



EMPLOYMENT TRIBUNALS

Claimant: Mr DJA Mills

Respondent: Coop

HELD AT: Manchester

ON: 3 March 2023

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: Did not attend

Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that:

- (1) The claimant has presented a claim which is one which the Tribunal has no jurisdiction to consider and/or is an abuse of process.
- (2) The claim is therefore struck out on the grounds that it is scandalous or vexatious or has no reasonable prospects of success in accordance with Rule 37(1)(a) of the Tribunals Rules of Procedure.

REASONS

Introduction

1. These proceedings arose from a claim form which was presented on 2 December 2022 following a period of early conciliation from 17 November 2022 to 2 December 2022.

2. The claimant ticked box 8.1 in the claim form which indicated he was claiming 'other payments'. Limited particulars were provided as to why the claim was brought in section 8.2 and he simply asserted that "*Was not paid my full amount of severance pay*". Section 9.2 of the claim form quantified the compensation sought as being £7,500, comprising of "*£3,500 for money owed and £4,000 compensation for pain and suffering.*"
3. Legal Officer Lamazares ordered on 7 December 2022 that the case be listed for a preliminary hearing in public today in order that the issue of whether the "*Claim wasn't submitted in the time period*".
4. This is an understandable order to make, given that the claimant had identified that his date of termination of employment was 20 May 2022 and yet he did not notify ACAS of a potential claim for the purposes of early conciliation until 17 November 2022 and which was more than 3 months after his employment ended. Although it was not entirely clear what complaint was being brought under the heading of 'other payments', it was likely that it would be one which would be subject to the primary limitation period of 3 months typically encountered in Tribunal proceedings. In any event, a preliminary hearing would be required to establish what the claim was about, what the issues were and consideration of further case management orders as appropriate.
5. The response was received on 5 January 2023 and resisted the claim.
6. They noted that the claimant was dismissed for gross misconduct and brought an Employment Tribunal claim under case number 2406509/2022 which was withdrawn when a settlement took place.
7. They argued that the claimant had received all of the money owed to him arising from a COT3 settlement agreement conciliated by ACAS and any perceived shortfall was in respect of statutory deductions which were required to be made.
8. When asked by Employment Judge Butler in a Tribunal letter dated 6 February 2023, the claimant replied by email the following day and confirmed that these payments related to the "*conciliated agreement*" and that he was not aware that deductions might be applied. No information was provided concerning the issue of whether the claim was presented out of time.
9. The parties did not attend today, and I was unable to hear from the claimant with his arguments as to why his claim should be allowed to proceed. Accordingly, I have dealt with this matter based upon the papers before me as neither party provided any explanation for their non attendance and it was proportionate and in accordance with the overriding objective for me to do so under Rule 2.
10. The claim was accepted by the Tribunal and this was confirmed in its letter dated 7 December 2022. However, it would appear that the claim is one which the Tribunal has no jurisdiction to hear in accordance with Rule 12(1)(a)

or is alternatively an abuse of process consistent with Rule 12(1)(b). this is because the issues identified by the claimant relate to a claim that was previously brought under case number 2406509/2022, which was settled between the parties and subsequently withdrawn. The claimant is effectively trying to re-litigate a previously determined case. Any resolution concerning a failure by the respondent to comply with the agreed terms of a settlement agreement, is not something which can be determined in these proceedings.

11. Taking into account the history of these proceedings before me, I have determined that on my own initiative, I can strike out this claim on the grounds that it is '*scandalous or vexatious or has no reasonable prospects of success*' in accordance with Rule 37(1)(a). Taking into account the previous correspondence in this case and in particular, the claimant's reply to EJ Butler's comments in the Tribunal letter dated 6 February 2023, I am satisfied that the claimant has had reasonable grounds to make representations, knowing that legal basis of his claim was subject to scrutiny.
12. I am therefore content that the claimant's claim is struck out in accordance with Rule 37(1)(a).

Employment Judge Johnson

Date 3 March 2023

JUDGMENT SENT TO THE PARTIES ON
3 March 2023

FOR THE TRIBUNAL OFFICE