



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Jing Zhang

**Respondent:** Asda Express Limited

**Heard at:** Manchester Employment  
Tribunal (by CVP)

**On:** 14<sup>th</sup> November 2025

**Before:** Employment Judge Thompson  
(sitting alone)

## REPRESENTATION:

**Claimant:** Mr Smith (Claimant's father)

**Respondent:** Mr Esmond, solicitor

# WRITTEN REASONS

1. On 14<sup>th</sup> November 2025 I gave a decision striking out the Claimant's complaint of disability discrimination because it has no reasonable prospects of success. I also made a deposit order of £200 in relation to the unfair dismissal claim and £200 in relation to the claim for enhanced redundancy pay on the basis that they had little prospects of success.
2. There was subsequently a long delay in promulgating my judgment and a long delay in these written reasons being provided. I apologise to the parties for the unacceptable delays.
3. There was a Preliminary Hearing in this matter on 4 August 2025 before Employment Judge Potter. It was identified at that hearing that the Claimant was bringing three claims: direct disability discrimination; unlawful

deductions in respect of an enhanced redundancy payment; and unfair dismissal. The direct disability discrimination claim was identified at that hearing as relating solely to the allegation that the Claimant was dismissed for reasons that she says were because of her disability. She identified her disability as cancer.

4. Employment Judge Porter listed the matter for a further Preliminary Hearing on 14 November 2025 to consider the Respondent's deposit order application. The Respondent considered its position ahead of the second preliminary hearing and updated its application to include a request to strike out of some of the Claimant's claims. Specifically, the Respondent applied for the Claimant's complaints of disability discrimination and enhanced redundancy pay to be struck out on the grounds that they have no reasonable prospects of success, pursuant to Rule 38(1)(a) of the Employment Tribunal Rules of Procedure 2024. In the alternative, should the Tribunal decide not to strike out the claims, the Respondent invited the Tribunal to make an Order in accordance with Rule 40 that the Claimant pays a deposit of £1,000 per claim to the Tribunal in order to continue each of her claims (for disability discrimination, enhanced redundancy pay and unfair dismissal) on the basis that the claims have little reasonable prospects of success.

## **Background**

5. The Claimant says she started working for Mobil on 30 June 1996, and Mobil was subsequently taken over by BP. Her employment later transferred to Euro Garages Limited, now called Asda Express Limited. She worked for the Respondent as a petrol forecourt services manager, mainly at the service station at Stretford circle. However, she was asked to move to the Trafford Centre site and she agreed.
6. The Claimant's employment was terminated on 8<sup>th</sup> November 2024. The Respondent says that this was on the grounds of redundancy because it chose to close the Trafford Centre service station where the Claimant worked. When the decision was made to close the Trafford Centre site the Claimant says she should have been moved back to Stretford circle so that she could continue with her employment. The Respondent offered her alternative employment elsewhere but because of the travel distances this was not suitable to the Claimant. The Claimant says that the Respondent should have made the managers at Stretford Circle, Irfan Patel and Frooq Patel, move to those alternative sites that she had been offered so that the Claimant could continue her employment at Stretford circle. The Respondent refused to do this. The Claimant therefore argues that her dismissal was unfair on the basis that the employees at the Stretford Circle branch should have been bumped to make way for her.

7. The Respondent asserts that there was a genuine redundancy given the closure of the service station at the Trafford Centre. The Respondent says it treated the Claimant fairly and did offer her alternative employment. There was no alternative employment available for the Claimant at the petrol station at Stretford circle. It was not reasonable to expect the Respondent to "bump" the service managers there out of their jobs to secure the retention of the Claimant in its employment.
8. The basis for the disability discrimination claim is that the Claimant alleges that she was selected for redundancy because of her disability. The Claimant contracted cancer in July 2010 and underwent surgery, chemotherapy and radiotherapy. She took ten months sick leave under full pay. In November 2012, she had a mastectomy due to a family history of breast cancer. She then had a reconstructive operation on 10<sup>th</sup> July 2024. She says that all of absences were connected to her cancer treatment.
9. On 8<sup>th</sup> November 2024 the Claimant says that she an outcome meeting relating to her redundancy that stated she had been selected for redundancy based upon "personal circumstances". She says the only "personal circumstances" that she could think of was that she had cancer treatment and had taken some sick time off. On this basis, she asserts that she was selected for redundancy because of her cancer.
10. The Respondent's case is that the entire site at which the Claimant worked was closed due to the expiry of the Respondent's lease, and that it followed a full and fair redundancy dismissal process. On the Claimant's own case, the Respondent's Trafford Centre site did close. The Respondent consulted with the Claimant about her potential redundancy. The Respondent offered the Claimant alternative roles, which she refused. The Respondent continued to employ the Claimant for almost a year after the site closure, during which the Respondent continued to look for alternative roles. The Claimant was paid during this time, despite not having a job role. The Claimant was unable to work for two months from July to September 2024 due to reconstructive surgery related to her cancer. The Respondent continued to employ and pay the Claimant during this period. The Respondent considers that the Claimant has no reasonable prospects of successfully showing that she was dismissed because of her disability. The reason for the Claimant's redundancy is clear, and the Respondent continued to support the Claimant for an extended period of time after the site at which she worked was closed, including a period during which the Claimant was unable to work due to reconstructive surgery related to her disability. In the alternative, the Respondent considers that the Claimant has little reasonable prospects of establishing that she was dismissed because of her disability.

11. In relation to the enhanced redundancy pay, the Claimant alleges that she should have been paid 1 years' salary for every 5 years' service under the terms of her employment contract at BP (which was her employer before she transferred to the Respondent under TUPE). The Claimant does not have any documentary evidence to support this claim. The Claimant's only evidence is that an unnamed manager allegedly received £140,000 and that the Claimant "knew the situation". The Respondent does not have a copy of the contractual terms which the Claimant was employed under at BP or any other document which sets out an entitlement to enhanced redundancy pay and having conducted searches is not aware of any documents which would show the Claimant had an entitlement to enhanced redundancy pay.

### The Law

12. Rule 38 of the Employment Tribunal Procedure Rules 2024 provides that 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 grounds that it has no reasonable prospect of success.
13. Rule 40 provides that where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order"). The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.
14. It is trite law that a claim for discrimination will not generally be struck out at a pre-hearing stage. The law is helpfully summarised in *Hussain v UPS UKEAT/0221/17/DM*:

*"The power to strike out an ET claim is provided by Rule 37 of Schedule 1 of the 2013 Rules, which allows that an ET may strike out all or part of a claim on the basis that it has no reasonable prospect of success. This is, for example, to be contrasted with an ET's power to order that an allegation or argument may only be pursued upon the payment of a deposit, which requires that the ET consider that the allegation or argument in question has little reasonable prospect of success.*

*In Ezsias v North Glamorgan NHS Trust [2007] ICR 1126 CA, Lord Justice Maurice Kay stated as follows: "29. ... 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. ..."*

*Guidance was further provided by the EAT in Balls v Downham Market High School & College [2011] IRLR 217 at paragraph 6. "6. Where strike out is sought or contemplated on the ground that the claim has no reasonable prospects of success ... the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word 'no' because it shows that the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects." (Original emphasis)*

*More specifically, in Tayside Public Transport Co Ltd t/a Travel Dundee v Reilly [2012] IRLR 755 CS, it was noted that in almost every case the decision in an unfair dismissal claim is fact-sensitive, and it was further observed that: "30. ... where the central facts are in dispute, a claim should be struck out only in the most exceptional circumstances. Where there is a serious dispute on the crucial facts, it is not for the tribunal to conduct an impromptu trial of the facts ..."*

*And further, where there is a dispute as to the reason for the dismissal, it has been stated that it would be very rare indeed that the dispute could be resolved without hearing from the party or parties who actually made the decision (per Langstaff J in Romanowska v Aspirations Care Ltd UKEAT/0015/14 at paragraph 15). As for discrimination cases, it has been recognised that involving, as they do, a investigation as to why an employer took a particular step, they will generally (allowing for the exceptional case). Whilst there is no ban on striking out a discrimination claim at an early stage, there is a public interest in such claims being heard (Ukegheson v Haringey London Borough Council [2015] ICR 1285, para 4)."*

15. However, there are cases where it is proper to strike out a claim. In *Ukegheson* it was pointed out that:

*"The purpose, as it seems to me, of the provision of the strike-out rule is twofold. In an appropriate case it serves to avoid the exposure of a respondent to unnecessary expense. A respondent may not be able to recover its costs of defending a labyrinthine, detailed, lengthy claim, which may be ill-formulated and which may take several days of hearing brought by a party who, if they lose, will have no substantial assets with which to pay any award of costs to which the respondent might otherwise be entitled under the costs provisions in the Rules.*

*However, its other and central purpose is to provide for straightforward and obvious cases where, on any showing, there is no prospect in reality success (other than perhaps a fanciful one) to be removed from consideration and in that way preserve the resources of the court and the parties and ensure that other cases have a better chance of being heard promptly before the tribunal” (para 23).*

16. In *Anyanwu v South Bank Students' Union and South Bank University* [2001] IRLR 305 at paragraph 24 it was stated as follows:

*“This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in *Madarassy v Nomura International plc* [2007] IRLR 246 (CA): ‘... only indicate a possibility of discrimination.’”*

### **Application of the Law to the Facts**

17. In my judgment there is no reasonable prospect of the Claimant being able to establish the facts necessary to liability being established in respect of her discrimination claim. I find that even if the facts alleged by the Claimant are all established, she will still not be able to establish that she was dismissed because she had cancer.
18. The only matter that the Claimant has been able to point to in support of her belief that she was discriminated against because of her cancer is the letter dated 8<sup>th</sup> November 2024 which refers to her "personal circumstances". Although she says the only "personal circumstances" that she could think of was that she had cancer treatment and had taken some sick time off, she does not allege that anyone at the Respondent told her that this was the personal circumstance they were referring to and having read the letter, the obvious alternative is that her "personal circumstances" being referred to is that she did not want to travel to the other roles offered. The Claimant accepts that she told the Respondent that she did not want to travel to other locations that were offered.
19. There is a straightforward explanation for why the Claimant was dismissed. The Claimant accepts that the Respondent's Trafford Centre site did close. She accepts that the Respondent consulted with her about her potential redundancy and that she was offered her alternative roles. These facts clearly support the innocent explanation.
20. There are other undisputed facts which clearly undermine an allegation of discrimination, including the fact that the Respondent continued to employ

the Claimant for almost a year after the site closure, during which the Respondent continued to look for alternative roles. The Claimant was paid during this time, despite not having a job role. The Claimant was unable to work for two months from July to September 2024 due to reconstructive surgery related to her cancer. The Claimant does not dispute that the Respondent continued to employ and pay her during this period.

21. A claim for discrimination cannot be allowed to proceed on the basis of an assertion by the Claimant that she was dismissed because she had cancer against the factual background set out above which she does not dispute. The Claimant has not been able to advance some basis, even if not yet provable, for an assertion that she was dismissed because of her disability. The only explanation that she offered, namely that the reference to her “personal circumstances” must be a reference to her cancer, is not sustainable and she offered no other reason as to why she believed that her dismissal was because of her cancer.
22. In relation to the enhanced redundancy pay claim, there is no documentary evidence to support this claim. The burden of proof is on the Claimant to establish the existence of the right to enhanced redundancy pay and so far all she has offered is oral evidence that an unnamed manager allegedly received £140,000. The Respondent does not have a copy of the contractual terms which the Claimant was employed under at BP or any other document which sets out an entitlement to enhanced redundancy pay. I therefore find that this claim has little prospects of success. The Claimant has confirmed that she has savings, but she was not prepared to divulge the full amount of her savings. I therefore consider that a deposit of £200 is appropriate.
23. In relation to the unfair dismissal claim, I am satisfied that this has little prospects of success as the only argument advanced relates to bumping. Given that there is no requirement to bump employees in a redundancy situation I find that this claim has little prospects of success. I consider that a deposit of £200 is appropriate.

Employment Judge Thompson

Date 6<sup>th</sup> July 2026

REASONS SENT TO THE PARTIES ON

7 August 2026

FOR THE TRIBUNAL OFFICE

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