

THE INDUSTRIAL TRIBUNALS

CASE REF: 898/13

CLAIMANT: Kevin Francis O'Neill

RESPONDENT: Radox Laboratories Limited

DECISION ON A PRE-HEARING REVIEW

The decision of the tribunal is that the claimant's claims against the respondent company should be struck-out on the ground that they have no reasonable prospect of success.

Constitution of Tribunal:

Chairman (sitting alone): Mr D Buchanan

Appearances:

The claimant, Mr O'Neill, appeared in person and was not represented.

The respondent was represented by Mr J Alghazy Queen's Counsel (England and Wales), instructed by its In-house Legal Department.

- 1 By a claim form presented to the tribunal on 13 May 2013, the claimant, Mr O'Neill, alleged that he had been constructively dismissed by the respondent company, and that he had suffered a detriment as a result of making a public interest disclosure.
- 2(i) The matter had been listed before the Vice President of the Tribunals for a Case Management Discussion on 17 September 2013. A Record of Proceedings issued on 18 September 2013 and a copy of it is set out at an appendix to this decision.
- (ii) At that Case Management Discussion the Vice President stressed to both the claimant and the respondent that he found it extremely difficult, on reading the claim form, to extract a coherent or valid claim within the jurisdiction of the tribunal.
- (iii) The matter was therefore listed for a pre-hearing review on the following issues:-
 - "(a) *Whether the claims of constructive dismissal and unlawful detriment as a result of protected interest disclosures have no reasonable*

prospect of success and should therefore be struck-out pursuant to Rule 18?

(b) *Whether all or part of the claimant's claim form should be struck-out as being outside the jurisdiction of the tribunal and/or irrelevant to any claim of constructive unfair dismissal and unlawful detriment as a result of a protected interest disclosures?*

(c) *Whether the claims of constructive unfair dismissal and unlawful detriment as a result of protected interest disclosures have little reasonable prospect of success and, if so, whether a deposit of up to £500.00 should be ordered before those claims or parts of those claims may proceed?"*

(iv) The Notice of Hearing for this pre-hearing review, issued on 25 September 2013, unfortunately did not include the issue at *sub-paragraph (iii)(c)* above (the deposit issue). However, Mr O'Neill very fairly accepted that he had had notice of this issue from the Case Management Discussion and the subsequent Record of Proceedings, and he was content for the pre-hearing review to proceed.

3 The parties agreed to proceed by way of submissions. I, of course, had the claim form, response, and full file before me. The respondent's representative made oral submissions. Mr O'Neill provided a witness statement, a bundle of documentation, written submissions and very brief oral submissions in conclusion.

4 The respondent's representative relied heavily on what was stated at *Paragraph 4 and 5* of the Record of Proceedings of 18 September 2013 and which I now set out here for convenience:-

"The tribunal notes and the claimant, in open tribunal agreed, that the claimant does not point to any breach of his employment contract other than a perceived breach of trust between him and the respondent organisation. The tribunal also notes that the claimant does not point to any detriment being applied to him other than the perceived breach of trust. The claimant argues that the final straw leading to his resignation was the search of the house he shared with a work colleague. That search was pursuant to an Anton Pillar Order obtained in the High Court against that colleague by the respondent organisation. Neither the claimant or his colleague have contested that Anton Pillar Order to date. However the claimant alleges that it was obtained on foot of a dishonest affidavit from Stuart Jackson. The claimant's complaints against the respondent organisation relate to that organisation's treatment of his work colleague, Mr Talalaev, the claimant's observations of a disciplinary/appeal process involving that colleague, the status of Monza machines in respect of which the claimant was not working and had no direct contact, and the treatment of alleged protected interest disclosures. The claimant does not rely on an actual action being taken against him but argues that matters got to a point where he could not work for the respondent.

The above summary of the claimant's position was read to the claimant and the claimant, in open tribunal, agreed it was accurate."

- 5(i) The various documents submitted by the claimant, unfortunately, did not advance the matter any further, and in essence gave the impression that he is seeking a wide-ranging enquiry into the respondent company's employment practices.
- (ii) In relation to the allegation of constructive dismissal, the 'last straw' for him was the execution, on behalf of the respondent company, of an Anton Pillar Order at the house which he shared with a fellow-employee of that company. That Order had been obtained not against the claimant, but against his fellow-employee. This incident therefore cannot form part of the claimant's case of constructive dismissal.
- (iii) As far as the allegation of whistleblowing is concerned, the claimant cannot point to any detriment which he has suffered other than an alleged breach of trust between him and the respondent. In his written submissions he relies on an alleged protected disclosure made by someone else. Even taking the evidence at its height there is little evidence of any protected disclosure.

Furthermore, there is no evidence of any link between a protected disclosure and any breach of trust.

- 6(i) In considering whether the claimant's claims should be struck-out under Rule 18(7) of the Industrial Tribunals Rules of Procedure 2005 on the ground that they are misconceived (which expression includes having no reasonable prospect of success) I have taken into account the law as stated in *Harvey on Industrial Relations and Employment Law, Volume 3, Division P1 'Practice and Procedure'* and the authorities set out therein. It is clear from those authorities that a party (here the respondent) has a high threshold to surmount in persuading a tribunal to strike-out a claim on this ground.
- (ii) It is a power which should only be used rarely, in the most obvious and stark cases, and where the tribunal has considered alternatives to striking out, such as the ordering of specific particulars.

The power should not be exercised where the central facts are in dispute, and where the issues to be decided depend on conflicts in evidence which can only be resolved at a full hearing.

Discrimination cases, in particular, because they are highly fact-sensitive, should only be struck-out in exceptional circumstances, and consequently the power to strike-out should be used with even greater caution than in other, less fact-sensitive, cases. In this respect whistleblowing cases are treated as akin to discrimination cases.

The power to strike-out is intended to be used at a pre-hearing review, as is the case here.

- 7(i) I fully realise that, in view of the foregoing principles, striking-out the claimant's claims is a drastic step. However, I am satisfied that it is an appropriate step to take in this case, and I so order.

There is no real substance to the claimant's claims, and indeed they are in some respects contradicted by the documentary evidence. I have considered the ordering of specific particulars, but I have at the same time borne in mind that since

the original Case Management Discussion the claimant has provided extensive documentation and submissions, but they have not advanced the matter any further.

- (ii) In view of my decision to strike-out his claim, the issues *at Paragraph 2(iii)(b) and (c)* fall by the wayside, and I do not have to make any determination in respect of them.

Chairman:

Date and place of hearing: 24 October 2013, Belfast

Date decision recorded in register and issued to parties:

A P P E N D I X

**Record of Proceedings dated 18 September 2013 relating to Case Management
Discussion held on 17 September 2013**

**THE INDUSTRIAL TRIBUNALS
CASE MANAGEMENT DISCUSSION
(DISCRIMINATION)**

CASE REF: 898/13

CLAIMANT: Kevin Francis O'Neill

RESPONDENT: Radox Laboratories Limited

DATE OF HEARING: 17 September 2013

REPRESENTATIVES OF PARTIES:

CLAIMANT: In person and was not represented.

RESPONDENT BY: Mr Alghazy of Counsel, instructed by the respondent's
In-house Legal Department.

**Case Management Discussion
Record of Proceedings**

1. The purpose of the hearing was to identify the issues to be determined by the tribunal, to make appropriate case management orders and to list the case for hearing.
2. **Issues**
 - (i) No issues had been agreed and I stressed to the claimant and the respondent I found it extremely difficult, on reading the claim form, to extract a coherent or valid claim within the jurisdiction of the tribunal.
 - (ii) The claimant produced a draft list of issues and a further document outlining his protected disclosures. Those documents had not been shown in advance to the respondent's representative.
3. Following a lengthy discussion with the claimant and the respondent's representative, I directed that a pre-hearing review should be held to determine:-
 - "(1) *Whether the claims of constructive dismissal and unlawful detriment as a result of protected interest disclosures have no reasonable prospect of success and should therefore be struck-out pursuant to Rule 18?*

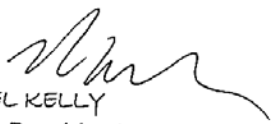
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- (2) *Whether all or part of the claimant's claim form should be struck-out as being outside the jurisdiction of the tribunal and/or irrelevant to any claim of constructive unfair dismissal and unlawful detriment as a result of a protected interest disclosures?*
- (3) *Whether the claims of constructive unfair dismissal and unlawful detriment as a result of protected interest disclosures have little reasonable prospect of success and, if so, whether a deposit of up to £500.00 should be ordered before those claims or parts of those claims may proceed?"*

4. The tribunal notes and the claimant, in open tribunal agreed, that the claimant does not point to any breach of his employment contract other than a perceived breach of trust between him and the respondent organisation. The tribunal also notes that the claimant does not point to any detriment being applied to him other than the perceived breach of trust. The claimant argues that the final straw leading to his resignation was the search of the house he shared with a work colleague. That search was pursuant to an Anton Pillar Order obtained in the High Court against that colleague by the respondent organisation. Neither the claimant or his colleague have contested that Anton Pillar Order to date. However the claimant alleges that it was obtained on foot of a dishonest affidavit from Stuart Jackson. The claimant's complaints against the respondent organisation relate to that organisation's treatment of his work colleague, Mr Talalaev, the claimant's observations of a disciplinary/appeal process involving that colleague, the status of Monza machines in respect of which the claimant was not working and had no direct contact, and the treatment of alleged protected interest disclosures. The claimant does not rely on an actual action being taken against him but argues that matters got to a point where he could not work for the respondent.
5. The above summary of the claimant's position was read to the claimant and the claimant, in open tribunal, agreed it was accurate.
6. It was stressed to both parties that this was a preliminary hearing which was meant to be short and which related to the case as pleaded. To that end it should consist largely of submissions. It was important that the case should not be allowed to run out of control and that matters should be focused on the preliminary issues set out above. To that end the claimant will have **between 10.00 and 1.00 pm** to put forward his position and call any evidence which he regards as pertinent to those preliminary issues. The respondent will have **between 2.00 pm and 4.00 pm** to put forward its position in relation to the preliminary issues.
7. The pre-hearing review will be heard on:-

Thursday 24 October 2013


NOEL KELLY
Vice President

Date: 18 September 2013

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