



EMPLOYMENT TRIBUNALS

Claimant: Mr S Wright

Respondent: Long O Donnell Associates Ltd

Judge: Employment Judge Phil Allen (sitting alone)

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent's application to strike out the claim for breach of contract under rule 37(1)(a) of the Employment Tribunal Rules of Procedure is refused.
2. The claim will accordingly proceed to be determined at a final hearing.

REASONS

Issues

1. The claimant was employed by the respondent from 13 September 2021 until his dismissal, which was effective on 6 April 2022. The claimant has brought a claim for breach of contract, claiming that the respondent did not give him the three months notice to which he was contractually entitled. The respondent disputes that the claimant was entitled to three months notice, contending that he had been entitled to only one weeks notice according to the particular terms of the relevant provision of the contract.
2. The claimant also brought a claim for a redundancy payment, but that claim has now been dismissed on withdrawal.
3. The respondent applied for the claim to be struck out in an email of 21 November 2022. Within that email the respondent's representative asked for the application to be determined on the papers unless the claimant requested a hearing. In his response the claimant did not request a hearing, but he did oppose the application to strike out.

4. The application has accordingly been determined on the papers as the claimant has had the opportunity to make written representations and has not requested a hearing.

Facts

5. In his written response to the application, the claimant has stated that there is a dispute about what was agreed regarding notice at the time that the contract was made. The claimant contends that the terms of the written contract provided were varied by an agreement reached between the claimant and Mr Jackson.

6. There is no dispute that the written document recorded that the notice required from the respondent to terminate the contract was a minimum of three calendar months, except in certain circumstances when it would be only the statutory notice period. The exception was stated to be that during a probationary period where the termination was a result of redundancy.

7. The respondent relies upon a downturn in work and contends that equates to redundancy and was the reason for the termination of the contract. The claimant appears to dispute that the termination was as a result of redundancy.

The Law

8. The tribunal has the power to strike out the claim under rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013. In its application, the respondent relies upon the ability to strike out the claim where the claim is scandalous, vexatious or has no reasonable prospect of success.

9. The respondent also relies upon the overriding objective, which requires the Tribunal to deal with cases fairly and justly and, so far as practicable, to save expense.

10. The respondent needs to persuade the tribunal to exercise its discretion to strike out the complaint.

11. No-one gains by truly hopeless cases being pursued to hearing.

12. However, if the question of whether a claim has a reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate. The Claimant's case must ordinarily be taken at its highest. This was set out in the Employment Appeal Tribunal Judgment in **Cox v Adecco UKEAT/0339/19**.

Conclusions – applying the law to the facts

13. The claim appears to involve two significant factual issues which are in dispute: what were the terms of the contract in place regarding notice (in the light of both the document and any other agreement reached at the time); and whether the termination was as a result of redundancy. Those issues will need evidence to be heard, before they can be determined.

14. Taken at its highest, the claimant's claim will succeed.
15. The claim has reasonable prospects of success.
16. The respondent has not provided any argument which would genuinely support any contention that the claim is either scandalous or vexatious.
17. As a result, the application to strike out the claim is refused. The case will proceed to be listed for a final hearing.

Employment Judge Phil Allen
5 December 2022

JUDGMENT AND REASONS
SENT TO THE PARTIES ON
20 December 2022

FOR THE TRIBUNAL OFFICE

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