



EMPLOYMENT TRIBUNALS

Claimant: Daniel Wellsted

Respondent: South Central Ambulance Service NHS Foundation Trust

Heard at: Bristol (by video) **On:** 12 September 2024

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Andrew Watson, of Counsel, instructed by DAC Beachcroft LLP

JUDGMENT

The claim is struck out.

REASONS

1. This hearing was a public hearing to decide upon the Respondent's application to strike out the claim as having no reasonable prospect of success.
2. That application succeeded and I struck out the claim for that reason.
3. The relevant rule is Rule 37, set out in the Schedule to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says:

Striking out

37. (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case

may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

4. The Respondent relies on Rule 37(1) (a), asserting that each part of the claim has no reasonable prospect of success.
5. This hearing was called specifically to consider this question and notice of it was sent to the Claimant on 08 April 2024, and so he has been given a reasonable opportunity to make representations.
6. The Claimant is a call handler for the Respondent. He started working for them on 21 January 2021. He had many absences and other issues at work. He was dismissed on 21 April 2023 as a result. His appeal was successful, on the basis that the reason was not said to be gross misconduct but an extension of matters for which he had been given a first written warning, and so he should have been given a final written warning. He was reinstated on 22 June 2023, with pay back to the date he was dismissed, and with a 12-month final written warning effective from 21 April 2023.
7. The Claimant has been absent from work for much of the time from 24 September 2023 with work related stress, which he says is now diagnosed as "Mixed Anxiety and Depressive Disorder".
8. The Claim form is not clear as to what is being claimed. On 27 November 2023. The Tribunal wrote to the Claimant saying that an Employment Judge could not see that there was a claim of unfair dismissal or of disability discrimination and so unless the Claimant stated otherwise the claim would be treated as one solely of unlawful deduction from wages, contrary to S13 of the Employment Rights Act 1996.
9. The Claimant filed a document headed "Claim Summary & Response Letter". During the hearing I went through what it said with the Claimant, to ensure that I properly understood his claim.
10. The Claimant states that his dismissal on 21 April 2023 was an unfair dismissal. He said that he sought damages arising from that unfair dismissal. He acknowledged that he had been paid for the gap between dismissal and reinstatement. Nevertheless, he sought two months' pay for this two-month period, as compensation, for the hurt this had caused him.
11. He also sought damages for personal injury, being the psychological harm he

said the dismissal and reinstatement had caused him. He said that he could not afford Courts, but that Acas had told him that Employment Tribunals could deal with this type of claim. He said that the action of dismissal and what followed had caused his Mixed Anxiety and Depression for which he sought £115,730 compensation.

11.1. Lastly, he sought the difference between full pay, with unsocial hours payments in addition, and the half pay then Statutory Sick Pay that he had received after being off sick for more than the full pay period. He quantified this as £6,156.55.

11.2. The total amount he claimed was £125,845.97.

12. The Employment Tribunal can deal with a claim for personal injury only as part of a claim for (usually) disability discrimination under the Equality Act 2010. There is no claim here under the Equality Act 2010. This is solely a claim under S13 of the Employment Rights Act 1996 for unlawful deduction from wages. There is no claim for personal injury to dismiss, as there is no such claim.

13. The claim for two months' wages is not a claim about a deduction from wages, because the Claimant agrees that he was paid in full for the period between dismissal and reinstatement (although he is unhappy that the tax it was, he says, larger than if paid month by month). There is no sum to which he was entitled as pay which he did not receive. What he says is that he thinks he should get compensation for that unfair dismissal, and he places that at two months' pay. An Employment Tribunal cannot award compensation for the manner of dismissal. In any event by being reinstated he was effectively "undismissed", and so there is nothing to base a compensation claim on.

14. Even if there was a claim which arose by reason of the payment when reinstated it is not part of a series (plainly, as it related to a specific period between dismissal and reinstatement). It was reasonably practicable to make the claim within three months. The Claimant says that his anxiety was such that eventually he could not work. That stress was work related, and there is no objective evidence that it was not reasonably practicable for him to make a claim within three months of returning to employment in June 2023. The claim was not made until 03 November 2023 which is a period of about five months. Time cannot be extended as it was reasonably practicable to bring the claim in the three-month period. Had there been a good claim it would have to be dismissed as out of time.

15. This leaves the claim for £6,156.55 which the Claimant says is the difference between his pay, including unsocial hours payments, and the amount he actually received while off from work through illness.

16. The Claimant does not dispute the calculation of sick pay. He agrees that the Respondent paid him what the contract said he should be paid, with his length of service (some time on full pay, then some on half pay and then SSP until that expired). What the Claimant says is that the Respondent caused his illness and so they should pay him full pay for the duration of the absence he says they caused, because if they had not caused him to be ill he would have been at work and been paid.

17. First, there is no evidence that the Respondent caused the Claimant's illness, and that is a necessary requirement of the claim put forward.
18. Secondly, and fundamentally, this is a claim of unlawful deduction from wages. During his absence the Respondent paid the Claimant everything to which his contract entitled him. He accepts this is the case. Therefore, there was no deduction. This is in fact a claim for loss of earnings dependent on a successful personal injury claim. This claim is that there were deductions from his pay, and as he agrees that there were none the claim must be dismissed.
19. I checked with the Claimant that all aspects of his claim had been covered and he said that they had been.

Employment Judge Housego

Date 12 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

1 October 2024

Jade Lobb
FOR THE TRIBUNAL OFFICE