



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Chemseddine Aitoukassi

**Respondent:** Crown Workspace Ltd

**Heard at:** Watford Employment Tribunal

**On:** 13 December 2024

**Before:** Employment Judge Young

## Representation

Claimant: Litigant in person

Respondent: Mr Robert Lassey (counsel)

# JUDGMENT

The Claimant's complaints of direct race discrimination and harassment related to race are struck out.

# REASONS

## Introduction

1. The Claimant was employed by the Respondent, a company that provides office move services and fit outs, as a Upholster, from 11 December 2019 until 20 December 2023. Early conciliation started on 28 January 2024 and ended on 28 February 2024. The claim form was presented on 27 March 2024. The parties attended a case management preliminary hearing on 9 September 2024, where EJ Quill ordered that the Respondent's strike out application dated 25 July 2024 [35-37] be listed for a 3 hour hearing on 13 December 2024.

## The Hearing and Evidence

2. I was in receipt of a bundle of 109 pages and a skeleton argument of the Respondent. I heard from the Claimant as to his means.

## Relevant Law

3. Rule 37 of the schedule 1, Employment Tribunal Rules of Procedure ('ETR') states:

*“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, the 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 Respondent, at a hearing.”*

4. In Cox v Adecco [2021] ICR 1307 HHJ Tayler provide guidance where the litigant in person has not clarified their discrimination claims as is the case here. HHJ Tayler, directed Employment Tribunals that:

*“30. There has to be a reasonable attempt at identifying the claims and the issues before considering strike out or making a deposit order. In some cases, a proper analysis of the pleadings, and any core documents in which the claimant seeks to identify the claims, may show that there really is no claim, and there are no issues to be identified; but more often there will be a claim if one reads the documents carefully, even if it might require an amendment. Strike out is not a way of avoiding rolling up one's sleeves and identifying, in reasonable detail, the claims and issues; doing so is a prerequisite of considering whether the claim has reasonable prospects of success.”*

5. The House of Lords in Anyanwu v South Bank Students Union and South Bank University [2001] IRLR 305, explained that a strike out will not normally be appropriate in cases where there are substantial disputes of fact, especially in discrimination claims which are highly fact sensitive.

6. Principles to apply to determining a strike out application were summarised in Mechkarov v Citibank NA [2016] ICR 1121, where Mitting J gave the following guidance:

*“(1) only in the clearest case should a discrimination claim be struck out; (2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence; (3) the Claimant's case must ordinarily be taken at its highest; (4) if the Claimant's case is “conclusively disproved by” or is “totally and inexplicably inconsistent” with undisputed contemporaneous documents, it may be struck out; and (5) a*

*Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.”*

7. Notwithstanding in Langstaff J in Chandhok & Anor v Tirkey UKEAT/0190/14/KN points out at paragraph 20 that Anyanwu “stops short of a blanket ban on strike-out applications succeeding in discrimination claims” but goes on to say:

*“There may still be occasions where a claim can properly be struck out – where for instance there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867): “... only indicate the possibility of discrimination. They are not, without more, sufficient material from which a tribunal ‘could conclude’ that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”*

### **Submissions**

8. The Respondent provided written submissions and spoke to those submissions. The Claimant made oral submissions which were in summary that he felt vulnerable and has no legal representation as he could not afford it and that he did not know what else to say but he did not want to give up.

### **Analysis/ Conclusions**

9. The Respondent’s written submissions were made on the basis of rule 37(1)(a) and did not take into account the Claimant’s case put at its highest both relation to the unfair dismissal claim and the discrimination/harassment claims. In oral submissions the Respondent conceded that the Claimant’s harassment related to his religion claim was clear, and Mr Lassy did not seek to strike out that claim or ask for a deposit order.
10. Dealing first with the unfair dismissal claim, the Claimant’s case put at its highest is that he was defending himself in respect of the alleged assault and that he was provoked by what his colleague Mr Keyes said to him by his swearing. It appears to me that it is clear that the Claimant’s argument in relation to his dismissal has reasonable prospects of success. I would need to do more than have cursory look at the documents in order to determine the prospects of success, and that in itself means that strike out of the Claimant’s unfair dismissal claim is not appropriate.
11. In respect of the Claimant’s discrimination claims, the Claimant puts his claim as direct discrimination in respect of the basis of the process and the dismissal by reason of his race or religion. The Claimant was not able to explain why anyone involved in any of the disciplinary process or decision to dismiss made their decisions based upon his race or religion. I was conscious that English was not the Claimant’s first language and so I asked the interpreter to translate the Claimant’s answer in respect of his discrimination claims. The Claimant referred to requesting a prayer room some months before to management, but he was not able to confirm whether the same people who carried out the decision to ignore his request for a prayer room were the same people involved in the disciplinary process and

decision. It maybe that the Claimant is able to sure up the names of these people and so to put the claim at its highest I cannot say that the direct religious discrimination complaints have no prospects of success. However, this does not apply to the direct race discrimination claim or racial harassment claim for which the Claimant was unable to provide any reason as to why he believed that he was dismissed or subject to a bias disciplinary process or why he says that Mr Keyes harassed him because of his race other than that is how he felt. I was persuaded by Mr Lassy's submission in respect of Chandhok, that there was no material from which a Tribunal could conclude there had been discrimination. It is for this reason that I strike out the Claimant's direct race discrimination claim, and harassment related to race complaints.

---

Employment Judge Young

---

Date 16 December 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 January 2025.....

.....  
FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved, or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>