



EMPLOYMENT TRIBUNALS

Claimant: Ms A Squire

Respondent: Mr Sivagnanam Gnanachandran t/a Dales Off Licence & News

HELD AT: Manchester (in person) **ON:** 24th May 2023

BEFORE: Employment Judge Anderson

REPRESENTATION:

Claimant: Ms I Bayliss (Counsel)

Respondent: In Person

JUDGMENT

1. Under Rule 37(1)(a) of the Employment Tribunal Rules 2013, the response of the Respondent in so far as it relates to a defence of a claim for unlawful deduction from wages regarding holiday pay is hereby struck out as it has no reasonable prospects of success.
2. Two deposit orders are made. These are contained within a separate document.
3. All other applications for strike out and/or deposit order are refused.

Employment Judge Anderson
25th May 2023

JUDGMENT SENT TO THE PARTIES ON
6 June 2023

FOR THE TRIBUNAL OFFICE

REASONS

1. The hearing today was listed as a public preliminary hearing.
2. Throughout, the Respondent had the assistance of an interpreter. I sought to ensure that the Respondent was able to actively participate in proceedings to the extent that he wanted to
3. The notice of hearing referred to the Respondent making an application to strike out at the hearing today. No party corrected this error. Only one party is pursuing strike out and it is the Claimant. That was understood by all parties.
4. There is a document dated 19th May 2023, which is said by the Claimant to be the basis for the strike out application. It also contains an application for a deposit order.
5. I am critical of this document. It is capable of being read more than one way. It could be read broadly, relating to all claims or it could be read more restrictively relating to some specific claims. Where specific claims are mentioned, some of the reasoning in the application is limited.
6. Through interactions with Ms Bayliss, the list of matters that were subject to the application were discussed at the outset. After much discussion, the list of claims was as follows:
 - a. S.15 – Discrimination arising in consequence of disability
 - b. S.13 Equality Act – Direct discrimination
 - c. S.11 – Failure to provide a s.1 statement
 - d. Unlawful deduction from wages:
 - i. Holiday pay
 - ii. SSP
 - iii. Failure to pay National Minimum Wage
7. Other claims not in the list are still pursued as claims, it is only that they are not subject to the application.
8. Based upon the wording of Rules 37 and 39, I was content to proceed. I had regard to the overriding objective. This case needed progressing. There had been multiple prior applications, effective and ineffective case management hearings. Most importantly, whilst there were problems with the application, the Respondent was aware that it was here today to defend against a strike out.
9. In respect of the law, I direct myself, that strike out is a high bar. It must be said that a contention, in this case a defence has no reasonable prospect of success. It is exceptional for a case to be struck out without evidence being

heard: Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330 is the most oft cited of many authorities on the point, all urging caution.

10. I am conscious that I am summarily looking at matters rather than conducting a mini-trial. I will therefore provide some brief reasons for the decisions that I have made.
11. Where I refer to a time point below, I am referring to the competing effective dates of termination in the ET 1 and ET 3. The ET 1 relies upon a communication from 28th June telling the Claimant not to return whereas the Respondent relies upon the Claimant submitting fit notes and states a date of the 30th May 2021.
12. If the Respondent's ET 3 is right then claims which rely on the edt as commencing time will be out of time.
13. In respect of the s.15 claim, I decline to strike it out. There may be a time point, but that is only a secondary consideration in light of the other points in dispute. Knowledge is in issue as it's the fact of dismissal. These are classic trial points in respect of which the Tribunal will hear evidence and make findings of fact. I don't have a basis for strike out.
14. IN terms of s.15 and a deposit order, applying the more liberal little reasonable prospects of success approach, it fair to say that I regard the Respondents contentions in respect of time limits, knowledge and dismissal with real caution. However, this is a discrimination case and I am not prepared to state that there is little reasonable prospect. Nothing within that should be taken to endorse the Respondents position. If the Claimant succeeds at the full hearing on this point I do not consider the fact that I have not made an order to be a barrier to a finding that the Respondent has acted unreasonably. That will depend on the facts found by the ET. In short, if I am being misled that will be taken seriously.
15. In terms of the s.13 claim (direct discrimination), the facts advanced do appear to be more akin to a s.15 claim than a direct claim under s.13 Equality Act 2010. This is plainly a claim that can only be sensibly determined at a full hearing on consideration of all of the evidence. Even taking the Claimant's case at its highest, I am not satisfied that s.13 is definitively made out.
16. In terms of the failure to provide a s.1 statement, I decline to strike out the defence. There is a possibility of a time point. It is an agreed fact that the Claimant was not provided with a statement of terms and conditions that complies with s.1 Employment Rights Act 1996.
17. I do however make a deposit order and have given my reasons in a separate document.

18. In respect of holiday pay, when framed as an unlawful deductions claim, time would run from the date of the failure to pay (ie the deduction). It is an agreed fact that the Claimant was paid monthly. Time would therefore run from the end of June on the Respondents own pleaded case. This claim is in time.
19. It is an agreed fact that at no time did the Respondent pay the Claimant holiday pay. This is a situation whereby there is a wholesale failure to pay holiday pay c.f. Smith v Pimlico Plumbers [2022] EWCA Civ 70.
20. The defence in relation to holiday pay has no reasonable prospect of success. It is a basic right contained within the Working Time Regulations. There is no time point. There is no defence available to the Respondent. It is not a defence to say that the Claimant did not request holiday and in any event it should still be paid when the relationship comes to an end.
21. The value of the holiday pay claim and how far back the Claimant is permitted to go, having regard to Pimlico Plumbers (above) is a matter for a remedy hearing. It is a remedy not a liability point.
22. In terms of SSP, it is again an agreed fact that the Claimant was not paid SSP whilst she was off sick. The min qualifying criteria are earning £123 per week, being ill for 4 days in a row and being employed.
23. On the face of it, the Claimant meets all of these criteria. I have been shown payslips showing a 60 hour month. I have not performed a fully forensic analysis and nor am I supposed to for the purposes of strike out.
24. I decline to strike out the defence to SSP because the Claimant does need to formally establish at trial the basic facts regarding her working pattern. There is an argument for the need of some scrutiny, even in the face of what appears to be relatively clear facts.
25. However, I do make a deposit order and give my reasons in a separate document.
26. In terms of the National Minimum Wage claim, the key contention is that the Respondent has consistently failed to engage with this claim beyond a flat denial.
27. I consider this claim to squarely be a question of fact. The Claimant must prove her case. The Respondent has a legal duty to keep records of working time. The Claimant will need to give evidence as to the hours and conditions of work. The absence of documents or explanation from the Respondent will cause him problems at any hearing. However, I decline to strike out or make a deposit order on the basis that evidence must be heard. A strike out or deposit is premature when the basic facts regarding the Claimant's working pattern are not established.

28. My reasons in respect of the Respondents means are contained within the deposit order reasons.

Employment Judge Anderson

25th May 2023