her claims can only be pursued in accordance with the legal framework underpinning the Tribunal's jurisdiction.
8. Accordingly I analyse her claims and reach the following findings thus:-
- 9.1 C had been employed since 3 March 2020 as a "Team Member" at one of R's "Taco Bell" quick service restaurants in Brighton until dismissed after redundancy consultation with effect from 19 March 2025. Redundancy is the reason relied on by R though they argue that C unreasonably refused an offer of alternative employment at another of their outlets reasonably proximate in Brighton and thus lost any right to a statutory redundancy payment. Because C offered no documentary or statement evidence to challenge R's evidence, I accepted R's evidence as truthful on a balance of probabilities.

9.2 Thus I was able to accept that on 19 March 2025 C was paid £1,985.52 net of tax and NI which R regarded as being the final sum due to her, being both her notice pay and her final holiday pay as is evidenced by a final payslip – P71. There is no evidence before me showing that any sums other than tax and NI were withheld from her.

9.3 C accepted Mrs Drumm's testimony that redundancy consultation began on or about 13 June 2025 and that closure of the branch at which she worked would be 19 January 2025. She regarded closure as inevitable and that she was from that point in time onwards entitled to a statutory redundancy payment, though she accepted that she was told that every effort would be made to find an alternative to offer to her and her colleagues.

9.4 On multiple occasions I sought to draw from C a clear statement of what the key issue was in her claim and concluded that it was that once redundancy consultation began, entitlement was triggered and that she had somehow been denied such entitlement. She steadfastly held to the view that moving to another site was not something she was obliged to consider.

9.5 I accepted Mrs Drumm's testimony that within a few days, an alternative at the second Brighton site was found and that it was offered to C with no changes to her terms other than as to place of work. I note that C's contract of employment (PP48-7 para headed "Place of Work – Brighton") includes a flexibility clause reserving to R a power to move employees within reasonable distances. This is precisely what R did in this case but C refused this offer despite the fact that if the alternative were in Brighton, which is precisely where the contract says she could be expected to work, so arguably there was no need to rely on this flexibility..

9.6 The key cause of grievance expressed by C to me was that the offer of the alternative was not immediately on 13 January but on 31 January 2025, thus only 18 days later. I accept from Mrs Drumm that this was the soonest such an offer could be made because the opportunity did not emerge until activity at the alternative could be gauged effectively after closure of the outlet at which C was engaged.

9.7 I accept that R acted in precisely the way a reasonable employer should act when presented with a situation where redundancy dismissal may ensue after an outlet closure in that they did not immediately dismiss C as soon as closure was announced, but commenced both collective and individual consultations before reaching any final conclusion so as to enable them to consider whether any viable alternatives to dismissal could be found and to make offers of alternative employment or reasonable redeployment. To reach a finding against an employer in such a situation might otherwise be perverse.

9.8 In terms, C was really seeking to argue a form of unfair dismissal, but I could find no reference to this in her claim and recognised that for her to be able to pursue such a claim she would have to seek leave to amend her claim. Given the passage of time leading to an inevitable conclusion that adding such a claim would be out of time, I did not grant leave to amend.;

9.9 I noted that since the start of the proceedings C has not engaged with R in order to progress preparation of the case for this hearing and has had to be warned that it might possibly be dismissed because of a failure actively to pursue the claim; She has not been in contact with R to discuss and agree evidence disclosure and exchange of witness statements, And thus I conclude that she has not actively pursued her claim in the manner expected and envisaged under the ET Rules.

Relevant ET Rules and their application

9. For the sake of completeness, I set out below the basis upon which I had to consider the position as far as set out in Rule 38(1) of the Employment Tribunals Rules of Procedure 2024 as amended ("The Rules"):-

"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 ... has no reasonable prospect of success - (*my emphasis*) ;
- (b) That the manner in which the proceedings have been conducted by C has been ... unreasonable;
- (c) for non-compliance with any of the ET Rules or with an order of the tribunal
- (d) the claim has not been actively pursued ... "

Case Law cited and/or considered.

10. I explained to C the effect of Langstaff J's Judgment in the EAT in **Chandhok v Turkey [2015] EAT/0190/14/KN**. I derive from this Decision the principle that:-

"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1."

Langstaff J referred to what was at that time Rule 37 of the 2013 Rules, the equivalent provision being now Rule 38 of the current ET Rules. I note there

is no material change. The point is the same. The effect in the present case of this guidance is that I must address the question of what is to be considered in a Rule 38 Application and that it is what is set out by C in, and to be seen through the prism of his Pleadings, not what evidence she proposes to test at Final Hearing.

11. Neither side referred me to it, but I took account of the Court of Appeal's finding in **Swain v Hillman [2001] 1 All ER 91** in which it was held that a Court (or Tribunal in this case) must consider whether a party "... has a realistic as opposed to fanciful prospect of success ..." in the context of assertions, as in this case, that the Claimant's case has no, as opposed to little prospect of success. In this case there is clearly on my examination no conflict of pleading on the key points such as would necessitate ventilation of evidence necessary to make factual findings on contested allegations at a full hearing. On the Claimant's own pleadings, there are no such factual disputes to be determined one way or another at a full hearing. I concluded that much less than even a fanciful prospect of success.
12. **A v B (and another) [2011] ICR D9, CA** - In this case the Court of Appeal held that a Tribunal was wrong to find a claim had no reasonable prospect of success basing this conclusion on a finding that on proper analysis it had "more than a fanciful prospect" of success. From this I derive a distinction between "no prospect" and no more than a "fanciful prospect." If a point is clear cut to show that a case as pleaded is such that disability is established or the expressing of public interest disclosures and no clear pleading shows any case of detriment, then C's claims MUST be doomed to fail. I conclude that this is a clear example of no prospect as opposed to no more than a fanciful prospect of success.
13. **Anyanwu (and another) v South Bank Students' Union [2001] ICR 391**. - In this case the 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 usually require full examination to make a proper determination. I conclude this is an obvious case where Rule 398 can and should be applied.
14. This was followed by the Court of Appeal's decision in **Community Law Clinic Solicitors v Methuen [2012] EWCA Civ 571**, in which it was held that an employee's claim for age discrimination should not be struck out because the case required further examination of the facts so as to properly consider whether age discrimination could be inferred. The Claimant's case before me today as currently pleaded is easily distinguishable from **Methuen** because though the claimant in that case had pleaded acts of discrimination or detriment clearly, he had not pleaded sufficiently any form of argument to show that his causes of action established or that he faced detriment because of that or because of some other cause such as having made a health and safety complaint nor of having made a public interest disclosure. He said clearly that his claims overall are all bound up with the disability complaints, so if he cannot pursue that line of argument much of what he otherwise relies on must fail.

15. In **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126**, the Court of Appeal again held that it will only be in an exceptional case that a claim will be struck out as having no reasonable prospect of success when the central facts are in dispute. However, in the current case, the Claimant's claims as pleaded do not go anywhere far enough to establish viable and triable claim in respect of whistleblowing.

Conclusions

16. I considered the balance of prejudice facing C if I struck out his claims leaving him with no further way of arguing here his views as to what has happened, or to R if the case were not struck out causing them to have to devote considerable time and energy to meeting claims which on what I have seen and heard today, and also based on C's admissions, have no prospect of success.
17. On this analysis, I conclude that the balance of prejudice favours R leading me to conclude it is right I should strike out all the claims.
18. I explained to C that a Rule 38 Application addresses the claims as pleaded, not what C believes subjectively she could prove. She asserted vociferously and frequently the opinion that because she held a sense of grievance for an 18 day time gap between first consultation and the making of an offer was made and that a move of work location within the same town was unreasonable, this was an implicitly absolute bar to the making of a Rule 38 Application and/or finding of no prospect of success as required by Rule 38. I had to explain that by their very nature, Applications under Rules 38 and/or 40 can be made at any point in development of a case after Pleadings.
19. I am satisfied that though the main complaint made by C was in effect an unfair dismissal claim which she had not initially pleaded in her Claim Form and which taking into account the authorities mentioned above she cannot now make.
20. For all the reasons set out above, I conclude that paragraphs (a) to (d) inclusive of Rule 38(1) are engaged and empower me to strike out all claims in accordance with Rule 38. Therefore, I find that I have no alternative but to dismiss the claims of failing to make reasonable adjustments discrimination (because disability at the relevant time is not established) and the claims of detriment caused by making protected qualifying public interest disclosures.

Employment Judge R S Drake
Date: 26 June 2026

Sent to the parties on:
Date: 4 July 2026

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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