



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Kutsoati  
**Respondent:** St Paul's Way Medical Centre  
**Heard at:** East London Hearing Centre (via CVP)  
**Before:** Employment Judge Elliott  
**On:** 16 September 2024

**Appearances:**  
**For the Claimant:** In person  
**For the Respondent:** Ms I Splavska, consultant

## JUDGMENT

The Judgment of the Tribunal is that the claim for unfair dismissal is struck out due to lack of qualifying service.

## REASONS

1. This hearing took place by video/CVP. This decision was given orally on 16 September 2024. The claimant requested written reasons.
2. By a claim form presented on 29 March 2024 the claimant Ms Marian Kutsoati brought claims of unfair dismissal, race and religious discrimination and wrongful dismissal for notice pay.
3. The claimant had just under 3 weeks' service with the respondent medical practice from 11 to 29 December 2023. On 31 May 2024 the tribunal sent the claimant a strike out warning in respect of the unfair dismissal claim because it appeared that she did not have sufficient qualifying service under section 108 Employment Rights Act 1996. The claimant was given until 14 June to provide her response.

4. The claimant replied to the strike out warning on 4 June 2024. She gave the following reasons as to why her unfair dismissal claim should not be struck out. She said she fell within the protected characteristic of being “a person of colour (race) and black ethnic minority”; she was dismissed without notice pay and no grievance process to determine the real reason for her dismissal; that the appeal decision went against her which left her “battling with [her] mental health”; she was stripped of her identity/access cards in front of colleagues and patients; the incident for which she was dismissed was a one-off event and that her care identity card was unlawfully discarded and that it contained sensitive data.
5. None of the above reasons disclosed grounds for a claim for automatically unfair dismissal.
6. At a preliminary hearing in private on 30 July 2024 Employment Judge Massarella discussed the claimant the claims that she brought. As a result of the matters discussed at that hearing, the claimant withdrew her claims for notice pay and for religious discrimination. These were the subject of a dismissal judgment dated 30 July 2024.
7. It also appeared to Judge Massarella that the claimant did not have sufficient service to claim unfair dismissal. The Case Summary records that at that hearing the claimant did not describe anything that indicated that she had grounds for a claim for automatically unfair dismissal (see Case Summary paragraph 39, bundle page 49).
8. This hearing today was listed to deal with a number of matters including amendment and whether the claim for ordinary unfair dismissal should be struck out because the claimant lacks qualifying service.
9. On 31 July 2024, the claimant made an application to amend her ET1. This application is dealt with separately in a Case Management Order of today’s date. The draft of the matters the claimant wished to include was at pages 57-61 of the bundle.
10. In relation to her claim for unfair dismissal the claimant said:

*“I was dismissed on the following health and safety issues which automatically qualify as unfair dismissal. I experienced harassment, my employer turned down my training requests without good reason and I was overlooked for development opportunities. Hence, I do not require 2 years’ service to claim automatically unfair dismissal particularly for discrimination claims.”*
11. In oral submissions the claimant said that her mental health was affected by how she was treated at work and this was a health and safety matter. She said she had no one to one sessions, her training needs were not dealt with and she had to seek help from a practice nurse who was not her supervisor. I explained to the claimant that the law relating to

automatically unfair dismissal for health and safety reasons was contained in section 100 Employment Rights Act 1996 and asked her if she wanted a moment to look this up. She said she did and she was given this opportunity.

12. The respondent said that none of the grounds given by the claimant fell within any of the categories of automatically unfair dismissal.
13. The law in relation to automatically unfair dismissal for health and safety reasons is set out in section 100 Employment Rights Act 1996 which says as follows:

*(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—*

*(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,*

*(b) being a representative of workers on matters of health and safety at work or member of a safety committee—*

*(i) in accordance with arrangements established under or by virtue of any enactment, or*

*(ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,*

*(c) being an employee at a place where—*

*(i) there was no such representative or safety committee, or*

*(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,*

*(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or*

*(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.*

14. The claimant said her situation fell within section 100(1)(c). She said she was not comfortable at work because she was not well equipped so she raised all these concerns with her supervisors who seemed to be

prioritising other matters and none of her matters were looked into. She believed it could have been avoided.

15. The respondent said that this had not been pleaded anywhere, not in the amendment or the original claim. The respondent understood that the claimant was trying to find a reason to bring a claim for automatically unfair dismissal, but it was necessary to look at what was originally pleaded. The respondent said that the claimant may not understand that she can claim that her dismissal was discrimination and it would not affect her compensation. The respondent said that the basic award would be zero in any event, because she did not have the necessary service.
16. I find that matters set out by the claimant in her amendment application dated 31 July 2024 do not disclose any grounds falling within section 100 Employment Rights Act 1996.
17. The claimant did not set out facts disclosing a claim within the ambit of section 100 or any other category of automatically unfair dismissal and consequently she does not have the right to claim unfair dismissal. I disagreed with the claimant that her grounds put as "*I experienced harassment, my employer turned down my training requests without good reason and I was overlooked for development opportunities*" disclosed a claim under section 100. The claimant had been given a number of opportunities to set out her case, in her ET1, the response to the strike out application on 4 June 2024 and in her amendment application of 31 July 2024.
18. I explained to the claimant that she could complain, if it were her case, that her dismissal was discriminatory, as the respondent had also stated. The claimant does contend that her dismissal was an act of direct race discrimination.
19. For these reasons the claim for unfair dismissal is struck out due to lack of qualifying service.

**Employment Judge Elliott  
Date: 16 September 2024**