EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104587/16 Held at Aberdeen on 27 & 28 February 2017

Employment Judge: Mr J Hendry (sitting alone)

Mrs Philomena Ezemonye	**CLAIMANT** **Represented by:** **Mr E Obi – Consultant**
Halliburton Management Limited	**RESPONDENT** **Represented by:** **Mrs M Gibson – Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the following parts of the Claim shall be struck out as having no reasonable prospects of success:

1.The allegations relating to the claimant having been promised a job for life or similar promises or guarantees.

2. The claim for race discrimination arising out of the non payment of a car allowance.

REASONS

1. The claimant in her ET1 sought findings that she had been 'automatically' unfairly dismissed from her employment as a Consultant with the respondent company. They are involved in the oil and gas industry. She believed that her dismissal related to whistleblowing disclosures she had made some years earlier. She also

sought a finding that she had been discriminated against on the grounds of her race in relation to payment of a car allowance and that she was due notice pay. It was confirmed that the notice pay allegation was not proceeding.

2. The respondent's position was that the claimant was fairly dismissed on the grounds of redundancy due to the downturn in the North Sea oil industry and that she had not been the subject of any racial discrimination.

3. A Preliminary Hearing took place on 27 and 28 February 2017 at the respondent's behest in order to consider their application for strike-out on the basis that the claims had no reasonable prospect of success. This case had previously proceeded to a Preliminary Hearing on 7 November 2016 in order to discuss case management issues. It is important to refer back to the positions taken at that time to understand how matters developed.

4. At that the earlier case management hearing Mr Obi, the claimant's representative, indicated that his client did not dispute that a general redundancy situation existed. There was reference by him to a Ms Angie Howard to whom he alleged the claimant's work had been passed. The issue identified as being the principal claim made by the claimant was that her dismissal related to a whistleblowing allegation made some time before her redundancy when she had uncovered a serious fraud in Nigeria (the 'S103A' case). It was recorded in the Note that in relation to this matter the respondents could not detect the alleged the 'causal connection' between the earlier disclosure and the redundancy. It was also noted that the claimant should look carefully at this matter and give details of "*any evidential matters that she will rely on from which such an inference can be drawn*."

5. There was also discussion about the issue of race discrimination which unusually was tied to the non-payment of a car allowance. Mr Obi identified a Mr Hicken as a comparator. It was accepted that he was male and white. The claimant is a black Nigerian. There was then a discussion in relation to what was later described as an allegation of there being a "job for life" whereby the claimant's position was that undertakings/guarantees had been made to her that she would

be employed by 'Halliburton' for as long as she wanted to be. Mr Obi was given fourteen days to set out the basis of these alleged obligations. In the event he lodged better and further particulars (JB5). In that document the claimant's position was summarised that she denied that there was a genuine redundancy in her case and that a Director, of the company, a Mr Mueller, was sent from Houston to terminate her employment. It was alleged by her that Mr Mueller, who carried out the redundancy exercise, was not aware of her initial selection or the background to her moving to Aberdeen from Nigeria. The better and further particulars also made reference to the Public Interest Disclosure ('whistleblowing' claim). It was alleged that Senior Managers of Halliburton including a Gerardo Mijares (based in Houston) were aware of the claimant's whistleblowing allegations (and the undertakings made to her) when Mr Mueller had been sent to the UK to make the claimant redundant.

6. At the start of the preliminary hearing on prospects Mrs Gibson provided the Tribunal with written submissions including details of the facts that had been agreed between the parties and also facts that she did not believe were disputed. In the event my understanding was that facts a) and c) were not in dispute. I set these out under the next heading to provide context for the claims.

Background

7. **AGREED FACTS**

a. The Claimant was employed by Halliburton Operation Nigeria Limited (**"HONL"**) prior to her employment by the Respondents.

b. The Claimant made a qualifying disclosure to HONL in August 2012.

c. Those who the Claimant dealt with within the Halliburton Group in connection with her disclosure were Luis Mera employed by Halliburton Worldwide Resources (a US entity) as Senior Area Country Manager and Chigor Wabail employed by HES Nigeria Ltd.(tab 71)

d. The Claimant applied for (and was not offered) a position as a senior knowledge broker in the United States

e. The Claimant took up employment with the Respondents pursuant to a written contract of employment (the **"Contract"**) dated 5 and 6 March 2013 as a Principle Consultant LG135-ESG – Principle Consultant.(tab 9)

f. The Claimant did not need to drive as part of her duties

g. The Claimant was in the United Kingdom in terms of an Inter Company (ICT) Visa and her right to remain could only be extended until 30th April 2018 (tab 23)

h. The Claimant was notified of a potential redundancy situation on 9 September 2015 by her Houston based line manager (tab 20).

i. On 16 October 2015 the Claimant accepted the Respondent's offer to extend employment for six months in order to give the Claimant more time to find work (tab 33).

j. During this six month window the Claimant applied for roles outside Halliburton (tabs 35, 37).

k. The Claimant's employment was terminated by reason of redundancy on 16 April 2016 – the end of the six month window. (tab 41)

l. The Claimant appealed by letter dated 20 April 2016. (tab 45)

m. An appeal hearing was held on 28 April 2016. (tab 49)

8. **FACTS BELIEVED TO BE AGREED BUT DISPUTED**

a. The Contract did not reference any entitlement to car allowance (tab 9)

b. In advance of signing the Contract the Claimant negotiated with the Respondents relative to the terms under which she would be employed. The car allowance was included within an increased base pay (tab 14) page 11)

c. The Respondents reduced their workforce substantially by reason of redundancy during 2015 and into 2016 (tab 72)

Respondent's Argument

9. Mrs Gibson prepared detailed written submissions (which she augmented orally) carefully taking the Tribunal through the legal and factual basis for the claims being advanced by the claimant, the various legal tests to be applied, the role of Ms Howard and Mr Hicken as comparators and broadly the redundancy process that had been followed. She then focussed on the claims made under the whistleblowing rules and the claim for race discrimination (car allowance).

10. The submissions made by Mrs Gibson were lengthy and I do not intend to rehearse every point made. They were carefully crafted and clear. In essence her position was that the Tribunal required to consider the pleadings and the claims that could be discerned in those pleadings as they stood. It would, she said, be clear to the Tribunal that there was substantial and material difficulties with the claims being advanced. These claims were misconceived and had no reasonable prospects of success.

11. The first matter that she dealt with was the "job for life" as this involved the background to the principal claim. She took the Tribunal through what was being alleged and the lack of any clear contractual agreement being set out. She made reference to the claimant's employment contract which was silent on the "job for life" suggestion and indeed contained an express condition (JB9) allowing for notice of termination. She referred the Tribunal to the well known textbook 'McBride On Contract ', and to the discussion at Chapter 9 and to the Supreme Court decision in **Marks & Spencer Plc v. BNP Parabis & Others [2015] UKSC72**. She suggested that there appeared to be nothing more than an agreement to agree and this would not be contractually binding (**Barwood F v. Eurocop Cable Management [2012] EWCA Civ 548**.) In her submission the claimant's contract had an express notice clause which could not be overridden by implication. There was no basis to imply a term covering the "job for life" allegation.

12. The respondent's submission was that this was an unusual contract term that was being alleged ("**Leary O' v. Jackal International Ltd [1991] WL837949**"). Mrs Gibson continued that the Courts had shown the proper approach to such unusual terms in the case of **Shevlin v. Lady Sainsbury & Others UKEAT/0278/14/PA**. In that case there had been an allegation that the Private Secretary of Lady Sainsbury had been promised a job for life. The primary issue was whether assuming a dismissal a breach of contract dismissal could nonetheless be fair. The EAT noted that even if such a term existed it could not prevent earlier termination by reason of redundancy. In other words even if there had been such an agreement it would only be a factor in the fairness of any dismissal. The claimant she observed seems to have accepted that Mr Mueller did not know about the alleged undertaking in any event.

13. Turning to the whistleblowing aspect of the claim Mrs Gibson took the Tribunal through the legal principles underpinning such claims referring in the course of her submissions to **Kuzel v. Roche Products Ltd [2008] EWCA Civ/80**. She suggested that normally the fact of the disclosure would be known to the person who made the decision to dismiss or impose the detriment complained of. However, she accepted that a claim could arise where the decision maker was manipulated by someone who knows the facts of the disclosure (which seems to be the suggestion here) and that knowledge may be attributed to the employer (**Royal Mail Group Ltd v. Jhuti UKEAT/0020/16 RN**) This case was currently subject to appeal.

14. The respondents accepted that a protected disclosure or disclosures had being made. It had been made to a different legal "persona" namely the Halliburton Company operating in Nigeria not to the current respondents who are the employers of the claimant. There was also a lengthy gap between the time of the disclosure 2012 and termination which began in 2015. This militated against any connection. No clear connection or casual link was advanced.

15. Mrs Gibson pointed out the claimant made reference to not being accompanied at meetings in her pleadings. This appeared to have no bearing on the matter. The

claimant was consistent at meetings and in telephone calls that she did not contest that there was a genuine redundancy situation. This was reflected in the documents produced. Mrs Gibson summarised her position (a) the claimant did not have any guarantee of a job for life, (b) on the 18 September she confirmed that 'HR' in Aberdeen were not involved/party to in the disclosures in Nigeria and that they did not know about these matters (c) there is no consistency about the alleged verbal guarantee or undertaking, (d) there was no suggestion in the ET1 that the redundancy was a sham or triggered by the whistleblowing, (e) on 16 October 2015 the claimant accepted a six month extension to her employment (JB31), (f) neither on the 1 or 16 April 2016 did the claimant mention whistleblowing as the possible reason for her termination (JB36, JB43) nor did she do so in her subsequent e-mail (JB37), (g) the claimant's appeal letter (JB45) does not suggest that disclosure was the reason for her termination nor do the appeal minutes (JB50) suggest this was her position at that time, (h) the claimant makes no reference to the alleged comments made by Mr Mijares that he was going to get the claimant out of the company although she was allegedly alerted to this in January 2015.

16. There was in her submission no obvious connection between the decision made to make her redundant made by Mr Mueller and these much earlier matters (JB22/JB5). The only possibility was that the redundancy was manipulated in some way in a "**Jhuti**" sense. She had never prior to her departure suggested dismissal was by reason of her disclosure. She had never raised this at meetings or at the appeal stage. She had not pled a "normal or standard" unfair dismissal claim. She had argued that her work had transferred to Oxford and that she should be pooled with Ms Howard who worked there. The following issues arose (a) the alleged appropriate pool was not pled (b) Ms Howard is a contractor, graded below the claimant and not comparable, (c) the pool 'point' was not followed up by the claimant after a meeting on 18 September 2015 and (d) there was no suggestion that any of this related to the disclosure.

17. Mrs Gibson then turned to the claim for race discrimination. This claim puzzled her. It was pled that race discrimination seemed to be contractual. The claimant alleged that the race discrimination arose out of non-payment of a car

allowance/possibly her dismissal/ possibly something else as evidenced by the further and better particulars (JB5). The claimant has to establish that she was treated less favourably than her comparator. Her comparator must be a comparator "in the same position in all material aspects as the victim say that only he or she is not a member of a protected class" (**Shamoon v. Chief Constable of The Royal Ulster Constabulary [2003] IRLR 285**. The claimant has not made this test and has no basis to lead evidence of a qualifying comparator. There was reference to what the claimant regarded as unreasonable behaviour but no indication that the behaviour was because of a protected characteristic. The claimant offered to prove that she did not receive a car allowance. This was not disputed. She offered to prove that Mr Hickman did receive a car allowance and this was not disputed. The first time reference was made to her not being entitled to a car allowance is in her ET1 at paragraph 32 the car allowance is not referred to by the claimant at any point during her employment with the respondent or at any time prior to the termination of that employment. The claimant does not argue a breach of contract claim. The car allowance was in fact consolidated into her basic salary (JB14, page 25). There was no suggestion that dismissal might be race related until at the very end of a meeting on 10 June 2016 (JB 55, page 6) the claimant said that it had a racial undertone. The allegation is then not "taken over" into the ET1 and it remains unclear if this allegation remained live.

18. Finally in Mrs Gibson's submission this was an exceptional case which meant that the Tribunal could properly find that there were no reasonable prospects of success and dismiss the allegation at this stage: there was simply no basis for the claim to proceed on the merits.

Claimant's Submissions

19. Mr Obi helpfully outlined his submissions and provided the Tribunal with a written copy of them.

20. He began by providing the Tribunal with an introduction setting out the claims being made. He dealt with the issues as she saw them in turn.

21. In his view the respondents had failed to give adequate reasons for the alleged diminution in work. The claimant alleged at the meetings that Angie Howard had been passed her work. Offering the claimant work in Nigeria was extraordinary given that she had to flee from Nigeria. They had kept on a contractor (Angie Howard) rather than the claimant.

22. Addressing the link between the dismissal and the disclosures Mr Obi referred to Mr Louis Mera who was the senior manager in the global company who had arranged the claimant's job in the UK after she had to leave Nigeria. He was high up in the company. She was guaranteed a role for life within the organisation. The claimant had faced death threats in Nigeria and had to leave. The company had to pay millions of dollars in fines and he was sure that this was the reason she was now being targeted for dismissal. In 2015 the claimant received a message warning her about Mr Mijares and that he wanted to kick her out of the business. Mr Mueller who made the decision was working under his direction.

23. In Mr Obi's view even if there was a genuine redundancy situation it was still unreasonable for the claimant to be dismissed. An alternative role existed namely that of Ms Howard's. He indicated that he would be seeking to amend the claim to add a claim for unfair dismissal on these grounds.

24. Mr Obi referred to the history of the matter. On the 9 September 2015 the claimant was served a notice of risk of redundancy. Meetings were scheduled and the claimant was only given the right to be accompanied during the first consultation meeting and she was never given that option again in her view because she mentioned the whistleblowing allegation at the first meeting. The only time she was given the right to be accompanied was during the appeal hearing of 28 April 2016.

25. Mr Obi then turned to the issue of the car allowance. It was stated that the claimant was entitled to such an allowance in the company handbook. She did not receive it. This was unreasonable. The comparator was white and the claimant therefore believes that the failure to pay related to her race. The

claimant was prepared to provide the Tribunal with her financial position in case it considered the question of imposing a Deposit Order. The claimant's current situation is desperate. She is living on charity. She cannot wok as her Visa has been withdrawn. She has a young family and the whole episode has had an adverse effect on her health. She is now suffering from depression.

Decision and Discussion

26. It has been observed that strike out is a draconian remedy **(Balls v Downham Market High School and College [2011] IRLR 217**) which If granted deprives a claimant from proceeding to a hearing and having the opportunity of advancing the claim, at least in this forum.
Rule 37 of the Employment Tribunal Rules 2013 governs the use of this power:
37.Striking out
(1) 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 …. has no reasonable prospect of success;

27. The principles which govern the striking out of a claim to an Employment Tribunal have been discussed in a number of cases which give guidance to Tribunal's on the proper approach. This was recognised by Mrs Gibson in her citation of authorities which included the case of **Tayside Public Transport Co Ltd t/a Travel Dundee v Reilly [2012] IRLR 755 CS**. This is authority for the proposition that where there are central facts in dispute the case should proceed to a full hearing except in exceptional circumstances. The test for strike out is high and the Tribunal should focus on the wording of the section. It requires there to be 'no' reasonable prospects of success. If the case has 'little' reasonable prospects of sucess then the Tribunal may make a deposit order.

28. Drawing the distinction between what are disputed facts can, however, sometimes be a difficult task especially of the pleadings do not focus the dispute. The Tribunal must also be careful not to strike out material that may be properly pled as background to the claims. There appears to be little dispute about the

facts relating to what happened in the redundancy process (who met who and when and what was a said) although there is a sharp dispute as to the reason why the claimant was made redundant and no agreement at all relating to any guarantees the claimant may have received about future employment.

29. It is also for a party to properly set down their case in writing to give the other part fair notice but also to allow the Tribunal to carry out the sort of assessment required by the Rule. In this case the claimant, although represented, was not represented by a Solicitor or Advocate and as a consequence a certain leeway or latitude has to be given when approaching the pleadings to try and discern the claims being made and their basis. Even taking such a view of the pleadings they are not particularly clear about a number of the issues.

30. The claimant was dismissed purportedly on the grounds of redundancy and although the fairness of the dismissal is challenged the claim proceeds on the much narrower basis that it was automatically unfair because she was dismissed for having made a protected disclosure (the 'S103A case'). The second claim is for race discrimination which seems tied up with or interlinked to a claim for car allowance and finally notice pay. It was accepted at the outset that notice pay was paid in full. There was also advanced a contention that the claimant had been offered a job for life.

31. Mrs Gibson argued that this was the sort of case that could be said to be exceptional and liable for striking out at this stage. She observed that there was no claim for a 'standard' or 'routine' unfair dismissal claim which might have been expected. There is no doubt that the unusual aspect of this case was the assertion that she had been assured that she would have a job for life. The basis for this was said to be the *disclosures that she had made in Nigeria when working there which had prompted her being transferred to the respondent's employment in Scotland.

32. Let me observe at the outset that the situation that the claimant finds herself in is desperately unfortunate and no one could fail to not to have sympathy for her plight and that of her family. She is an educated successful professional woman

who has found her life turned upside down. The termination of her employment automatically cancelled her Visa and she was unable to work even if work had been available. Both the claimant and her young children are without state benefits and forced to live a hand to mouth existence on charity. The respondents accept that she was relocated to the UK because of genuine threats to her safety and that she had acted with some considerable courage in making the disclosures she had. However, their position was that matters had moved on and the respondent company in Aberdeen had no more use for her services because of the downturn in work in the North Sea and more generally globally.

Job for Life

33. First of all, let me deal with the job for life issue. As observed a feature of all the claims is that they are not pled with any great regard to the applicable law and have to an extent to be disentangled from the other circumstances. There is no claim pled for breach of contract. The claimant seems to accept that her now terminated employment contract was with the respondents and that the written document produced is that contract. The contract is with the respondent company and makes no reference to job security or a 'job for life'. The claimant seems to indicate that the people with whom she had discussions about relocation from Nigeria have either 'moved on' or retired and were not employed by her current employers.

34. The written contract also provides for notice of termination of the relationship. It narrates that the document was given under the Employment Rights Act 1996 . It was signed by the claimant on 6 March 2013. The Notice clause is in the following terms:

> " *Notice Period*"
> "*If you or the company wish to terminate your employment, three months notice, in writing must be given to the other party. The company reserves the right to terminate your employment without notice in the event of gross misconduct or breach of contract.*" Halliburton Handbook (JB72, Clause 11.6)

35. This does not sit well with an obligation for some long term job security or a job for life. There is no suggestion that the contract is in some way a sham but the

argument advanced seems to be that what might be described as collateral undertakings were given by Mr Mera about future employment. What is also relevant is that more the claimant's employment contact is not with the global parent company or the Nigerian subsidiary company who previously employed her. This is not a matter that seems to be disputed. The exact nature of the apparent arrangement is, even after Mrs Gibson pressed the claimant's representative on the matter, vague. It was stated to arise from a conversation between the claimant and Luis Mera where he suggested that the company would take care of her helping her to relocate and obtain a new position.

36. In interpreting an employment contact the Tribunal can look at the whole circumstances to ascertain what those terms are and if they have altered over time but these words even if taken at their highest do not seem to amount to some sort of guarantee. The claimant's position leaves many questions unanswered. There is no reference to the current respondent being a party to such an arrangement or agreeing to be bound by it. Even if such an obligation were proven, leaving aside the requirement for a contractual term to be clear unambiguous this seems to be a situation very similar to that in the case of **Shevlin v. Lady Sainsbury & Others** .

37. Even if a claim for breach of contract could be discerned a Tribunal could not restore the claimant's job at least not as a remedy on these grounds. The difficulty that presents itself is that the claimant has not such a claim for breach of contract. More broadly she seems to allude to this matter as having an impact on the fairness of the dismissal. If this had been advanced as a claim for breach of contract then the respondents arguments would have been very persuasive. The Tribunal does have the power to strike out all or part of a claim and this must include irrelevant material. My hesitation is that while any alleged guarantee of a job for life would not necessarily prevent a fair dismissal it could be a relevant factor. The Tribunal can take into account a wide variety of matters impacting on the fairness or otherwise of a dismissal in terms of section 98(4) of the Act. However, as stated above the claim is currently based on Section 103A of the Employment Rights Act which does not engage this section. The material is therefore irrelevant and incapable of founding any claim under section 103A. I will

therefore strike out this part of the claim although the claimant may seek to effectively reintroduce these matters if she is successful in amending the claim to include unfair dismissal under section of the Act which I understand is the course of action being considered.

Section 103 A claim (Whistleblowing)

38. Despite hearing argument and considering the pleadings I am still unsure as to the alleged causal link between the claimant's disclosures in Nigeria and her ultimate dismissal on the grounds of redundancy. It would seem odd on the face of it that the parent global company would go to considerable efforts to relocate the claimant and keep her employed here in Scotland for some years and then dismiss her because of the actions she had taken, and been protected and redeployed for, that had taken place some years earlier. In the course of the hearing for the first time the claimant sought to rely on an alleged comment made by a senior manager Gerardo Mijares in January 2015 that he would have her kicked out of the business because of the issues in Nigeria. His involvement in the actual decision making to select the claimant and to dismiss her remains unstated. It would however be open to Mr Obi to question Mr Mueller about the matter and whether he had been influenced in some way.

39. Mr Obi argues that Mr Mueller admitted that he did not know about her particular situation before he came to the U,K to carry out the redundancy process and infers from this that he must therefore have been instructed to make the claimant redundant. In effect the argument is that there is a conspiracy or hidden hand behind the outwardly bona fide actions of the respondents. If the restructuring that took place which led to the claimant's dismissal was planned and arranged by local management along with the HR department then it is perhaps understandable that Mr Mueller was not involved at this early stage and did not know about the detailed background until he came to the UK and was briefed. The claim appears to be based on little more than assertion but until the Tribunal hears the evidence of the decision maker it cannot hold that there are no reasonable prospects. There appear to be little reasonable prospects of success for the reasons I have outlined. I would have ordered that the claimant pay a

deposit in order to proceed with this claim but her dire financial position make such an order fruitless.

Race Discrimination Claim

40. In the ET1 Mr Obi confirmed that the claim relating to the car allowance was a 'race' claim. He suggested that everyone on the claimant's grade was entitled to a car allowance and she was the only person not to get one. The term of the Handbook is:

"*<u>Car Allowance</u>*
It is company practice to provide a car allowance to certain employees based on their job, level or grade or on the basis that they need a car to do their job. The product service line or function manager must approve the provision of a car allowance in conjunction with the Human Resource Department. Vehicles of the current car allowance levels are available from your local Human Resources Department" (JB14).

41. It is noteworthy that the provision of a car must be approved and does not seem to be in some was' automatic' Mr Obi suggested that it was unreasonable for the claimant not to get such a car allowance. He was unable to say why the employer's actions, even if accepted as being unreasonable, were motivated by race. The argument presented in support of the claim seems particularly disingenuous and strained when the email correspondence seems to show that the claimant was aware when her salary was being discussed on transfer to the UK the car allowance was 'rolled up' to give her a higher base salary. It appears that on 17 February 2013 Mark Dick e-mailed Carol Wright in relation to the claimant's proposed post/salary in Aberdeen indicating that the job's car allowance was £6,000 should be added to the claimant's salary. On 12 February Carol Wright had e-mailed Mark Dick:

"*$88,100. Please check my map, what I am trying to do is add 10% plus the equivalent of 12 months car allowance. I may not have added in the allowance appropriately. I do not want to do a car allowance, but rather add the equivalent of £500 GBP a month to the base on top of 10% increase. If we do that where does she end up in relation to the salary band.*"

42. The claimant seems aware of this and Mr Obi certainly did not suggest that the emails were inaccurate. Rather his view was that even if this was the situation the claimant was still entitled to this in terms of the handbook and that it was unreasonable for her not to get the allowance. The fact that a white employee got such a car allowance does not assist him as it was conceded that many employees of all races employed globally would have such an allowance and some would not.

43. A Tribunal is not entitled to infer discrimination from unreasonable behaviour alone (**Bahl v The Law Society [2004] EWCA Civ)** The logic of that decision applies here. The suggestion that there has been 'unreasonable behaviour' by an employer does not point to one form of the many types of discrimination rather than another. Despite being questioned about the matter Mr Obi could not point to any matter that suggested that it was the claimant's race that led to the decision not to award her an allowance. If the claimant has a genuine contractual right to the allowance she can raise proceedings for breach of contract. Although conscious that public policy militates against dismissing discrimination claims before they are heard there appears to be no relevant claim here. There appears to be no disputed core facts in this situation. The claim is pled as a claim for either direct or indirect discrimination and as currently advanced I regard it as misconceived and one having no reasonable prospects of success and it shall be dismissed.

44. In issuing this Judgment I am conscious that there is an application to amend. It would be inappropriate to comment on that application but I think it desirable for this decision to be issued before any such application is determined and for that application to be dealt with by another Employment Judge.

Employment Judge: James Hendry
Date of Judgment: 20 March 2017
Entered in Register: 20 March 2017
and Copied to Parties