



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4114389/2019 (V)**

**Preliminary Hearing held by Kinly CVP on 30 June 2020**

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**Employment Judge I McFatridge**

**Mr Alex Forootan**

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**Claimant  
In person**

**Alliance Trust Savings Limited**

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**Respondent  
Represented by:  
Ms Fitzpatrick,  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is

(One) The application to strike out the claim of automatic unfair dismissal does not succeed.

30 (Two) For the avoidance of doubt, all other claims made by the claimant are dismissed on the basis that they have no reasonable prospect of success.

**REASONS**

1. A preliminary hearing took place on 30 June 2020 with a view to  
35 determining whether the claimant's claim should be struck out in terms of

E.T. Z4 (WR)

5 Rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The claimant submitted a claim to the Tribunal in which he set out a history of having made a complaint to the Information Commissioner's Office in relation to a mobile phone application which he was required to install on his personal mobile phone by his employer the respondent. He narrated that he had subsequently been dismissed. He went on to state that the respondent had breached section 47B of the Employment Rights Act 1996 by dismissing him as a direct result of making a complaint to the ICO. The respondent submitted  
10 a response in which they denied the averments made by the claimant. They also made the preliminary point that the claim under section 47B of the Employment Rights Act 1996 was inept in that section 47B specifically provides that it has no application where the alleged detriment is dismissal. The case was set down for a preliminary hearing which took  
15 place on 20 March 2020. The claimant attended this hearing in person (it was a telephone hearing) although he had previously been represented. I advised the claimant of the difficulty with his claim in that it appeared that he was referring to the wrong section of the Employment Rights Act 1996. I also advised him that he required to provide further specification of his  
20 claim so as to enable it to be dealt with properly by the respondent. I indicated that at that stage I was not prepared to accede to the respondent's request that the claim be struck out but would give the claimant more time to rectify his pleadings.

2. An order was made which required to be complied with by 17 April 2020.  
25 The claimant did not comply with this order.

3. A further preliminary hearing took place on 5 May 2020. The claimant's position was that he did not feel he was in a position to respond to the order since he wished to be represented by a solicitor. He said he had contacted around 150 firms of solicitors throughout Scotland but none of  
30 them were prepared to take on new cases in the current situation. I advised the claimant that he had been given a degree of leeway because he was unrepresented but he must comply with Tribunal orders. In the circumstances, given that the respondent were still seeking strike out which failing a deposit order I fixed a preliminary hearing in order to

determine this application for 30 June 2020. On 15 June the claimant provided documents including a copy of his Universal Credit application, a copy of an article which had been printed about the claimant's case in the newspaper, a letter the claimant had written to the law society complaining about his previous solicitor and a zip file containing copies of letters which he stated he had written to various solicitors seeking to have them represent him. Finally, around about 17 June the claimant produced a further document which bore to be a completed PH Agenda. This was the Agenda which ought to have been prepared in advance of the hearing in March. The claimant said he was claiming

“Direct discrimination, indirect discrimination, sex race age harassment.”

He mentioned that he had been dismissed or otherwise disadvantaged because he had made a protected disclosure and referred to

“Complaint re data protection breach by using app on personal mobile to the Information Commissioner's Office.”

When asked at box 2.4 whether the information disclosed tended to show any of the following he said

“Yes, data protection breach. Failing to abide by data protection legislation.  
ICO evidence attached.”

When asked about the disadvantage he had suffered he said “employment dismissed”. In section 2.7 when asked about other complaints he said

“Automatic unfair dismissal, unfair dismissal, breach of human right, Human Rights Act 1998 – the right to respect of a private life, sexual harassment.”

4. Accompanying this was a document entitled timeline which bore to give a timeline of the claimant's employment. He refers to having raised an HR grievance about the mobile phone application in January 2019. He says he reported this to the police in January 2019 that he then spoke to someone called Jason described as a “mobileiron partner”. He said he

was not satisfied with the HR investigation and escalated matters to the ICO and ATS Chairman Robert Smith. He refers to various matters culminating in the termination of his employment. He refers also to various additional matters such as someone tampering with his Instagram account and a blackmailing spam e-mail which he reported to the police in April 2020.

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5. The open preliminary hearing took place on 30 June using the Tribunal's Kinly CVP system. Both parties made full submissions. The respondent's solicitor helpfully lodged a copy of her submissions in writing. These are extremely full and were most helpful. Given that I could not hope to properly do them justice by re-phrasing them I shall refer to them where appropriate below.

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6. The claimant's submissions were extremely limited. He indicated that he had not responded to the Tribunal's orders because he had spent all his efforts in trying to find a new solicitor. He had only recently come to the view that he was not going to find another solicitor and had attempted to provide the information sought. He apologised if this was not in the proper format but he stressed that he was not legally trained. He also mentioned that English was his fourth language. It was his view that there was a matter of serious public interest here and that the case should be heard.

### **Discussion and decision**

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7. The respondent's solicitor has correctly referred to the legal principles involved. The respondent's solicitor based her application for strike out essentially on three grounds.

8. The first of these is that the claim made under section 47B of the Employment Rights Act 1996 is incompetent. I considered that I required to deal with the case based on the claimant's averments being taken at their highest. I have taken the claimant's averments to be those stated in his original ET1 together with the Agenda and document entitled Timeline which he forwarded to the Tribunal in June. Section 47B generally makes it unlawful to subject an employee to a detriment as a result of their having made a protected disclosure. As I pointed out to the claimant as far back

as March it excludes dismissal from being a detriment in terms of section 47B.

5 9. It appears to me that the whole thrust of the claimant's claim based on him having made a protected disclosure is that he was dismissed. He does refer to other matters such as his Instagram account being hacked and him receiving various spam e-mails which he refers to as blackmailing e-mails but there is no specific averment that the respondent was responsible for sending these e-mails or hacking his Instagram account. It appeared to me that on the face of it the respondent's position is that  
10 any claim by the claimant under section 47B is incompetent and has no reasonable prospect of success. The claimant has not provided sufficient detail of any detriment claim other than his dismissal and there is not even an averment saying that the respondent was responsible for the other matters he refers to. I do not however consider that this is the end of the  
15 matter.

10. The overriding objective of the Tribunal is to do justice between the parties and that means avoiding formality so far as possible. I indicated to the respondent's representative at the very first preliminary hearing that it was clear to me that the respondent's then representative has simply referred  
20 to the wrong section of the Employment Rights Act 1996. It was an error for her to do so and either the claimant or his solicitor ought to have corrected immediately the error was pointed out by the respondent in their ET1 or at the very latest when I not only pointed this out to the claimant personally at the PH in March 2020 but also told him the correct section  
25 of the act to which he should be referring. In my view, however, despite the fact that the claimant's failure to engage with the point is frustrating, it would be disproportionate to strike the claim out simply because the claimant's representative has referred to the wrong section of the Act. If that was all there was then this is clearly something which is capable of  
30 being rectified and indeed on 20 March I fully expected the claimant to write back to the Tribunal within a short period of time confirming that he was claiming under section 103A. The claimant has not done this but he has stated in his Agenda that he is claiming automatic unfair dismissal. My view therefore is that I would not in the normal course be prepared to

strike out the claim purely on the basis that it is incompetent because the wrong section of the Act has been referred to when the claimant has made it clear elsewhere that he is claiming automatic unfair dismissal. It appears to me that it is clear that, although he has refrained from saying so in as many words, the claimant is making a claim under s103A.

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11. Going on from that the respondent's representative has indicated that in any event the claim should be struck out as it has no reasonable prospect of success. Failing this she seeks a deposit order on the basis it has little reasonable prospect of success.

10 12. First of all I should say that I have no hesitation in ruling that any discrimination or other claim made by the claimant and any claim under section 47B which has been made has no reasonable prospect of success. The claimant has not given sufficient detail of the detriments which he claims to have suffered under section 47B and as noted above there is not even an averment that the respondent was responsible for these alleged detriments or indeed any suggestion given as to how they could have done this. The discrimination claims are not particularised in any way and it is not clear what if any incidents the claimant is relying on. If the claim were to proceed to a hearing then the claimant would not be in a position to lead evidence any alleged discrimination because there is simply no fair notice to the respondent of what is being alleged.

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13. With regard to the claim of unfair dismissal I also have considerable hesitation as to whether there is any reasonable prospect of success. He does not have sufficient qualifying service to bring a claim of ordinary unfair dismissal. His claim is that he made protected disclosures. It appears that from what he has said in his pleadings that he has disclosed information which tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. I understand the legal obligation is said to relate to data protection. He says he made the disclosure to his employer in a grievance and also that he escalated this to the company chairman. He is also alleging that he disclosed this information to the Information Commissioner who is a prescribed person under the Public Interest Disclosure (Prescribed Persons) Order 2014. The Information Commissioner is a prescribed

person in relation to compliance with the requirements of legislation relating to data protection and to freedom of information. It is clear from what the claimant has said so far that the claimant at least believes that the disclosure was in the public interest. It is also clearly his position that he was dismissed on account of this. It is therefore my view that if I were prepared to accept, as I am that I am not prepared to strike out the claim purely on the basis that the claimant has mis-described the section of the Employment Rights Act on which he seeks to rely I could not say at this stage that his claim of automatically unfair dismissal has no reasonable prospect of success.

14. I appreciate the respondent's concerns that the claimant has provided information in the various documents he has sent in which is somewhat sparse particularly in relation to specifically what it is he says was disclosed what time. I do note however that he refers to a grievance which he has lodged with his employer and to escalating the matter to the ATS Chairman. I also note that he has produced a copy of an e-mail from the Information Commissioner which mentions a complaint he has made. He does not appear to have yet lodged a copy of his actual letter of complaint to the Information Commissioner. I am however of the view that these are matters of additional specification which could be sorted out.

15. I should also say that I am not minded to make a deposit order. I do not consider that I have sufficient information before me to make a finding that the claim of automatic unfair dismissal has little reasonable prospect of success. I have to base this assessment on the claimant's pleadings taken at their highest. The claimant clearly has a number of difficulties in establishing his claim but if the tribunal, after hearing evidence, found the facts as set out by the claimant to have been established then it cannot be said there is little likelihood of success.

16. Finally, the respondent considers that the claim should be struck out on the basis that the claimant has failed to comply with the Tribunal order. I have to say that this is the part of the application which has caused me the most difficulty. As mentioned above the respondent raised the issue of competency and sought strike out prior to the first case management preliminary hearing in this case in March. The matter was discussed at

the case management hearing and the claimant was left in no doubt that as matters stood his claim was inept and that he required to take immediate steps to rectify it. The claimant was provided with guidance as to how to do so and entirely failed to comply with the Tribunal order. I do  
5 note that at an earlier stage the claimant indicated he had not received a written copy of the order. The claimant did not mention this in his submissions at the hearing on 30 June. In any event the claimant was personally present at the hearing on 20 March when he was ordered to provide the additional information.

10 17. The position we have is that the claimant has produced a claim which as it stands is entirely vague and lacking in specification in respect of practically all of the matters raised. With respect to one particular claim there is probably just about sufficient to get a claim off the ground but for the fact that the claimant has referred to the wrong section of the  
15 legislation. It is part of the Tribunal's job in case management to level the playing field by giving unrepresented claimants an opportunity to rectify matters such as this. In this case the claimant was given that opportunity but appears to have deliberately chosen not to comply with the Tribunal orders until at the very last minute he has submitted documentation which  
20 does not really address the issue at all comprehensively. I consider that there is real injustice to the respondent in allowing this state of affairs to proceed. This is particularly the case where the claimant is apparently contacting the press about his case and making various allegations about the respondent and about his Tribunal claim. It does not reflect well on the  
25 claimant that he appears willing to criticise the respondent to the press whilst at the same time failing to provide answers to questions which have been asked about his claim in a Tribunal order.

18. The above having been said I am required to consider issues of proportionality. Whilst I accept that the respondent has been prejudiced  
30 by the claimant's behaviour I also have to take into account that if the claim is struck out in its entirety the claimant will lose the opportunity of having the very serious allegations he has made considered by a tribunal. I note that the various cases referred to by the respondent make clear the higher courts still regard strike out as being an exceptional remedy which should



only be used sparingly. I note that in the case of ***Weir Valves & Controls (UK) Limited -v- JB Armitage [2003] WL 2287114 (2003)*** it is made clear that although it may be frustrating for a Tribunal if its orders are not complied with, non-compliance does not automatically lead to strike out.

5 The Tribunal in that case stated that if they did not strike out the (notice of appearance) there would effectively have been a flagrant breach of the terms of the rules to the advantage of the other party without any sanction being imposed. The tribunal were heavily criticised by the appeal tribunal for taking this view into account. It was said to be an irrelevant

10 consideration.

19. The ultimate test which I required to apply is whether it is possible to have a fair hearing of the case. In my view the claimant has just, and only just, provided enough information to enable his claim that he was automatically unfairly dismissed for making a protected disclosure to his employers and

15 the Information Commissioner to proceed to a hearing. As noted above, the specific allegation can be fleshed out by the respondent seeking additional information as to the form and content of the disclosure should they wish.

20. In my view there has been a failure of the claimant to comply with the order

20 but it is not proportionate to strike out his claim on that basis. On the other hand I consider that the claimant has failed to specify any claims such as discrimination which have been previously mentioned. Accordingly, my ruling is that the claimant's claim of automatic unfair dismissal in breach of section 103A of the Act should proceed to a hearing. For the avoidance

25 of doubt any other claims being made by the claimant are dismissed as being inadequately specified and having no reasonable prospect of success.

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**Employment Judge:**  
**Date of Judgment:**  
35 **Date sent to parties:**

**Ian McFatridge**  
**15 July 2020**  
**16 July 2020**