EMPLOYMENT TRIBUNALS

Claimant: Mr Z Englander

Respondents: 1. Esynergy Solutions Limited
2. Paula Kelly
3. Nigel Gausden
4. Matt Gilson
5. Anthony Hyde

Heard at: London Central **On:** **21 February 2019**

Before Judge: **Employment Judge A Isaacson**

Representation

Claimant: Mr S Park, Solicitor

Respondents: Mr J Braier, Counsel

JUDGMENT

The Judgment of the Tribunal is as follows:

The claimant's claims against the fourth Respondent Matt Gilson are struck out and Matt Gilson is removed as a respondent.

REASONS

Application to strike out

1. At a preliminary hearing on 18 December 2018 Judge Professor Neal determined that events up until and including 28 February 2018 should not be allowed to proceed as part of claim 2. Claim 2 are the claims against the individual respondents("R") 2-5.

2. On the 31 January 2019 the respondents made an application to strike out the cases against R2 and R4.

3. The respondents argue that the pleaded case against R2 is all about matters that occurred prior to I March 2018 and that the contemporaneous documentation makes it clear that the case against R2 has no reasonable prospects of success.

4. The respondents argue in relation to R4 that all matters relating to him crystallise prior to 1 March 2018 and there are no reasonable prospects of success.

5. This is a case where the claimant has the opportunity to pursue any claims against R1 his employer, including his allegation relating to R2 and R4.

The Law

6. Rule 37 in schedule 1 of the ETs (Constitution & Rules of Procedure) Regs 2013 (The ET Rules") provides that a Tribunal can at any stage of the proceedings strike out all or part of a claim on the grounds that it is scandalous or vexatious or has no reasonable prospects of success.

7. Both parties agreed that the respondents' counsel had accurately recorded the law regarding striking out at paragraphs 5 to 11 of his skeleton argument.

8. In summary a Tribunal should not strike out any claim where there is a core of disputed fact and that discrimination issues *"should as a general rule, be decided only after hearing the evidence"* – **Anyanwu v South Bank Students Union and Anor (2001) ICR 391.** It is a high test and the Tribunal must carefully consider all material before it concludes that there is no reasonable prospect of success.

Conclusion

9. In relation to R2 the Tribunal noted that at paragraph 30 of the particulars of claim the claimant pleaded that in response to his resignation letter he felt extremely disappointed and betrayed when he received a standard termination of employment letter. This letter was written by R2 and sent to the claimant after the 28 February 2018. The claimant referred to this letter in his answers to questions for his grievance appeal at paragraph 113 where he refers to R2 ignoring the reasons he set out in his resignation letter and finding the language she used in it as accusatory.

10. It is, therefore, arguable that the claimant has pleaded a case against R2 which postdates 28 February 2018.

11. The Tribunal concludes that as there is possibly a case against the R2 which postdates 1 March 2018 and there is insufficient information to conclude that the case has no reasonable prospects of success the Tribunal is not minded to strike out the case against R2.

12. In relation to R4 the Tribunal accepts the respondents' counsel's argument that all the allegations against R4, as pleaded, fall prior to 1 March 2018. This includes any exclusion from team meetings. Therefore, it is clear and obvious, based on the ruling of Judge Professor Neal's, that all the allegations against R4 as an individual claimant have no reasonable prospects of success and should be struck out.

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Employment Judge Isaacson

Date 22 February 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

25 February 2019

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FOR THE TRIBUNAL OFFICE