



# EMPLOYMENT TRIBUNALS

**Claimant**

Mrs S Warsame

v

**Respondent**

Four Seasons (No 7) Limited

**Heard at:** Bury St Edmunds (by CVP)

**On:** 20 September 2021

**Before:** Employment Judge KJ Palmer (sitting alone)

**Appearances**

**For the Claimant:**

In person.

**Assisted by an Interpreter:**

Mrs F Moussa (Translation - Somali).

**For the Respondent:**

Mr L Ashwood (Solicitor).

## JUDGMENT PURSUANT TO A CONSIDERATION FOR STRIKE OUT AND/OR A DEPOSIT ORDER

1. It is the Judgment of this Tribunal that the claimant's claim in whistleblowing under s.43B of the Employment Rights Act 1996 will continue. It is not struck out and no Deposit Order is made.
2. The claimant's claim in discrimination on the basis of the protected characteristic of religion or belief is not struck out but is subject to a Deposit Order. The claimant must pay into the Tribunal the sum of £200 on or before 15 October 2021. If the claimant fails to make that payment by that date then the claimant's claim in discrimination on the basis of the protected characteristic of religion or belief is struck out.
3. Claims that remain will be considered, isolated and such appropriate case management orders will then be made for the furtherance of these proceedings in a closed telephone preliminary hearing before a Judge sitting alone on 6 December 2021.

## REASONS

1. This matter came before me today as a preliminary hearing to be conducted by Cloud Video Platform. The purpose of today's hearing was to determine whether any or all of the claimant's claims should be struck out under rule 37 of the Employment Tribunal Rules of Procedure and/or whether a Deposit Order should be made under rule 39. The hearing followed a decision of

Employment Judge R Lewis to list it for this hearing on the 18<sup>th</sup> July 2021. It follows a presentation of a claim by the claimant to this Tribunal on 17 January 2021 and a further presentation of a second claim on 1 March 2021. The claims arise out of a brief period of employment by the claimant as she worked for the respondent between 26 November and 9 December 2020.

2. Before me today was the claimant assisted by a Somali Interpreter Mrs Moussa and for the respondent a Mr Ashwood a Solicitor appeared.
3. I am most grateful to the parties before me for their forbearance in light of the necessity for every word to be translated by Mrs Moussa to enable the hearing to commence. I am particularly grateful to Mrs Moussa who worked extremely hard in her role as interpreter. We also experienced some difficulties with the CVP process in that on at least two occasions Mr Ashwood froze during his submissions and had to log out and log back in, so this caused some further delay.

### **Preliminary Matters**

4. The respondent filed an ET3 to both claims and it is entirely logical that both claims be consolidated and proceed as one. The second claim is no more than a clarification or a provision of further and better particulars pursuant to the first and I therefore make an order consolidating both. I also accept that the proper name of the respondent is Four Seasons (No 7) Limited and I amend the respondent's name in the consolidated claim to that effect.
5. I must say from the outset that the claimant's claim is homemade and she does not have the benefit of legal representation. On the face of the pleadings to date it is difficult to ascertain precisely what claims the claimant is pursuing but I agree with Mr Ashwood that the claims appear to fall into two categories. The first claim would appear to be a claim under the protected disclosure provisions of the Employment Rights Act 1996. These are more commonly referred to as Whistleblowing claims. The claimant who was only employed for a matter of some 13 days claims that she was dismissed because she raised a complaint about another member of staff abusing a resident in the care home. She says after raising that allegation of abuse against another employee she was told if she pursued it she would never work in the care industry again and subsequently was dismissed.
6. Her second claim is much less clear and that is a claim for discrimination on the basis of the protected characteristic of religion or belief. Nowhere in her original claim or the subsequent clarifications of that claim in email and in the second ET1 has the claimant set out any basis for this discrimination claim. The claimant has merely ticked the box on the form of the ET1 indicating that she is pursuing such a claim. She has not identified the religion or belief upon which she seeks to rely nor has she given any narrative as to how she has been discriminated on the basis of that protected characteristic. When I probed her on this aspect of her claim she

indicated that it was based on colleagues making asides about her Hijab and religion but she was not clear in those answers.

7. I now turn to the law on striking out claims at a preliminary stage. Such strike out is governed under rule 37 of the Employment Tribunal Rules of Procedure and it is part of rule 37(1)(a) that we are concerned with today, that is whether any or all of the claimant's claims has no reasonable prospect of success and can therefore be struck out. As a matter of policy and pursuant to previously decided authorities Tribunals are generally reluctant to strike out claims at an early stage where a claimant is unrepresented. This reluctance is enforced in circumstances where unrepresented claimants are pursuing fact sensitive discrimination and whistleblowing claims. I am guided by the cases of Anyanwu & Other v Southbank Student Union & Another [2001] ICR 391 HL and Ezsias v North Glamorgan NHS Trust [2007] ICR 1126. It is only therefore in exceptional cases that a Tribunal will strike out claims of an unrepresented claimant in discrimination where there are facts which are in dispute. In essence in these circumstances it is a very high threshold for a Tribunal to strike out such claims. Even where the claims are not clear, not articulated and are indistinct the claimant's claims must be taken at their highest when considering strike out. Where strike out is not awarded then the Tribunal may consider the lesser sanction of making a Deposit Order under rule 39 if the Tribunal considers that a claim has little reasonable prospect of success. In such circumstances the Tribunal may make an order that to be able to continue with a particular claim the claimant must pay a sum of money into the Tribunal within a certain time. If that deposit is not paid into the Tribunal by the date ordered then the claimant's claim the subject of that Deposit Order is struck out. The amount must not exceed £1,000 per claim but can be less and the Tribunal must take into account the claimant's ability to pay when assessing the amount.

### **The Whistleblowing claim**

8. Mr Ashwood addressed me on the whistleblowing claim and in essence it is this, the claimant argues that she was dismissed for making a disclosure namely reporting a fellow employee Amarpreet Kaur for abusing a resident. Mr Ashwood says that this claim lacks credibility because the alleged abuse was not reported until 2 days after the alleged incident and was after the claimant was aware that the other member of staff had raised a complaint about the claimant and her performance. This is disputed by the claimant who says she raised the allegation the day after she says it took place when she could speak to her manager. She says also that her manager who she referred to as Salvador told her that if she pursued the complaint she would never work in the care industry again. What is not disputed is that a process of investigation was followed pursuant to her complaint against Amarpreet Kaur and her complaint was not upheld. She was then dismissed on 9 December 2020 on the grounds the respondent say of performance and conduct. Having considered carefully Mr Ashwood's submissions and listened to the claimant's submissions and reviewed the documentation I do not consider that the whistleblowing claim is a claim

which should be struck out under rule 37. The claim although homemade is apparent on the documentation and there is clearly evidential dispute about the sequence of events. I cannot therefore conclude that there is no reasonable prospect of this claim succeeding. I also do not consider that on that which is before me there is little reasonable prospect of success and for that reason I decline to make a Deposit Order in respect of the whistleblowing case therefore the whistleblowing claim can proceed unhindered.

**The Discrimination claim**

9. Here matters are somewhat different. The claimant has not advanced any claim other than ticking the box on the ET1. She has not identified the religion or belief upon which she relies nor has she set out in any way the nature of the discrimination she relies upon. The best she did was some vague suggestion of colleagues making comments under their breaths. On the face of what is before me it appears that the claimant may be in some considerable difficulty in pursuing her discrimination claim, however I am mindful of the authorities and the general principals on strike out where a claimant is unrepresented and the claim is in discrimination. Therefore I do not propose to strike out the discrimination claim as having no reasonable prospect of success, I do consider however that the lower standard under rule 39 has been reached and that there is little reasonable prospect of success. I therefore propose to make a Deposit Order that the claimant should pay into the Tribunal the sum of £200 on or before 15 October 2021 to enable her claim to proceed. If that payment is not made by that date then the claimant's claim in discrimination on the grounds of religion or belief is struck out. If the payment is made in time then the claim can proceed. I have taken into account the claimant's means that I questioned her on and considered £200 to be an appropriate sum. Accordingly this matter will be further considered in a closed preliminary telephone hearing to take place on 6 December 2021, the purpose of that hearing will be a case management discussion to isolate claims that remain and to make appropriate orders for those claims going forward.

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Employment Judge KJ Palmer

Date: 24 September 2021

Sent to the parties on: ...4<sup>th</sup> Oct 2021  
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For the Tribunal Office