



EMPLOYMENT TRIBUNALS

Claimant
G Adeyi

v

Respondent
DHL Services Limited

Heard at: Bury St Edmunds by CVP
Before: Employment Judge Anderson

On: 16 December 2024

Appearances

For the claimant: R Ibakakombo (lay representative)

For the respondent: J Middleton (solicitor)

RESERVED JUDGMENT

1. The claimant's claim of automatically unfair dismissal under s100 Employment Rights Act 1996 (health and safety cases) has no reasonable prospects of success and is struck out.
2. The claimant's claim of automatically unfair dismissal under s103A Employment Rights Act 1996 (protected disclosure) has little prospect of success and a deposit order of £100 is made in respect of each allegation made under that head of claim. (The details of the deposit order are set out in a separate order).

REASONS

Background

1. The claimant was employed by the respondent, a parcel delivery company, as a warehouse operative from 19 January 2022 until 1 December 2022 when he was dismissed. On 31 January 2023 he filed a claim in the employment tribunal claiming automatic unfair dismissal on the grounds of having been dismissed for having made a protected disclosure about health and safety and breach of legal obligation, race discrimination and unpaid wages.
2. Following a case management hearing on 5 September 2023 the claimant was ordered to confirm whether he pursued a claim of automatic dismissal on the basis of making a protected disclosure and/or having exercised his rights under s44 Employment Rights Act 1996. He confirmed on 30 October 2023 that he did intend to pursue those claims as follows:

1. I confirm that I wish to proceed with my complaint of Automatic Unfair Dismissal based on having made a protected disclosure:
 - 1.1 When on 21/09/2022; I said to Alina, my line Manager that There are some colleagues who were put on light duties on return to work following being off-sick to maintain them at work and those who are not given light duties to maintain them at work with no good reason and;
 - 2.2 My GP advised me to avoid to do heavy physical duties to avoid further damage to my already painful leg;
2. With regards to point 14.2 of the Employment tribunal's Order; on the basis of having exercised my rights under s. 44 Employment Rights Act 1996 (health and safety cases); When on 21/09/2022, I said to Alina, my line Manager that:
 - 2.1 I cannot do heavy physical duties to prevent or avoid further damage to my already painful leg;
 - 2.2 Putting me on light duty for the period of my full recovery as advised by my GP would help my health conditions and keep me at work but putting me on heavy duty would be damaging my leg when doing heavy duty.
3. In various communications the respondent has sought a strike out of the claimant's claims of race discrimination and protected disclosure detriment on the basis that they had no reasonable prospects of success and/or had been insufficiently particularised so that the respondent was unable to respond to them. At a second case management hearing on 18 October 2024 EJ Postle ordered that a case management hearing be listed 16 December 2024 and at the discretion of the presiding judge the hearing could be converted to a public hearing for the purposes of considering a strike out application. He also made a wasted costs order against the claimant at that hearing.
4. On 2 December the respondent made an application as follows:

We write to make an application for the case management discussion, currently listed for Monday 16 December 2024 to be converted to a half day remote CVP open Preliminary Hearing. We request the open Preliminary Hearing to consider the following issues:

 1. *Whether the Claimant's complaints for automatic unfair dismissal and/or suffering a detriment under s44 Employment Rights Act 1996 to the Tribunal should be struck out on the grounds of having no reasonable grounds of success, in accordance with rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 ("ET Rules"); or*
 2. *Whether a deposit order should be made in respect of those claims on the grounds that they have little prospect of success in accordance with rule 39(1) of the ET Rules; and*

3. *Whether the Claimant's Claim should be struck in its entirety for continued non-compliance with the Tribunal's Wasted Costs Order of 18 October 2024; or*

4. *In alternative, whether the Claimant should be subject to an Unless Order for non-compliance with the Tribunal's Wasted Costs Order and therefore failing to actively pursue his case.*

5. The claimant's representative, Dr Ibakakombo, set out further particulars of the automatic unfair dismissal claim in a letter dated 2 December 2024 but objected to a strike out application being heard today. The details provided on 2 December 2024 include alleged statements made on 21 December 2022 which are not included in the grounds of claim.
6. It was my decision that the strike out application should be heard. The claimant was on notice and was aware of the points being raised by the respondent for the purposes of the application. He had time to consider any response he wished to make. He was aware that a strike out hearing on 16 December was a possibility.
7. In making my decision I had a joint bundle of documents from the parties before me, and I heard oral submissions from both Mr Middleton and Dr Ibakakombo. Due to time constraints, I reserved judgment

Law

8. Under Rule 37 of the Employment Tribunal Rules a claim can be struck out if the tribunal concludes that it has no reasonable prospect of success, or that the manner in which the proceedings have been conducted is scandalous, unreasonable or vexatious. Under Rule 39, deposit orders can be made in respect of any allegation that has little reasonable prospect of success.
9. While the claimant is not a litigant in person, Dr Ibakakombo is a lay representative and I have kept in mind the guidance in *Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT* on considering strike out or deposit order applications, for that reason, noting particularly that the claimant's case should be taken at its highest and where prospects of success turn on facts then strike out is unlikely to be appropriate. I have also, in addition to hearing the parties' submissions, assessed the pleadings and documents in the bundle.
10. I have also had regard to *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*, their lordships said that discrimination claims should not be struck out except in the most obvious cases as they are generally fact-sensitive. In *Ezsias v North Glamorgan NHS Trust 2007 ICR 1126, CA*, the Court of Appeal held that the same or a similar approach should generally inform protected disclosure ('whistleblowing') cases, which have much in common with discrimination cases, in that they involve an investigation into why an employer took a particular step.
11. The claimant has requested a reconsideration of the decision of EJ Postle to make a wasted costs order. The order was partly due to the failure of the

claimant's representative to attend the hearing on 18 October 2024 without sufficient explanation. As it is not clear yet whether there will be a reconsideration, I have not considered whether the claim should be struck out on the grounds that the wasted costs order has not been complied with. My consideration has been about the prospects of success of a claim of automatic unfair dismissal on the grounds of health and safety disclosures and breach of a legal obligation.

12. In submissions Mr Middleton said this was a simple case where now, at this very late stage, the claimant had provided some particularisation of the detriment claim and all of the detail is about the claimant's personal situation. The respondent has a committee for health and safety. The matters raised by the claimant are not through proper channels. The claimant did not work for the respondent for long, he had a poor attendance record and believed that because he had a fit note he did not need to engage in a disciplinary process.
13. Dr Ibakakombo said that the respondent wanted the tribunal to make a decision without documents and the case should not just be struck out on legal argument.
14. The claimant claims that the detriment that he suffered due to raising health and safety and race discrimination issues was dismissal. Therefore, his claims must be brought as automatically unfair dismissal claims under s103A or s100 Employment Rights Act 1996.
15. The matter of whether the claimant's claim under s100 Employment Rights Act 1996 has reasonable prospects of success is not one that is fact sensitive. The respondent has a health and safety committee, the respondent was not part of that committee, he was not a representative and it has not been put by him or on his behalf that it was not reasonably practicable in the circumstances for him to have raised health and safety concerns through the proper channels. His case is simply that meetings went ahead in his absence, or a process continued where he said he was unable to attend a meeting, because of his or his family's health. The claim was filed in January 2023 and there have been numerous communications from the claimant and then from Dr Ibakakombo, as well as two case management hearings in which judges have tried to obtain particulars of the claim, in which any matters relied upon to show that the claimant's actions fell within s100 could have been put forward. No such matters have been put forward. The claimant relies simply on the contention that he told his line manager that he required to be put on light duties, and this was supported by his GP. The parties have already completed disclosure. If there was any basis for this claim, then I would have expected to hear an argument from the claimant or see documents supporting it today. It is my view that the claimant's claim of automatically unfair dismissal under s100 Employment Rights Act 1006 has no reasonable prospect of success and for that reason it is struck out.
16. For a claim under s103A to succeed the claimant must show that he made a qualifying disclosure of information which, in his reasonable belief, was made in the public interest and tended to show that the health and safety of any

individual has been or is likely to have been endangered or that a person has failed or is failing to comply with a legal obligation. As with the s100 claim, the act relied upon is the claimant telling his line manager he needed to do light duties in order to aid his recovery, or to stop his injury getting worse. I note that it appears to have been raised for the first time on 2 December 2024 that he said to Alina not only that heavy duties would be harmful to him, but also to others who had health issues. In his further particulars he relies also upon telling his line manager Alina on 21 September 2022 that white colleagues had been assigned light duties after sick leave. This is not a claim made in the grounds of claim where the reference to white people being treated differently is only raised under the heading of race discrimination and in relation to an incident dated 11 October 2022 not involving Alina. However, these new particulars were not raised with me by the respondent, and I note that the claimant refers to 'racial discrimination' in connection with s43B in his grounds of claim, albeit without elaboration.

17. I find that on the information before me it is very unlikely that the claimant's claim under s103 will succeed. The disclosures relied upon were made to his line managers because he was not allowed to remain at work carrying out light duties during his convalescence. I think it is likely that the alleged disclosures fall into the category of personal employment disputes, as suggested by Mr Middleton, and that the claimant is unlikely to be able to show that in his reasonable belief the alleged disclosures were made in the public interest as he believed then to be showing endangerment of health and safety or breach of a legal obligation. However, I cannot say with certainty that this claim has no reasonable prospect of success as there would be a need to hear evidence from the claimant on what was in his mind at the time and what exactly was said in the conversation on 21 September 2022. It is my view that while the threshold for strike out under Rule 37 has not been met, the claim has little reasonable prospect of success, and for that reason I make a deposit order of £100 in respect of each of the two allegations brought under s103 Employment Rights Act 1996. The terms of the deposit orders are set out in a separate order. Evidence on means was heard from the claimant at the hearing.

Employment Judge W Anderson
Date: 28 December 2024

Sent to the parties on: 15/1/2025

N Gotecha
For the Tribunal Office