



## EMPLOYMENT TRIBUNALS

**Claimant**

Mrs R Ioan

**Respondent**

v Secretary of State BEIS

### **JUDGMENT** FOLLOWING PRELIMINARY HEARING BY TELEPHONE

**Heard at:** Birmingham

**On:** 22 May 2020

**Before:** Employment Judge Lloyd

**Appearances**

**For the Claimant:** In person/with her sister

**For the Respondent:** No attendance; written submission

### **JUDGMENT**

Upon hearing the claimant in person, accompanied by her sister, and pursuant to my powers under r.37 Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 I strike out the claimant's claim in its entirety, on the grounds that;

- i) It has no reasonable prospect of success.
- ii) The manner in which the proceedings have been conducted has been unreasonable.

### **REASONS**

1. I have listened to the claimant at length at this preliminary hearing, which has been listed in line with the tribunal arrangements to address the current Covid-19 emergency.

*Claims and Background*

- 2.1 The respondent to her claim is the Secretary of State BEIS in the context of his responsibility for the Insolvency Service and his relevant powers under the Employment Rights Act 1996 ("ERA") Parts VI and XII.

- 2.2 Sadly, the claimant is confusing her right to seek specific payments from the respondent out of the National Insurance Fund under ss.166 and 183 ERA with the general enforcement of the award made by the Manchester Employment Tribunal in its judgment on 5 September 2016; sent to the parties on 24 October 2016. That was a claim of discrimination and automatically unfair dismissal. She was also awarded the further judgment with interest, of October 2015, unpaid by the respondent
- 2.3 The respondent in these proceedings was Darcy Lou Limited (In Voluntary Liquidation). The award of compensation was a total of £56974.08
- 2.4 The respondent does not dispute that Darcey Lou Ltd, the claimant's former employer, is insolvent within the meaning of section 166 and 183 of the ERA having entered into Creditors Voluntary Liquidation on 31 March 2016.
- 2.5 The claimant does not appear fully to appreciate that the respondent is limited in the payments that can be made from the National Insurance Fund and is only able to consider statutory payments under sections 166 and 184.
- 2.6 The claimant is pursuing other claims that the respondent is unable to consider, relating to awards made in the Judgment against Darcey Lou Ltd in the Manchester tribunal. The respondent was not a party and is not bound by the judgments. The Secretary of State can only consider those elements of awards that he is able to consider pursuant to sections 166 and 184.
- 2.7 I find that payments have been made to the claimant from the National Insurance Fund in respect of holiday pay and arrears of wages. Whilst there are many elements of the previous Judgment that cannot be considered for payment from the National Insurance Fund, the Secretary of State did concede that further holiday payment was due and also that the claimant was entitled to make a claim for compensatory notice pay from the National Insurance Fund.

#### *Redundancy Payment*

- 3.1 With regard to the claim for redundancy pay, the claimant was advised in the rejection letter sent to her on 4 December 2018 that she had not worked for her former employer for the two complete years required to qualify for a statutory redundancy payment.

#### *Compensatory Notice Pay*

- 4.1 With regard to the claim for compensatory notice pay, the Secretary of State notes the claimant should have been entitled to claim compensatory notice pay for the statutory 1-week notice period. Unfortunately, the statement provided by the Insolvency Practitioner pursuant to section 187 (1) of the 1996 Act, provided incorrect details regarding the date on which prior notice was given, which resulted in the Redundancy Payments Service advising the claimant on 22 February 2019 that compensatory notice pay could not be considered on the grounds that the claimant had been given and worked the correct notice period.

- 4.2 The Secretary of State acknowledged this error and confirmed that the claimant was able to claim compensatory notice pay online. The claimant was required to use the following link <https://www.gov.uk/claim-loss-notice>. She did not. I do not accept her statement to me at this hearing that the link did not work when she tried it. I do not believe she attempted to use the link to make a claim for compensatory notice pay.
- 4.3 The compensatory notice that may be considered for payment from the National Insurance Fund is subject to mitigation and is not be the same as a “lieu of notice” payment awarded against the employer.

*Arrears of wages*

- 5.1 With regard to the claim for arrears of wages, the statement provided by the insolvency practitioner pursuant to section 187(1)(a) of the 1996 Act, confirmed that the claimant was owed arrears of wages of £1123.16 plus overtime of £151.44, a total of £1274.60. Payment of £1274.60 gross, £963.94 net, was paid to the claimant accordingly.

*Holiday pay*

- 6.1 The Redundancy Payments Service previously made payment to the claimant of £244.75 (gross). However, the Tribunal awarded £293.41. A supplementary payment of £48.66 was processed for the claimant.

*Unfair Dismissal*

- 7.1 The claimant is also claiming compensation for unfair dismissal. Pursuant to section 184 (d) of the 1996 Act, the only element of an unfair dismissal award that can be considered for payment from the National Insurance Fund is the Basic Award. In this case, the claimant was not entitled to a Basic Award, as confirmed in the Judgment promulgated 24 October 2016 and the Secretary of State is therefore unable to consider any element of the unfair dismissal award in this case.

*Employer pension contributions*

- 8.1 The Judgment promulgated 24 October 2016 awarded £114.43 in respect of employer pension contributions which were not paid during her 6.5-week period of employment. Although the Judgment acknowledged that the claimant’s former employer was in liquidation, the Secretary of State was not joined as a respondent pursuant to Rule 96 of the procedure rules 2013 and was therefore not able to participate in proceedings and confirm that this award could not be considered for payment from the National Insurance Fund.
- 8.2 The respondent can only consider claims for pension contributions where the relevant authority acting for the pension scheme submits a claim for payment from the National Insurance Fund, confirming that contributions are outstanding to that scheme. In the absence of any existing pension scheme and a claim for outstanding contributions from the relevant authority dealing with the scheme, no payment can be considered by the respondent.

*Other claims by the claimant*

9.1 The Secretary of State has no authority consider payment from the National Insurance Fund in respect of compensation for future losses of wages or pension, expenses, costs, compensation for discrimination or any uplift of Tribunal awards. These are not guaranteed payments under sections 166 or 184 of the 1996 Act, and therefore the Secretary of State is not able to consider payment in respect of such elements.

*My decision to strike- out*

10. Rule 37(1) of the tribunal rules 2013 provides

*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;

.....  
.....

*(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.*

11. I am satisfied that the claimant's claims now before this tribunal, have no reasonable prospect of success. I further find in the light of my exchanges with the claimant at this hearing that she is conducting these proceedings in an unreasonable manner. At this hearing, I have given the claimant, and her sister considerable latitude to respond to my conclusion that her claims fall within r.37(1) and that I propose to strike out her claims. She has in my conclusion done nothing in what she has said to change my view.

12. I am striking out the claimant's claims in their entirety forthwith.

**Employment Judge Lloyd**  
26 May 2020