Neutral Citation Number: [2022] EWHC 3090 (Admin)

Case No: CO/2145/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 13/12/2022

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between:

THE KING ON THE APPLICATION OF BRIAN NESBITT	**Claimant**
- and -	
CLEVELAND, DURHAM AND NORTHUMBRIA LEGAL TEAM, HMCTS	**Defendant**

- -
- -

The Claimant appeared in person
The Defendant did not appear and was not represented

Hearing date: **30 November 2022**

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Judgment Approved by the Court for handing down (subject to editorial corrections)

Mr Justice Julian Knowles:

Introduction

1. This is a renewed application by the Claimant for permission to seek judicial review following refusal by the single judge (His Honour Judge Kramer). The decision challenged is the decision of a Legal Team Manager (in other words, a justices' legal adviser) employed by the Defendant refusing to issue criminal summonses on the Claimant's application. There are two decisions: one dated 23 August 2021, and one dated 11 March 2022. The second decision upheld the first decision and followed further representations by the Claimant.

2. The Claimant sought summonses for various offences involving alleged dishonesty by a Citizen's Advice Bureau (CAB) adviser, Wilfred Holt, and a solicitor, Juliet Abraham-Hale. The decision maker refused the summonses on the basis that, 'there is no prima facie evidence of dishonesty, or making/using a false instrument as alleged against the proposed defendant(s)'.

3. I make clear that I have considered all of the points made by the Claimant orally and in writing. The fact I do not mention a particular point does not mean that it has been overlooked.

4. In his oral submissions, the Claimant referred several times to there having been a 'cover-up', and he criticised the judiciary. He was entitled to do so, however I make clear that I am not engaged in a cover-up, nor were my judicial colleagues, and I have considered the Claimant's application wholly on its merits.

Background

5. This case has a long history and has already been the subject of considerable litigation. The following are the salient matters

6. In 2000 the Claimant was unfortunately assaulted and suffered a brain injury. I bear this in mind in considering his submissions. That said, he has represented himself in various courts in connection with this matter (including, successfully, in the Court of Appeal), and I am satisfied he was able to properly present his case to me. He did not suggest otherwise, although he complained that the support he had been promised at court had not appeared. He did not ask for an adjournment.

7. At the time of his injury the Claimant was employed by Dunlop (Tyres) Ltd (Dunlop). He was unable to work for a considerable period. In 2002, following rehabilitation, he returned to work in an administrative capacity. That proved unsuccessful, and in 2003 the Claimant was suspended. He then commenced proceedings against Dunlop under the Disability Discrimination Act 1995 (DDA). After a discussion with Mr Coleman of ACAS (the Advisory Conciliation and Arbitration Service), in July 2003 he appointed the CAB in Gateshead to act for him in his claim. His allotted CAB adviser was Wilfred Holt.

8. There was a directions hearing on his DDA claim on 12 August 2003. Outside court, Mr Holt discussed possible settlement with Dunlop's representative. The

Dunlop representative said that the Claimant would be dismissed whatever the outcome of the DDA claim

9. Shortly afterwards, the same month, Mr Holt had a discussion with Juliet Abraham (as she then was), a solicitor with the firm Wragge & Co, acting for Dunlop, about a potential settlement.

10. According to attendance notes made by Mr Holt (some or much of which the Claimant disputes) on 15 August 2003 he and Mr Holt had a lengthy discussion about the case. The outcome of the discussions is disputed. Mr Holt told Ms Abraham that the Claimant might settle for £11000 (about a year's salary).

11. On 18 August 2003 Dunlop made an offer of settlement of £9000. The Claimant and Mr Holt spoke on the telephone about the offer. The Claimant states he rejected the offer. Mr Holt said the Claimant agreed the offer. What is clear is that the following month (September 2003) the Claimant received a cheque for £9000 which he banked and, in due course, spent. He refused to sign a receipt for the money. He told me, in answer to my question where he thought the money had come from, if he had not agreed to settle, that he was (in effect) destitute and needed the money in order to live. He left his employment with Dunlop.

12. Also on 18 August 2003, Ms Abraham completed the ACAS COT3 form and faxed it to ACAS. A COT3 is a legally binding agreement to settle actual or potential claims in the Employment Tribunal. Essentially, it is a form agreed following conciliation by an officer employed by ACAS recording the terms of the agreement.

13. On 21 August 2003 the Claimant telephoned Ms Abraham directly enquiring about exchange of witness statements. Mr Holt was on annual leave at the time, and Ms Abraham told the Claimant that witness statements were no longer required as the case had been settled

14. In November 2003 the Claimant contacted Gateshead CAB and alleged that his claim against Dunlop had been settled without his consent. That is the central core of his complaint – that a false settlement without his authority had been reached and the COT3 was fraudulent.

15. The Claimant then commenced proceedings in the Employment Tribunal to set aside the compromise, but was unsuccessful. The Tribunal found that Mr Holt had ostensible authority to enter into the agreement with Dunlop, and that that had occurred, and the compromise was therefore valid.

16. Next, the Claimant began proceedings against the CAB alleging professional negligence. The CAB applied to strike out the claim as an abuse of process. After litigation up to and including the Court of Appeal (*Nesbitt v Wilf Holt of the Citizens Advice Bureau* [2007] EWCA Civ 249), in which the Claimant represented himself, the claim was allowed to proceed.

17. There was then a trial in the Newcastle upon Tyne County Court before District Judge Walton in Claim NE590064. On 17 November 2010 the judge dismissed the Claimant's case and found for the Defendant. I will need to return to this ruling

later, but in summary the judge found that the case had been settled with the Claimant's knowledge and consent. He rejected the Claimant's version of events to the contrary.

18. There was then a gap of 11 years or so.

19. In May 2021 the Claimant wrote to the magistrates' court in Gateshead indicating he wished to lay informations against Mr Holt and Ms Abraham alleging fraud against each of them in connection with their actions in August 2003.

20. The Legal Team Manager, Mr Baker, then took his decision to refuse the summonses in August 2021 (in other words, 18 years after the alleged offence(s)). Following further representations from the Claimant, he reached the same decision in March 2022. I summarised Mr Baker's principal reason for refusing the summonses earlier.

21. Taking a step back at this stage, the Claimant is accusing a CAB employee, and a solicitor with a large and reputable firm, of dishonesty. Whilst dishonesty by professionals is not unknown, it seems to me right to observe that very cogent evidence would be required even at the stage of applying for summonses. There is no reason that is obvious to me *why* Mr Holt or Ms Abraham should have behaved in a dishonest fashion on what probably was, for them, a low value and routine matter, and from which they did not personally stand to benefit.

The judgment of District Judge Walton

22. I incorporate into this judgment by reference (but without repeating) the full judgment of the District Judge. The Claimant has a copy of this, and it is in my papers. I have read it carefully.

23. The judgment goes through in detail all of the negotiations between the Claimant, Mr Holt and Ms Abraham, about the terms of any settlement. Much of this was recorded in attendance notes made at the time (now some 19 years ago). The judgment does record at [30] that the Claimant never saw the COT3 until after it had been finalised and had become binding. That said, [32] and [33] record contemporaneous written evidence that the Claimant did agree to a settlement of £9000 for dismissal on medical grounds. Paragraph [35] of the judgment notes the differences in account of Mr Holt and the Claimant.

24. Paragraph 36 records Mr Holt's evidence that the Claimant accepted Dunlop's final offer – put to Mr Holt by Ms Abraham – of £9000. Paragraph 37 records Mr Holt's evidence that he read the COT3 to the Claimant on the phone, and he accepted it. Mr Holt also made a note, 'The matter is settled. He [the Claimant] is happy with it'.

25. The judge turned to his conclusions at [44] onwards. He said that both Mr Holt and the Claimant genuinely believed in their version of events.

26. At [48], the judge said that the Claimant's perceptions were not always accurate, and that led him to take up positions which were not always defensible. At [50]

he said the Claimant had 'a capacity for misconstruing events'. At [51] the judge said the Claimant's evidence was inconsistent with evidence that it was 'difficult to put to one side'. At [52] the judge rejected the suggestion of a conspiracy among CAB employees. At [54] the judge said this:

> "I have kept in mind the explanation that he [the Claimant] thought there was no agreement, because he had not authorised one, but for all of the reasons I have given, the evidence compels me the other way."

27. At [55] the judge said that there had been nothing wrong with the procedure the parties had adopted with regards to the COT3. This is perhaps significant, because much of what the Claimant complained to me about involved the COT3, and whether and to what extent ACAS had been involved. Section 3.1 of his Claim Form makes allegations that no COT3 existed on 18 August 2003 and that ACAS had no involvement with it. At [56] the judge noted the evidence of Mr Coleman of ACAS that it *had* been involved, and the COT3 was enforceable (as the Employment Tribunal had found in the earlier proceedings brought by the Claimant).

28. At [57] the judge found that the evidence 'overwhelmingly' suggested that the case had been compromised with the Claimant's agreement. He said he would have rejected any case by the Claimant that, 'I agreed, but I was misled'. He said that Mr Holt had secured the Claimant's agreement.

Discussion

29. I allowed the Claimant to address me for as long as he wished, on any point he wished, and he did so. He began by reading out a letter he had written to an NHS talking therapy service about his mental health, and what he regarded as failures and lack of care for him.

30. I attempted to guide the Claimant so that he could identify for me what he said had been the error in Mr Baker's decision making that would properly permit me to grant him permission. He was unable to do so specifically, but just said generally that the evidence was all in the papers.

31. The principal difficulties lying in the way of the Claimant are, it seems to me, two-fold: (a) the substance of his case on this application - namely that he never agreed a settlement and Mr Holt was not telling the truth and the COT3 was false or forged or somehow not genuine - was advanced by him in the County Court proceedings, tested in evidence, and his case was rejected by District Judge Walton in a fully detailed and reasoned judgment; (b) I can only intervene in Mr Baker's decision (which is consistent with District Judge Walton's findings) if I am satisfied that it is arguable that Mr Baker reached a conclusion which was irrational, ie, one which no reasonable decision maker could have reached. This is quite a high threshold, which is not easily overcome. It is not sufficient that the Claimant believes in his case, however strongly, and however genuinely that belief is held.

32. In light of the District Judge's judgment, the decision not to issue the summonses is unchallengeable. The judge heard live evidence, saw it tested, and reached the conclusions he did which were, as I have said: that the Claimant did indeed agree the settlement; that there was nothing wrong with the COT3; that ACAS had been involved; and although the Claimant genuinely believes a different version of events, his belief was not supported by the evidence. The judge found Mr Holt to be honest (and also Ms Abraham), and that is fatal to the Claimant's application for summonses for offences involving dishonesty and improper behaviour. Given the District Judge's findings, Mr Baker was obviously entitled to reach the conclusion he did.

33. For these reasons, and those of His Honour Judge Kramer which I agree with, this renewed application is dismissed.

34. Post-script: after this judgment was sent to the Claimant in draft for the usual typographical, etc, corrections, he supplied several pages of comments disputing it and making a number of accusations, including about the judges who have considered his various cases over the last 19 years (myself included).

35. For example, in relation to my [28] above, which as I have said was based upon the District Judge's findings following trial, the Claimant commented: 'LlE No ('overwhelmingly') evidence can exist because it simply never happened with my knowledge or consent'. Of my [31] he said: 'This is proof that judges cover up the evidence placed in front of them and protect criminals as well as previous judge's decisions.'

36. He also made reference to his mental health, as he had in the hearing before me.

37. I reiterate my [26] above, and District Judge Walton's finding at [48] of his judgment, reached after he had heard the Claimant give evidence on oath and been cross-examined, that the Claimant's perceptions were not always accurate, and that led him to take up positions which were not always defensible.

38. For the avoidance of doubt, and so that the Claimant knows, I have considered all of his comments, but propose to say no more about them.