



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE K ANDREWS (sitting alone)

BETWEEN:

Mr A McSorley

Claimant

and

Tesco Stores Ltd

Respondent

ON: 11 June 2021

Appearances:

For the Claimant: In person

For the Respondent: Mr H Zovidavi, Counsel (by video link)

JUDGMENT **(pursuant to rule 37)**

The claim is struck out pursuant to rule 37 of the Employment Tribunal Rules 2013 as it has no reasonable prospects of success.

REASONS

1. In July 2019 the claimant submitted a claim of sex discrimination. In the narrative description of his claim he described a course of unacceptable treatment he alleged he had suffered at the hands of his manager (male) who was having a romantic relationship with the claimant's colleague (female) by which the claimant said the manager was favouring that colleague.
2. A case management preliminary hearing was heard before Judge Wright on 18 November 2019. In the subsequent order she recorded that the claimant said he did not intend to present a claim for sex discrimination but instead wished to claim constructive unfair dismissal. He was given leave to submit such an application which he did in due course and that application was also considered today and a separate order, refusing that application, has been sent to the parties.
3. At a subsequent telephone preliminary hearing on 17 April 2020 before

Judge Sage, it was recorded that the claimant accepted that his claim as then pleaded was unlikely to succeed and that he again confirmed he wanted to replace the claim for sex discrimination with unfair dismissal.

4. At today's hearing, having refused the application to amend, I then discussed with the claimant what he wanted to do about his sex discrimination claim. He indicated that he wanted to proceed with it. I discussed with him the basis of that claim. In the course of that discussion he confirmed that in his view his manager treated all of his staff appallingly and that if the claimant had been a woman, the manager would have treated him in the same way as he would have continued to favour the colleague with whom he was having a relationship. I explained to the claimant why this fatally undermined his claim of sex discrimination. He seemed to understand that but again confirmed that nonetheless he wanted to proceed with his claim.
5. Having also discussed the matter with Counsel for the respondent, I concluded that the claim of sex discrimination has no reasonable prospects of success and it is appropriate, therefore, that it should be struck out pursuant to rule 37.

Employment Judge K Andrews
Date: 11 June 2021