



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Bibi

**Respondent:** Royal Bank of Scotland PLC

**HELD AT:** Manchester

**ON:** 25 April 2017

**BEFORE:** Employment Judge Sherratt

## REPRESENTATION:

**Claimant:** Litigant in person

**Respondent:** Mr M Humphreys, Counsel

## JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that for the purposes of the claimant's claim under section 27 of the Equality Act 2010 relating to victimisation, the only protected acts that the claimant can rely upon are the raising of a grievance on 5 May 2014 and the lodging of Tribunal proceedings on 22 May 2014.

## REASONS

1. This hearing is of the respondent's application made under rule 37(1) (c) of the Rules of Procedure 2013 to strike out part of the claimant's claim relating to certain alleged protected acts. Rule 37(1) provides that "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", and ground (c) is "for non-compliance with any of these Rules or with an order of the Tribunal".

2. The claimant brought her claim of victimisation on 18 August 2016. In her narrative she said that she had recently brought Tribunal proceedings; she referred to the full hearing and relayed certain of the allegations. She said that during the full hearing the respondent, as an act of victimisation, cancelled her bank account and

bank cards, and additionally they started possession proceedings against the claimant which the claimant says was a deliberate act of victimisation for bringing earlier Tribunal proceedings and grievances concerning discrimination and whistle-blowing. It is relevant to state that the claimant is a former employee of the respondent with whom she also banked.

3. By way of response on 19 September 2016 the respondent accepted that the raising of the Tribunal proceedings alleging disability discrimination amounted to a protected act for the purposes of section 27 of the Equality Act 2010, and it then went on to deny that the claimant had been victimised and that she had been caused to suffer a detriment by reason of her actions.

4. Section 27 of the Equality Act 2010 deals with victimisation, and provides that:

“A person victimises another person if A subjects B to a detriment because –

- (a) B does a protected act, or
- (b) A believes that B has done or may do a protected act.”

5. Subsection 2 states:

“Each of the following is a protected act:

- (a) Bringing proceedings under this Act;
- (b) Giving evidence or information in connection with proceedings under this Act;
- (c) Doing any other thing for the purposes of or in connection with this Act;
- (d) Making an allegation (whether or not express) that A or another person has contravened this Act.”

6. The matter came before Employment Judge Horne on 19 October 2016 at a preliminary hearing to make Case Management Orders. The claimant was ordered to deliver a written schedule of protected acts by 2 November 2016.

7. Judge Horne provided that:

“The schedule must take the form of a table with numbered rows. Each row must refer to one protected act. In separate columns the table must set out:

- 5.1 The date of the protected act;
- 5.2 Whether the protected act consisted of the sending of a letter or email, the name of the person to whom that letter or email was addressed;
- 5.3 A short description of the protected act; and
- 5.4 Into which of the categories in section 27(2) of the Equality Act 2010 the protected act fell.”

8. Under the heading “Discussion” at paragraph 2 Judge Horne recorded that:

“At today’s hearing I attempted to clarify the protected acts upon which the claimant relied. One protected act was the claimant’s claim 2401731/2014 to the Tribunal, which the respondent accepts was protected. Beyond that, the claimant was unable to state exactly how many protected acts there were. She described them in general terms as ‘grievances concerning discrimination and whistle-blowing’. Some were made to two named individuals; others were made to ‘Human Resources’. As to the content, the claimant mentioned that some grievances did not allege discrimination at all but referred to an alleged practice of the respondent misusing the bank account information of competitors such as Peninsula. These grievances were said to qualify for protection under section 27(2)(b). When asked about the connection between grievances such as these and proceedings under the Equality Act the claimant stated that by the time she raised she raised these grievances she had already presented her first claim to the Tribunal.”

9. The claimant, having been present before Judge Horne on 19 October 2016 when his orders were made and having received them in writing, produced a document called “Schedule of Protected Act” on 30 November 2016. It had two columns. The first was the date and the second was the protected acts. I will give some examples from the schedule of 23 protected acts:

“5/11/13	Assisting and attending work colleague representative to TS with his grievances October-November 2013
1/1/14	Telephone calls with CC (various calls in the month as per telephone log)
24/3/14	Meeting with work colleagues for collective grievances
3/5/14	Reporting the respondent to the Financial Conduct Authority and the Information Commissioners Office”

10. The respondent replied to the schedule and accepted that the claimant had carried out two protected acts: one related to the raising of a grievance in May 2014 and the other related to the Tribunal proceedings lodged in May 2014. It did not accept any of the other matters, and in a separate accompanying document it asked the Tribunal to make an order that the issues in the case were limited to the two protected acts that were accepted by the respondent, namely the raising of the grievance on 5 May 2014 and the lodging of the Tribunal proceedings on 22 May 2014.

11. The matter came before Regional Employment Judge Robertson on 12 January 2017 and in his Case Management Orders at paragraph 4 he said this:

“The claimant has provided a schedule of protected acts. The schedule does not include the information required by paragraphs 5.3 and 5.4 of the Case Management Orders made by the Tribunal on 19 October 2016. I have made a Case Management Order for the claimant to provide such information and I have directed her to the contents of paragraph 2 of the Case Management Discussion which took place on 19 October 2016. I am concerned that the

claimant has not properly understood the difference between a “protected disclosure” (for whistle-blowing purposes) and a “protected act” (for section 27 victimisation purposes), which must meet the criteria set out in section 27(2) of the 2010 Act. This was the purpose behind paragraph 5.4 of the case Management Orders and it is essential now that the claimant understands the distinction.”

He continued at paragraph 5:

“Further, although the claimant has told me that her main claim is that the respondent acted as it did because she had brought Tribunal proceedings against it, she does not feel able to limit or abandon her reliance on the other protected acts in her schedule (save for the last two, which she now accepts are not protected acts).”

12. The relevant Case Management Order appears at paragraph 9:

“The claimant shall by 27 February 2017 provide to the respondent and the Tribunal the further particulars required by paragraphs 5.3 and 5.4 of the Tribunal’s Case Management Orders made on 19 October 2016, and in doing so shall have particular regard to the contents of paragraph 2 of the Case Management Discussion held that day.”

13. The claimant produced an amended schedule on 27 February 2017. The first column with the dates did not change. The second column with the protected acts as described did not change; however, the claimant did acknowledge that the last two matters were not pursued in accordance with the Tribunal’s Order dated 12 January 2017. The claimant introduced a third column headed “Category under Equality Act 2010 – section 27(2)” and in respect of each alleged protected act she stated “(a) & (b) & (c) & (d)”, without in any way differentiating between them.

14. The claimant submits today that she has complied with the Employment Tribunal’s orders but in my judgment she has not. Regional Employment Judge Robertson was of the view that the claimant had not complied with the October orders when he dealt with this matter in January, and with all respect to the claimant she has not provided any further information with regard to the protected acts; there is nothing that was not before Regional Employment Judge Robertson in January; and when it comes to engaging with section 27(2) of the Equality Act 2010 in my judgment she has failed to do that properly because self evidently all of the alleged protected acts cannot relate to all of the matters in section 27(a)-(d): for instance, having a phone call with CC in April does not involve bringing proceedings under the Act.

15. I find that the claimant has not complied with the orders of the Tribunal for these reasons.

16. Mr Humphreys, counsel for the respondent, seeks an order that the alleged protected acts, other than the admitted ones, should be struck out under rule 37(1)(c) or, in the alternative, he seeks an Unless Order. I have also heard from the claimant, a litigant in person, who submits that I should not take the draconian step

of striking anything out but that I should allow her remaining allegations of protected acts to continue as pleaded.

17. Counsel for the respondent referred me to two cases. The first was **Weir Valves & Controls (UK) Ltd v Armitage [2004] ICR 371**, a decision of the Employment Appeal Tribunal given by Judge Richardson, and then to **Blockbuster Entertainment Ltd v James [2006] IRLR 630**, a judgment of the Court of Appeal given by Lord Justice Sedley with Lords Justices Wilson and Brooke agreeing.

18. From **Weir Valves** the respondent referred me in particular to paragraphs 10-18 and especially paragraph 17:

“But it does not follow that a striking out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The Court should consider all the circumstances. It should consider the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to the disobedience.”

19. In **Blockbuster** counsel for the respondent referred me to paragraphs 20 and 21 that striking out must be a proportionate measure.

20. The claimant referred me to paragraph 5 of **Blockbuster** to the effect that the power to strike out should not be readily exercised:

“The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of the required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.”

21. In this case I am only being asked to strike out a number of the claimant's allegations related to protected acts leaving her with two admitted ones. I am not being asked to strike out the claimant's claim as a whole and thus deprive her of her potential remedy.

22. Having considered everything before me this morning it seems to me that an Unless Order is not the appropriate way forward. The claimant has had at least three opportunities to set out her alleged protected acts: in her claim form; her first attempt at further particulars and her second attempt at further particulars, and the claimant has failed to do this. It seems to me that it is appropriate, and in accordance with the overriding objective, to strike out all of the alleged protected acts, apart from the two that have been accepted by the respondent.

23. The matters from the overriding objective, rule 2, that I take into account are dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay so far as possible with proper consideration of the issues and saving expense.

24. The claimant's claims will proceed because the respondent has accepted two matters as acts on behalf of the claimant that enable her to bring her claim of victimisation. The removal of certain allegations it does not, it seems to me, in any way go to the remedy that the claimant might receive should she succeed in satisfying the Tribunal that the respondent victimised her because she had carried out protected acts. So for these reasons the protected acts will be limited to the two admitted by the respondent.

Employment Judge Sherratt

5 May 2017

JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

11 May 2017

FOR THE TRIBUNAL OFFICE