



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Donald Heaven

**Respondent:** Fraser's Group & Others

**Record of a Preliminary Hearing by CVP  
at the Employment Tribunal  
Audio Recorded by CVP**

**Heard at:** Nottingham

**Heard on:** 13 November 2024

**Before:** Employment Judge Hutchinson (sitting alone)

**Appearances:**

**Claimant:** In person

**Respondent:** Mr L Harris, Counsel

## JUDGMENT

The Employment Judge gave Judgment as follows:

The claims of race discrimination are struck out.

# REASONS

## Background to this Hearing

1. These claims relate to the Claimant's engagement as an agency worker (Warehouse Operative) at the Sports Direct.com Limited warehouse at Shirebrook between March 2021 and September 2022 when his engagement was terminated.
2. Following termination, he has made a number of claims to the Tribunal. Three of those claims have already been dealt with by my colleagues.
3. Claim 1 was under case number 2602179/2022 and made against Single Resource Limited (1), Job and Talent Limited (2) and Extra Personnel Limited (3).
4. That was a claim of race discrimination, harassment and victimisation.
5. Claim 2 was case number 2603108/2022 and made against Job and Talent Limited on 20 December 2022. That was a claim of unfair dismissal and race discrimination.
6. These claims were dealt with together by my colleague Employment Judge Victoria Butler on 26 July 2023. The Reserved Judgment was sent to the parties on 23 October 2023. Employment Judge Butler dismissed the claim of unfair dismissal because the Tribunal did not have jurisdiction to hear it and struck out all the other claims for reasons that she set out in her judgment.
7. The Claimant presented a 3<sup>rd</sup> claim on 19 February 2023 under case number 2600401/2023. That claim was made against Fraser's Group Plc (1) and Sports Direct Retail Limited (2).
8. Those claims were struck out by Employment Judge Michael Butler at a hearing on 19 September 2023 on the grounds that the Tribunal had no jurisdiction to hear them for reasons which are again set out in that Judgment (page 175-178).
9. Since that date the Claimant has presented 3 further claims which I have to deal with today. Those claims are:
  - (1) A claim of race discrimination against Fraser's Group presented on 22 September 2023 under case number 2602115/2023.
  - (2) A claim against Malgorzata Plonska of race discrimination presented on the same day under case number 2602116/2023.

(3) A claim of race discrimination against Fraser's Group Plc and Malgorzata Plonska which was presented on 28 September 2023.

10. Almost no detail was provided of the allegations. In his first claim he said as follows:

*"One of the senior managers of Fraser's Group called Mrs Malgorzata Plonska conspired with the agency Jobs and Talent to unlawfully dismiss my employment due to race discrimination I had put in place against the agency. Therefore, the Company knew of the allegation but downplayed the issue and finally dismissing me without any reason".*

11. In his second claim against Mrs Plonska, he provided slightly different details namely:

*"During the employment I had at Fraser's Group Facility at Shirebrook. The senior manager, Malgorzata Plonska conspired with the agency Job and Talent to downplay the race discrimination allegation I had placed against them. She maliciously marginalised my ethnicity to get me dismissed."*

12. The Claimant used broadly the same terms in his third claim.

13. Matters came before my colleague Employment Judge Singh on 29 July 2024. He ordered that there should be an Open Preliminary Hearing today to consider the following matters:

(1) Whether Sports Direct Limited should be added as a Respondent.

(2) Whether the current Respondent should remain.

(3) Any application by the Claimant to amend the claim to include complaints of direct race discrimination and harassment.

(4) Whether or not the Tribunal has jurisdiction to hear the claims on grounds that they have been submitted outside the normal time limit for doing so.

(5) Whether the claim should be struck out on the basis they have no reasonable prospect of success.

(6) Whether a deposit order should be made on the basis the claims have little reasonable prospect of success.

14. Case Management Orders would be made if it was decided that any claims should remain.

15. The Claimant was ordered to provide further and better particulars of all the claims.

He was told to write to the Tribunal and the Respondents by 19 August 2024 with the following information:

“Details of any allegations of discrimination he says he suffered because of his race. The Claimant must say what happened, who was involved and when it occurred for each allegation.”

16. On 19 August 2024 the Claimant wrote to the Tribunal seeking a one-month extension. The application was not opposed, and the extension was granted and on 23 September 2024 the Claimant sent two emails which allegedly contained allegations relating to his engagement at the warehouse. These are at pages 113-117. The emails are not a formal application, but I must take into account that the Claimant is a litigant in person. They do not identify what sort of claim is advanced and the details provided are incomplete and as Mr Harris says do not give sufficient information for a proper response.

### **The Hearing Today**

17. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle. I also heard at length from both the Claimant and Mr Harris and Mr Harris referred me to a skeleton argument that he had prepared for the hearing and forwarded to the Claimant.
18. Dealing with matters in the order suggested by Employment Judge Singh I considered the following:

#### **The amendment application.**

19. As described above the Claimant has not provided the further and better particulars as ordered by my colleague Employment Judge Singh. I am satisfied that the Claimant is making fresh claims other than those in his original claim which related only to race discrimination arising from his dismissal.
20. The allegations appear to be:
- (1) Failing to promote him.
  - (2) Refusing him overtime and telling him to “go to delivering”.
  - (3) Telling him to “go back to Africa”.
21. The principles for dealing with amendment are known as those set out in the case of *Selkent Bus Co Ltd v Moore* 1996 ICR 836, Applying those principles in this case I am satisfied that it would not be in the interests of justice to grant the application

to amend. This is because:

- (1) If I granted the application there would be significant prejudice caused to the Respondents who are entirely blameless in this matter. The claims relate to a period more than 2 years ago and it would be extremely difficult for them to investigate the allegations at this stage. There was no internal investigation at the time. There would be a considerable cost to them in doing so and a huge amount of management time spent on investigating these matters.
- (2) This is not a relabelling exercise. The Claimant is making fresh allegations which are also significantly out of time. As I explained to Mr Heaven the Tribunal only has jurisdiction to hear claims that are made within 3 months of the incident complained of unless it would be just and equitable to grant an extension of time and he has the burden of proof in establishing that it would be just and equitable to extend the time. He has not presented any good reason why the claims have been presented out of time and I am satisfied that no just and equitable extension should be granted.
- (3) Most importantly these claims have already been ruled by Employment Judge Victoria Butler to have no reasonable prospects of success and nothing has changed since that order was made.

22. I am therefore satisfied that these claims still have no reasonable prospects of success and that it is not in the interest of justice to allow the application to amend the claim.

### **The Claims**

23. As a result of finding that the application to amend fails I then have to consider what to do about his claim of race discrimination as set out in his claim form.

24. I am satisfied:

- (1) That the allegations are substantially out of time. The Tribunal has no jurisdiction to hear these claims because it would not be just and equitable to extend time for the reasons I have set out above.
- (2) In any event, the claim is substantially the same matter that has already been litigated and struck out by my colleague Employment Judge Victoria Butler.
- (3) In any event, these claims have no reasonable prospect of success for the same reason determined by my colleague Employment Judge Victoria Butler in September 2023.

25. The claims are, therefore, struck out in their entirety.

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Employment Judge Hutchinson

Date: 27 November 2024

JUDGMENT SENT TO THE PARTIES ON

.....28 November 2024.....

FOR THE TRIBUNAL OFFICE

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