



EMPLOYMENT TRIBUNALS

Claimant(s): Mr G Evans

Respondent(s): Ministry of Defence

Heard at: Leeds

Before: Employment Judge Deeley

On: 23 January 2020

Representation

Claimant: Ms K Gallafent QC (Counsel)

Respondent: Mr S Murray (Counsel)

JUDGMENT

1. The respondent's application to strike out the claimant's claim on the basis that the claimant's claim has no reasonable prospects of success is rejected.

REASONS

2. The key issue here is whether the Tribunal has jurisdiction to consider this claim at all. It is common ground between the parties that s192 of the ERA, as currently drafted, does not provide the Tribunal with jurisdiction to hear the claimant's claim because the Secretary of State has not appointed a date of commencement of these provisions.
3. The Tribunal must consider a number of factors in relation to a strike out application. I noted that:
 - 3.1. strike out is an order given only in exceptional circumstances;
 - 3.2. the Tribunal must take the claim at its highest; and

- 3.3. the Tribunal should consider whether other case management directions would be appropriate instead of striking out the claim.
4. I have decided that it is not appropriate to strike out the claim at this stage of proceedings. I have considered the respondent's contention that even if the claimant succeeded in his judicial review proceedings, the remedy currently sought by the claimant as part of his judicial review application would not necessarily lead to the outcome that the Tribunal would have jurisdiction to hear the claimant's claim. However, I accept the claimant's contention that:
 - 4.1. the claimant may seek to amend his judicial review application, on receipt of the respondent's response to that application and any disclosure; and
 - 4.2. the Tribunal is not in a position today to adjudicate on the merits of the claimant's prospects of success in relation to his judicial review proceedings. I was provided with copies of the pre-action letters from both parties and the claimant's judicial review application. However, neither the respondent's response nor any decision of the Administrative Court in relation to permission to proceed was available at the date of this Preliminary Hearing.

Employment Judge Deeley

30 January 2020