



EMPLOYMENT TRIBUNALS

Claimant: Mr N Olokodana
Respondent: South West London & St Georges Mental Health NHS Trust

OPEN PRELIMINARY HEARING

Heard at London South by CVP

On: 16 March 2023

Before: Employment Judge Truscott KC

Appearances

For the claimant: In person
For the respondent: Mr C Kennedy, counsel

JUDGMENT

The respondent's application for strike out or alternatively a deposit order is refused.

REASONS

1. At a case management preliminary hearing on 22 December 2022, this hearing was listed to consider:
 - 1.1 That the Tribunal strike out the claimant's claims as the respondent alleges they have no reasonable prospects of success.
 - 1.2 That the claimant be ordered to pay a deposit in order to continue with his claims as the respondent says they have little reasonable prospect of success. The claimant understands that the Tribunal can take his financial means into account in deciding the level of deposit to order, if any.
2. The Tribunal considered whether or not it should hear evidence from the claimant but concluded that it should not. It heard submissions from Mr Kennedy and the claimant. The hearing bundle was also made available to it.
3. The claimant was employed by the respondent as a clinical charge nurse, from 15 March 2011 until his resignation and the expiry of his notice period on 6 December 2021. He was suspended on 22 June 2021 and this was lifted on 14 July 2021.

4. The claim is one of constructive unfair dismissal. In determining the issues for the hearing, the case management hearing narrated:

1.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation. The claimant told the Tribunal during this case management discussion that the "only reason why I resigned was because I had a good job offer".

5. Mr Kennedy outlined the relevant legal principles and focused attention on paragraph 1.1.3 of the issues above. He referred to the contents of the resignation letter [382-3] of 19 October 2021 where there was no indication of a breach of contract and also to an email from the claimant where he sought to withdraw his resignation [437]. As a fundamental breach could not be established as evidenced by the resignation and the claimant's request to return, the claim could not succeed. The claim should be struck out or a deposit order made.

6. The claimant disagreed with everything Mr Kennedy said but it was pointed out to him that such a response was inadequate in the face of cogent legal submissions. He could not recall saying what he was noted as saying to the previous Tribunal.

Decision

7. A claimant's claim must be taken at its highest in the consideration of whether or not to strike it out. He has set out his claim in his ET1, made a statement to the previous Tribunal and has not yet given evidence on the relevant issues. There may be a context into which the identified matters might be put from which a different interpretation might be taken. Mr Kennedy agreed that the contents of the letters were not determinative by themselves. In these circumstances, the Tribunal decided that it could not take the claimant's evidence at its highest without knowing what that evidence was and his evidence will be adduced at a full merits hearing on 17-19 May 2023. In these circumstances, the application by the respondent was refused.

Employment Judge Truscott KC
Date 16 March 2023