



EMPLOYMENT TRIBUNALS

Claimant: Mr S Thileeban

Respondent: Gate Gourmet London Limited

Heard at: Watford (by CVP)
On: 25 September 2026

Before: Employment Judge Caiden

Representation

Claimant: In person with the assistance of a Tamil Interpreter (Mr R Razik)

Respondent: Mr Anthony Green (Head of Human Resources)

PRELIMINARY HEARING IN PUBLIC RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim that the Claimant is 'owed other payments', including that he did other duties other than Team Leader duties but received no additional pay, is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.
2. The other claims, namely harassment related to race and direct race discrimination, are not struck out or subject to any deposit order and will therefore proceed.

REASONS

Introduction and preliminary matters

1. The Claimant presented the ET1 on the 4 September 2025, after having completed ACAS Early Conciliation on 6-7 August 2025. The Claimant at the material time was a Team Leader for the Respondent who operate major airline catering facilities at London airports.
2. In section 8.1 of the ET1 the Claimant ticked boxes of *"I was discriminated against on the grounds of...race"* and *"I am owed...other payments"*. He attached a document to his ET1 that detailed *"Statements of Events – Racial Discrimination at the Workplace"* which centred around an allegation that there were *"ongoing issues that reflect discriminatory treatment involves the use of a shared drawer located on the computer desk"* but it had no details of the alleged *"other payments"* owed.
3. The Respondent defended the claim by way of its ET3 and stated materially *"the grievance related to a draw in a desk that the employee stated was locked and he was denied access to, which appears to be the basis of this claim. This claim was found by the grievance and subsequent appeal hearing to be unfounded. The desk draw is unlocked and open for access by anyone and contains only stationary items"*. The ET3 also stated the claim had no realistic prospect of success and should be struck out.
4. By letter of 20 February 2026, the Tribunal listed a Preliminary Hearing to determine whether the claims should be struck out or subject to any deposit order on 25 September 2026.
5. The Claimant requested a Tamil interpreter for the hearing. Unfortunately, there was considerable delay in the interpreter attending. The result was that whilst the Tribunal was satisfied that there was an adequate time for all to make the points that they wished to make it was not possible to deliver oral judgment and the Tribunal had to reserve its decision.
6. The Tribunal was provided with the following material, all of which it considered (although much of which did not seem relevant to the issue at hand):
 - 6.1. a 14-page witness statement by the Claimant;
 - 6.2. a 7-page grievance appeal transcript;
 - 6.3. a 129-page file of documents provided by the Claimant (it had pagination at the bottom which ran to 128 pages, and was cross referenced in the witness statement, but there were in fact 129 pages);
 - 6.4. an email from the Respondent stating the documentation provided by the Claimant was not relevant and maintaining the claim should be struck out.

Identifying the claims

7. The Tribunal spent considerable time during the hearing, with the aid of the interpreter, clarifying the issues. This was in line with *Cox v Adecco* [2021] ICR 1307 at [30]. The following were clarified at the hearing:
 - 7.1. the Claimant's race is Sri-Lankan, all the other Team Leaders were allegedly Polish;
 - 7.2. between February 2025 until 25 May 2025 (whereupon the behaviour stopped following grievance process), the Claimant was excluded from a shared drawer located at the computer desk by (a) it being locked and/or (b) the key being hidden;
 - 7.3. had he been Polish the Claimant alleges in effect he would have had access to the drawer;
 - 7.4. in terms of other payments, he drew attention to what was in his witness statement and in brief terms as Team Leader he should not be doing also driving or banksman duties. The Respondent in essence was 'taking advantage' of him having a driver licence and it was stressful for him to undertake this time. It was common ground however that a Team Leader would be paid £1 per hour more than someone doing purely the other roles and that all the staff were hourly paid.
8. Accordingly, the claims were:
 - 8.1. a claim of harassment related to race. With the unwanted conduct being the exclusion from a shared drawer between February 2025-25 May 2025;
 - 8.2. a claim of direct race discrimination, with the alleged less favourable treatment also being the exclusion from a shared drawer between February 2025-25 May 2025. The relevant race for the purposes of the claim being non-Polish.
 - 8.3. a breach of contract claim or 'equity' claim in that the Claimant should have been paid more for having to do non-Team Leader tasks.

Legal Principles

Strike out

9. Rule 38 ET rules provides:

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, or 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).

10. In terms of case law:

- 10.1. *Anyanwu v South Bank Students' Union* [2001] IRLR 305 (HL) at [24] and [39] stands for the principle that although in general discrimination cases are fact sensitive and often not struck out for this reason, it is still possible for discrimination cases to be struck out on the grounds of having no reasonable prospect of success (ie striking out should be exercised with greater caution in the discrimination context);
- 10.2. Indeed, the point that *Anyanwu* does not provide a bar to strike out or fetter the Tribunal's discretion has been repeatedly made in other cases: *Jaffrey v Department of the Environment, Transport and the Regions* [2002] IRLR 688 (EAT) at [41], *Malik v Plymouth Hospitals NHS Trust* UKEAT/0117/11/ZT at [5], *ABN AMRO Management Services Ltd v Hogben* UKEAT/0266/09/DM at [7], *Chandhok v Tirkey* [2015] ICR 527 (EAT) at [20];
- 10.3. *Hogben* at [13]-[15] makes the point that if a claim appears hopeless, and there is no concrete basis for supposing that cross-examination would improve its prospects, that it is not legitimate to allow it to proceed to trial in the hope that something might turn up in cross examination. This was repeated in *Patel v Lloyds Pharmacy Ltd* UKEAT/0418/12/ZT at [19]-[20];
- 10.4. *North Glamorgan NHS Trust v Ezsias* [2007] EWCA Civ 330, [2007] IRLR 603 at [25]-[27] made clear that (a) the test is whether a claim has a 'realistic' prospect of success which (consistent with the Civil Procedure Rules approach) requires prospects that are better than merely arguable (fanciful, false and imaginary prospects being discounted) and (b) that disputed cases of facts are still susceptible to being struck out depending on the nature and scope of the factual dispute;
- 10.5. the principles of many of the above cases were summarised in *Malik v Birmingham City Council* UKEAT/0027/19/BA at [30]-[34] which the Tribunal had regard to. This reminds Tribunals that the Claimant's case should ordinarily be taken at its highest.

Deposit orders

11. Rule 40 ET rules provides:

- (1) 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”).

(2) 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.

(3) The Tribunal’s reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.

12. In terms of case law, the EAT in *Van Rensburg v Royal Borough of Kingston-upon-Thames* (EAT/95/07) at [23] and [26]-[27] held that the threshold for making a deposit order was lower than that of striking out a claim and that a Tribunal is not restricted to a consideration of purely legal issues but is entitled to have regard to the likelihood of the party being able to establish the facts essential to his case, and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward. This was confirmed by *Arthur v Hertfordshire Partnership University NHS Foundation Trust* UKEAT/0121/19/LA which at [21]-[24] which also summarised the law and purpose of deposits to identifying at an early-stage claims with little prospects and to discourage the pursuit of them, without fixing sums that make access to justice difficult thereby striking out by the back door.

Brief summary of party’s oral submissions

13. The Claimant made the following broad points:

- 13.1. the other Team Leaders were all Polish and they even shared the key with one of the boyfriends who was a driver and was Polish. It was unfair that he did not have a key;
- 13.2. there were lots of issues with his colleagues and his employer, and it was not fair that he was having to do more than Team Leader duties. It was stressful as those that were just drivers did not have to think of things he did and in effect the Respondent was abusing its position. He did acknowledge however that he was paid £1 more than a driver per hour.

14. Mr Green made the following points – some of them in answer to Tribunal’s questions:

- 14.1. the reason the drawer was locked was because one Team Leader stored their laptop in it;
- 14.2. everyone had to speak English at work and so it was not understood the significance of the differing races. Indeed, the reason for the locking of drawer had nothing whatsoever to do with the Claimant’s race. He expressly stated “*If anything there were relationship issues and they weren’t working well as a team, that if anything is the issue*”;
- 14.3. it was clarified that, despite one reading of the ET3, the drawer was indeed locked. However, once the grievance was raised as part of the

process it was ensured that it would not longer be locked / the Claimant not having access to the key. In short, the matter was resolved;

- 14.4. the contract provides for other duties as appropriate, and the Claimant got £1 more an hour than those other jobs. The employees are only paid for the hours they do on shift, so the Claimant was not in any worse position.

Analysis and Conclusions

15. The Tribunal will separate out its analysis by considering the claims in turn.

Harassment/discrimination

16. In terms of the harassment related to race and direct discrimination claim, taking the case at its highest the matter cannot be struck out. The ET3 had suggested that the factual premise – namely the drawer being locked and the Claimant not having the key – was false. However, Mr Green orally acknowledged that was not the position the Respondent was taking, and the Respondent acknowledged the drawer was indeed locked. The fact that it was for security reasons does not adequately explain why the Claimant did not have a key as a Team Leader. Fundamentally therefore the issue is a ‘reason why’ issue and given the fact that the causation threshold is ‘no discrimination whatsoever’, that is race only need be a part in the exclusion, this is plainly a case involving a central dispute of fact that, per case law, cannot be struck out. Of course, it may well be the claim ultimately fails but the high bar for striking out is not made out at this stage. As an aside, the Tribunal notes it arguably appears to have been brought in time as with ACAS commencing on 6 August 2025, anything on or after the 7 May 2025 would be in time and the issue was not resolved until 25 May 2025.

17. By contrast the ‘other payments’ claim has no reasonable prospects of success and should be struck out. The Tribunal spent a great deal of time trying to clarify the claims and explained that the claims must be in the ET1, and the Claimant would need to amend to add matters to it. Even overlooking that he had merely ticked a box and treating the clarification provided at the hearing and by way of witness statement as an amendment that required no permission, the claim fundamentally has no reasonable prospects of success:

- 17.1. the Tribunal has no jurisdiction to deal with things under ‘equity’, it only has jurisdiction given to it by statute;
- 17.2. building on this point ‘other payment claims’ are ordinarily based on some form of agreement. There was no evidence of a reason for the Claimant getting more money;
- 17.3. further still at the time of making the claim the Claimant was still employed so the Tribunal does not have jurisdiction to deal with such as a breach of contract claim;

17.4. moreover, there was no financial loss suffered. This is not a case of overtime as it were – the Claimant did and was paid for all hours worked (like all employees). Indeed, he was paid £1 more per hour so whether it was pure Team Leader or he was driving he was in a financially better position.

Deposit order application

18. Turning to the deposit order application, the Tribunal reminds itself that it is not the same test as that of striking out. It is a lower threshold that needs to be established.

19. However, this is not a case where – given the factual dispute and central question for the Tribunal to determine – the Tribunal can adjudge at this stage there are little reasonable prospects of success in terms of the remaining claims of harassment or direct discrimination. Even on the Respondent's own case if there were relationship issues it has to be examined if race played a part in these. So, it cannot be said that there are little reasonable prospects of success: ultimately, it will depend on evidence given and tested at a full hearing.

Approved by
Employment Judge Caiden
27 September 2026

SENT TO PARTIES ON
3 October 2026

FOR EMPLOYMENT TRIBUNALS

Notes

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