



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Woods

**Respondent:** Sky PLC

**Heard at:** North Shields Hearing Centre **On:** Thursday 21<sup>st</sup> February 2019

**Before:** Employment Judge Martin

**Members:**

***Representation:***

**Claimant:** In Person

**Respondent:** Mr P Sangha (Counsel)

## JUDGMENT

The claimant's complaints of disability discrimination and protected interest disclosure are struck out and are hereby dismissed.

## REASONS

1. The Tribunal was provided with a bundle of documents which largely consisted of the pleadings. The respondent filed written submissions and made oral submissions. The claimant also made oral submissions.
2. The claimant presented his complaints to this Tribunal on 31<sup>st</sup> March 2018. Following a preliminary hearing on 1<sup>st</sup> June 2018 which was arranged to identify the claims and issues in the case and make directions, there have been four other preliminary hearings in this case including the hearing today.
3. At the first preliminary hearing on 1<sup>st</sup> June 2018, the claimant was ordered to provide further and better particulars of his claim. This further information was

provided by the claimant on 20<sup>th</sup> June 2018, however it failed to address the information ordered to be provided by him.

4. The claimant purported to file further and better particulars on 31<sup>st</sup> August 2018, which again did not deal with the information ordered to be provided by the Tribunal.
5. At the preliminary hearing on 28<sup>th</sup> September 2018, the matter was set down for the Tribunal to determine the issues which has come before it today. That hearing was originally scheduled to take place on 23<sup>rd</sup> January 2019, but was adjourned because the claimant did not attend.
6. At the hearing on 6<sup>th</sup> August and 28<sup>th</sup> September 2018, the claimant indicated that he would be seeking legal/professional advice to assist him to formulate his case, but he has not done so to date.
7. The Tribunal considered Rule 37 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which states that, at any stage, a Tribunal can consider an application to strike out all or any part of a claim for a number of reasons. Firstly because the manner in which the proceedings have been conducted is vexatious, scandalous or unreasonable. Secondly, Rule 37 allows the Tribunal to strike out a claim for non-compliance with an order of the court and/or if the proceedings are not been actively pursued. The Tribunal can also strike out a claim under Rule 37, if it considers that it is no longer possible to have a fair hearing of the claim.
8. The Tribunal also considered the case law referred to in the respondent's skeleton argument. It took into account that it had to consider very carefully whether the case should be struck out, bearing in mind that this is a very draconian measure.
9. The Tribunal considered whether there may be any alternatives to a strike out. In that regard it considered the possibility of a deposit order and/or another order or unless order for the further information.
10. The Tribunal was also referred to and considered the case of O'Hanlon V the Commissioners of HM Customs and Revenue 2007 IRLR 404, where the Court of Appeal held that the failure to extend sick pay was not a failure to make a reasonable adjustment or disability related.
11. The respondent submitted that the claimant had failed to particularise his complaints of protected interest disclosure or disability discrimination. He submitted that neither of them had any reasonable prospect of success, nor was a fair hearing possible. In relation to the protected interest disclosure claim, the respondent submitted that the claimant had not identified the qualifying disclosure relied on, nor what detriment he alleged he had suffered. In relation to the disability discrimination claim the respondent again submitted that the claimant had failed to particularise his claim. He also submitted that it no reasonable prospect of success. He said that the main issue appeared to be the non extension of the sick pay but submitted that, even if the claimant could

properly particularly his claim, he had no reasonable prospect of succeeding on that claim on the basis of the O'Hanlon case. In relation to the other disability discrimination claims the respondent submitted that they lacked any particulars and furthermore were not matters where a claim for disability could arise on the facts as currently stated.

12. The claimant in his submissions did seem particularly concerned about the extension of his sick pay, which was a substantive issue for him. However, he was unable during the course of the hearing today to provide any further clarification of his claims or how they met the legal basis of any claim which he wanted to pursue. Indeed, he indicated that he would not be able to provide any further clarification of those claims without legal assistance, which he had not obtained, nor without obtaining further documents. He suggested that he really would be unable to do so until the final hearing. He did not seem to appreciate that the case could not progress to a final hearing unless it was clear what issues had to be determined at that Hearing. By the time of this hearing the claimant had still not obtained legal advice nor any professional advice regarding his claims, despite the fact that he had indicated on two previous occasions that he would seek advice. He indicated that he might get legal representation for the final hearing. He acknowledged that he had still not instructed nor sought any other professional advice, despite that issue having been raised over six months earlier.
13. This Tribunal noted that two other Employment Judges had considered this case at preliminary hearings and had been unable to identify or clarify the claims and issues in this case, on the basis of the way in which the claimant pleaded his case.
14. This Tribunal is concerned that there could not be a fair hearing of this case because the respondent does not know the case which it has to answer.
15. The Tribunal considered whether, as strike out is such a draconian measure, any other alternatives could be considered. The Tribunal concluded that nothing had changed regarding whether the claimant could provide the further information in accordance with the orders made, so that the claims and legal basis for those claims could be identified. Further, the Tribunal concluded that nothing was likely to change if the claimant was given more time. For those reasons the Tribunal concluded that making further orders would not progress this matter any further.
16. The Tribunal also considered whether the claimant's claims as they were currently pleaded had any reasonable prospect of success. The Tribunal concluded that they did not, and therefore as they did not have any reasonable prospect of success as pleaded, there was no point in making a deposit order. In relation to the protected interest disclosure claim, the Tribunal noted that the claimant had not identified nor did there appear to be any qualifying disclosure. In any event, on the basis of the information provided, it was unclear the claimant had suffered any detriment as a result of any alleged disclosure. As far as the disability discrimination claim was concerned, the main issue in the pleading appeared to relate to the failure to extend the claimant's sick pay. On the face of it was difficult to see how that element of the disability discrimination claim had

any real prospect on the basis of the Court of Appeal decision in the case of O'Hanlon.

17. The Tribunal concluded that the way in which the case has been conducted was unreasonable and was not being actively pursued by the claimant. The respondent is unable to understand the case which it has to meet. These proceedings have been going on for almost a year and even now it is unclear what case the respondent has to meet. Furthermore, the Tribunal does not consider that the claims have no reasonable prospect of success for the reasons referred to above.
18. Accordingly, the claims are struck out on the basis that the proceedings have not been actively pursued and/or have been conducted in an unreasonable manner. As a result it is not possible to have a trial of the proceedings. The claimant has failed to identify the factual and legal basis of his claims and as such the claims have no reasonable prospect of success.

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**EMPLOYMENT JUDGE MARTIN**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 5 March 2019**

**JUDGMENT SENT TO THE PARTIES ON  
8 March 2019**

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