EMPLOYMENT TRIBUNALS

Claimant: **Mr D Slate**

Respondent: **Ruane Transport Services Ltd**

JUDGMENT

The claimant's claims are struck out.

REASONS

Background

1. This is a claim for unfair dismissal, race discrimination and breach of contract. The ET1 was lodged on 14 October 2018. The claimant is a litigant in person. He was employed as a HGV Driver from 14 May 2018 until his summary dismissal on 25 August 2018. He therefore did not have the requisite continuous service to claim unfair dismissal.

2. By a letter dated 8 January 2019 the respondent made an application under Rule 37 that the claimant's claims be struck out. The Tribunal informed the parties by a letter dated 1 March 2019 that the application would be discussed at the Telephone Preliminary Hearing listed on 27 March 2019.

Race discrimination

3. The claimant's claim for race discrimination was unclear from the particulars of the claim, which on the face of the pleadings set out no basis for any type of race discrimination claim. The claimant was asked to explain the basis of his claim which he explained as follows:

a) The claimant's race / national origin is White British.

b) On 26 July 2018 he was called a racist by Mr Ruane, in that he was alleged to have made racist comments about his line manager, Mr John Ionut Sucia, who is Romanian. The claimant vehemently denied making any such comments and was offended by the suggestion he would do so. The claimant relies upon this act as direct race discrimination. The claimant was unable to specify a comparator, actual or hypothetical. The respondent denies that Mr Ruane alleged the claimant had made racist comments

c) The claimant was informed that other drivers were gossiping and commenting that the claimant due to his car and clothes and his partner being Russian he was doing other things than driving trucks for a living; in other words they were implying he was involved in other potentially criminal or tax evasive activities again vehemently denied by the claimant. The claimant complained about this gossip to his line manager but he did not take any action. The claimant accepted that this conduct was not related to his race.

Conclusions

4. Having heard from the claimant regarding his race discrimination claim, I have concluded that it has no reasonable prospects of success. I am mindful that facts are in dispute and that discrimination claims should only be struck out in the clearest of cases at preliminary stage. Notwithstanding this well established principle, the respondent referred to the case of **Ahir v British Airways plc [2017] EWCA Civ 1392.** At paragraph 16 per Underhill LJ:

"….Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. "

5. Taking this into account I am satisfied this is one of the occasions where it is appropriate to strike out. Even taking the claimant's case at its highest, assuming Mr Ruane did accuse the claimant of being racist, this did not disclose any basis for the claimant to bring a complaint of race discrimination. The claimant was not able to say why the conduct by Mr Ruane would have amounted to less favourable treatment because of his race.

Breach of Contract claim

6. The claim form referred to a breach of contract which the respondent had understood and dealt with in their response as a failure to pay a bonus. The claimant accepted there were no grounds to pursue this complaint as the bonus was discretionary and he had not been employed at the relevant pay out dates. The claimant sought to explain a further breach of contract claim. In his claim form at Box 8.1 he stated "The employer in breach of contract". In 8.2 he further stated "During my time with the Company, I received no training, nor did they issue me with any safety footwear. And towards the end of my employment, the Company did not even supply me with gloves".

7. The claimant explained at the preliminary hearing that he was asserting he had a contractual right to receive training and PPE and the respondent had breached that term by failing to provide training or PPE. This had the direct result of his dismissal and accordingly he should be able to recover lost wages as a result. All of this is disputed by the respondent.

Conclusions

8. The claimant's claim had not set out the breach of contract claim as described by the claimant at the preliminary hearing. There was no pleaded case that there were such contractual terms of his contract and no application to amend his claim. Whilst the claimant is a litigant in person and some degree of informality is in accordance with the overriding objective, the respondent could not have ascertained from what was set out in his claim form that his breach of contract claim was of the nature he described at the preliminary hearing. The case as pleaded in relation to the bonus has no reasonable prospects of success. The claimant himself accepted he had no entitlement to the bonus.

9. Even if the claimant's claim could be construed as a claim for damages arising from a breach to provide training and PPE, taking the claimant's case as its highest he would not be able to recover damages for loss of earnings in any event. His remedy for the breach of contract claim would be limited to his notice pay, which he accepted he had been paid. There are no grounds to conclude that the claimant's case, as set out in his claim form was intended to be put under the Gunton extension principle. This is described in Harveys as follows:

"If the contract incorporates a disciplinary procedure or some other administrative process which must be followed before notice of termination may be given validly, the time such a process may have taken, had it been followed, may also be added to the notice period itself when determining the period in respect of which damages are to be assessed; this possibility first arose from the case of Gunton v Richmond-on-Thames Borough Council [1980] IRLR 321, CA"

10. For these reasons I have determined that all of the claimant's claim have no reasonable prospect of success and are struck out.

11. The hearing fixed for 17, 18 and 19 February 2020 will not take place.

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Employment Judge Moore
Date: 27 March 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE