



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4112482/21**

**Preliminary Hearing held by telephone on the 11 August 2022 at 11am**

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**Employment Judge Porter**

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**M Diop**

**Claimant  
In Person**

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**FCS Recruitment Ltd**

**First Respondents  
Represented by:  
Mr Miller, solicitor**

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**Kingdom Services Group Ltd**

**Second Respondents  
Represented by:  
Mr Cater, Peninsula**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

It is the judgment of the Employment Tribunal to dismiss the claimant's claims of race discrimination against the First Respondents

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#### **Introduction**

1. In these proceedings the claimant claims race discrimination, unpaid wages, holiday pay and claims in respect of the failure of the respondents to provide a written pay statement. The claimant's claims are resisted by both respondents.
- 5 2. On the 11 August 2022 there was an Open Preliminary Hearing ("PH") at 11am which was conducted by telephone conference call. By letter of 4 August 2020 from Mr Miller for the First Respondents the issue for determination at the Preliminary Hearing was clarified as being "strike-out- no reasonable prospects of success" under Rule 37(1) of the Employment  
10 Tribunals (Constitution & Rules of Procedure) Regulations 2013 Schedule 1. The Second Respondents attended the PH but did not advance an application for strike-out.
3. At the PH the claimant represented himself and the First Respondents were represented by Mr Miller, solicitor, the Second Respondents being  
15 represented by Mr Cater of Peninsula. Mr Miller intimated a bundle of documents numbered 1- 40 in advance of the PH.
4. At the outset of the PH the claimant was allowed 15 minutes to access the bundle of documents (which he had been unable to do hitherto). He succeeded in accessing the documents during this period of time. The  
20 claimant was advised of the possibility of adjourning the PH and reconvening with an interpreter present; however he stated that he wished to proceed with the PH.

### **Strike-Out- No reasonable Prospects of Success**

- 25 5. Mr Miller's arguments on strike-out are encapsulated in his letter of 27 January 2022 to the Tribunal, to be found on pages **37-38** of the Bundle. The claimant confirmed that he had sight of this letter. In essence, the First Respondents submit (with reference to documents **22-32** in the Bundle) that the claimant was self-employed rather than a worker and, further, was  
30 provided with all relevant documentation including payslips.

6. Against this, Mr Diop submitted that as a matter of fact he was a worker; and that to this end relevant deductions were made from his pay. He submitted that not all relevant pay statements were provided to him. Mr Miller submitted that the documentation produced did not support those contentions and that accordingly the claimant's claims of unpaid wages, holiday pay and failure to provide a written pay statement should be dismissed.
7. Further, Mr Miller submitted that insofar as the claimant's claim of race discrimination against the First Respondents is concerned, no allegations of race discrimination are, in fact, made by the claimant against the First Respondents in the ET1. Mr Diop agreed with this and agreed that the case of race discrimination against the First Respondents could be dismissed. In these circumstances the Tribunal dismissed claimant's case of race discrimination against the First Respondents.
8. The Tribunal considered the application for strike-out in respect of the claims of unpaid wages, holiday pay and failure to provide a written pay statement. To this end the Tribunal was of the view that, despite the documentation, there remain crucial facts in dispute and parole evidence in relation to those facts requires to be heard. In considering this application the Tribunal also had regard to the terms of overriding objective and in particular the need to ensure that parties are on an equal footing. To this end the Tribunal was mindful of the fact that the claimant is unrepresented and that English is not his first language.
9. For all of these reasons the First Respondents' application for strike-out in respect of the claimant's claims of unpaid wages, holiday pay and failure to provide a written pay statement is refused.

### **Further Procedure**

10. Further Particulars of the claim are required (and indeed the Second Respondents highlight this in their ET3) and it was determined that the case should be set down for a Preliminary Hearing on Case Management on the **2 September 2022 at 10am**. This PH will take place again by telephone conference call. After further discussion the claimant submitted that he does

require the services of an interpreter going forward. Accordingly a French interpreter will attend the PH at 10am on the 2 September 2022.

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**Employment Judge: Porter**  
**Date of Judgement: 11 August 2022**  
**Entered in register: 16 August 2022**  
**and copied to parties**

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