EMPLOYMENT TRIBUNALS

Claimant: Mr Harvey Stone

Respondent: John Roe Motor Sales Limited, trading as John Roe Toyota

JUDGMENT

The claimant's entire claim is struck out pursuant to rule 37 on the grounds that it has no reasonable prospects of success.

REASONS

1. At a telephone preliminary hearing on 10 April 2017, the claimant, Mr Harvey Stone, was warned that I [Employment Judge Camp] was proposing to strike his claim out because, for the reasons subsequently set out in the written record of that preliminary hearing, it appeared to have no reasonable prospects of success. The claimant commented on that proposal during the preliminary hearing and I also ordered him to put any objections to it that he had in writing, and to provide further information, by 24 April 2017. The only thing he submitted to the tribunal by the deadline was an email sent on 10 April 2017, shortly after the hearing had ended and before the written record of the hearing ("written record") was sent out to him.

2. I refer to the written record. An unsigned and italicised copy of the body of it is appended for ease of reference.

3. The claimant's email of 10 April 2017 is headed "*Without Prejudice*" but it is not protected by so-called 'without prejudice privilege', nor does the claimant want it to be. It has nothing to do with settlement negotiations and the claimant evidently would like the tribunal to take its contents into account. Neither in his email of 10 April 2017, nor in any subsequent correspondence that I am aware of[1], has he

[1] I have before me four further emails from the claimant, two sent on 25 April and two on 26 April 2017. Each of them was sent to both the tribunal and the respondent's solicitors; some of them appear not to be directed at the tribunal but at the respondent's solicitors instead. Parts of them are gratuitously rude. Two of them are, like the email of 10 April 2017, inappropriately headed "*Without* prejudice". One of them is sent from the email address of one Steven Crayn, a pseudonym the claimant uses (or, as the claimant puts it, a "*stage name*"; as far as I know the claimant does not perform on stage but he has posted online videos of him singing three songs he wrote, one entitled "*Bomb the Bastards*"). One of them comes from "*Harvey Stone Legal*", the email address of which is "*thelawisanarse@gmail.com*". Contrary to a request I made that is set out in paragraph (7) of

requested that the proposal to strike out be dealt with at a further preliminary hearing.

4. In terms of the relevant law, I take into account, in particular, paragraph 24, part of Lord Steyn's speech, of the House of Lords' decision in Anynanwu v Southbank Student Union [2001] ICR 391 and paragraphs 29 to 32 of the Court of Appeal's decision in North Glamorgan NHS Trust v Ezcias [2007] EWCA Civ 330. When assessing whether a claim has "*no reasonable prospects of success*", the test to be applied is whether there is no significant chance of the trial tribunal, properly directing itself in law, deciding the claim in the claimant's favour. Subject to one proviso, in applying this test I must assume that the facts are as alleged by the claimant. The one proviso or qualification is that I do not make that assumption in relation to any allegation of fact made by the claimant so implausible that I think there is no significant chance of any tribunal, properly directing itself, accepting the allegation as true.

5. Striking out a tribunal claim, particularly one such as this one involving complaints of discrimination and disputed allegations of fact, and particularly when there hasn't been a dedicated preliminary hearing in public dealing with the issue, is an exceptional thing to do. Before I will do so, the respondent has to cross a very high threshold indeed. Equally, however, the overriding objective is not served by permitting claims that are bound to fail to continue. Doing so benefits no one, least of all the claimant.

6. Parts of a claim that have no reasonable prospects of success should not automatically and necessarily be struck out. Before striking out any of the claimant's complaints, I have considered whether it would be in accordance with the overriding objective to permit them to continue notwithstanding my views as to their prospects of success, and have decided that it would not, essentially on the basis that I can think of no good reason why it would. Apart from anything else, it would be very unfair to the respondent, which employed the claimant for less than two weeks, to compel it to go to the time, trouble, and expense of preparing for a final hearing which would serve no useful purpose.

7. At the preliminary hearing, as set out in the written record, I identified three types of complaint the claimant seemed potentially to be making: direct religion or belief discrimination by dismissal; wrongful dismissal; some kind of public interest disclosure / whistleblowing complaint. The claimant has raised no objections to the latter two types of complaint being struck out and accordingly, having no reason – good or bad – to do otherwise, I strike them out as having no reasonable prospects of success, for the reasons set out in paragraphs (3)(i) and (iii) of the written record.

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my case management orders, all of them have been inappropriately copied to seven individuals, including the President of the Toyota Motor Corporation in Japan. If the claimant has a legitimate reason for copying these individuals into his every email, he has not informed the tribunal what it is.

8. The focus of the claimant's claim is on his allegation: that he was dismissed because of things he allegedly said about the religion of Islam; that his dismissal was an act of less favourable treatment because of philosophical belief.

9. In deciding this case, I do not have to concern myself with, and do not concern myself with, what the claimant actually believes. Even put at its reasonable highest, his case, properly analysed, is not that he was dismissed because he believes various things; it is that he was dismissed because he said various things. If he was, as he alleges, dismissed because of something he said, then all that is important is what he said. Any belief he didn't articulate can't have been the reason he was dismissed and so is not relevant. The question for me is therefore whether there is any reasonable prospect of him persuading a tribunal at any future trial that anything he allegedly said is an expression of a philosophical belief in accordance with section 10 of the Equality Act 2010 ("EqA") and paragraph 24 of Grainger plc and Ors v Nicholson [2010] IRLR 4.

10. What, then, did the claimant allegedly say? The claimant has not applied to amend the claim form (despite my referring, albeit indirectly, to the possibility of amendment in paragraph (3)(ii) of the written record); and I could legitimately consider just the allegations made in it. The only relevant allegation in the claim form is that the claimant said he "*was glad Donald Trump won the American election*". That, an expression of political preference, does not come anywhere near being an expression of philosophical belief under the EqA.

11. I do not propose, as part of this decision, to consider a non-existent amendment application. I shall, though, consider what the position would be if the claimant had permission to amend to add the allegation he made for the first time during the telephone preliminary hearing (see paragraph (3)(ii) of the written record): that he was dismissed because he [allegedly] said, "*Islam is a fascist ideology. The Prophet Mohammed was a barbarian and a paedophile. His 13th wife was 9 years old when he raped her. Islam is a threat to the world. It will never be compatible with the West. Therefore I am glad Donald Trump won the US election because he will get tough on Islam.*" During the hearing, the claimant was very willing and able to put his point of view across; and I did my level best, by asking him questions, to ensure during the hearing that he had fully explained his claim. In response to my questions, he told me that the quotation just set out was as close to word-for-word what he said as he was able to get; and he confirmed that this was all that was said that was relevant.

12. In my view, the only thing within that quotation that might conceivably be characterised as an expression of philosophical belief is the statement that Islam is a fascist ideology. Each of the statements that Islam is a threat to the world and that it will never be compatible with the West is, I think, correctly to be characterised as a mere "*opinion or viewpoint based on the present state of information available*" (Grainger plc v Nicholson; see also McClintock v Department of Constitutional Affairs [2008] IRLR 29).

13. Any complaint based on the belief that "*Islam is a fascist ideology*", even if it satisfied the other limbs of the test set out in paragraph 24 of Grainger plc v Nicholson (and I don't think it would; albeit I would probably not strike the claim out on that basis, but would, perhaps, make a deposit order instead), would inevitably fail at the final hurdle, in that it is not "*worthy of respect in a democratic society*" and/or is "*incompatible with human dignity and* [conflicts] *with the fundamental rights of others*".

14. In support of his contention that his views about Islam constitute a philosophical belief, the claimant referred, in his email of 10 April 2017, to various academic and journalistic works, as well as to a quotation from Sir Winston Churchill (a well-known quotation, beginning "*How dreadful are the curses which Mohammedanism lays on its votaries…*" from the first edition of his 1899 book, "*The River War*").

15. The academic and journalistic works the claimant refers to do not appear to be to the effect that the religion of Islam is a fascist ideology but instead that certain strands of Islam (e.g. Wahhabism) and/or groups describing themselves as Islamic (e.g. the Muslim Brotherhood), and certain things done in the name of Islam (e.g. the Iranian revolution), can properly be characterised as fascist. Further, even if the claimant were able to point to a published academic treatise to the effect that Islam *per se* is a fascist ideology, it would not make his belief to the same effect any more "*worthy of respect in a democratic society… not incompatible with human dignity and not* [in] *conflict with the fundamental rights of others*"; it would simply mean someone had published an academic treatise that was not "*worthy of respect…* [etc.]".

16. The Churchill quotation is even less relevant. First, it is not to the effect that Islam is a fascist religion. Secondly, the fact that Churchill, writing 118 years ago, when he was 24 or 25 years old, expressed particular negative views about Islam makes no difference at all to whether or not they are respectable views for someone to hold in the twenty-first century. Churchill was a great man, but not everything that came out of his mouth or from his pen is holy writ. Thirdly, one can 'prove' Churchill held all kinds of contradictory opinions by selective quotation; at times during his life he seems to have been positively Islamophilic.

17. In conclusion, if the claimant were permitted to amend his claim to include the allegations he made during the preliminary hearing on 10 April 2017, the claim would still be struck out as having no reasonable prospects of success.

18. Finally, I have considered whether I should take into account allegations made for the first time in one of the claimant's emails of 26 April 2017. The main allegation in the email is that he was sacked because one of the respondent's managers, Mr Salameh, had seen and was offended by three songs (called "*Give Us Back Our Country*", "*Minarets*", and "*Bomb the Bastards*") that the claimant states he wrote, recorded, and posted videos of online under a pseudonym. In short, I don't think it

would be in accordance with the overriding objective for me to consider that allegation, mainly for the following reasons:

a. the claimant did not mention this allegation in his claim form, nor during the preliminary hearing on 10 April 2017. If the allegation that Mr Salameh told the claimant he had seen the online videos of the claimant singing these songs were true, the claimant's failure to mention it before is inexplicable – and no attempt has been made to explain it;

b. the allegation was made after the deadlines for raising objections to the striking out of the claim and for providing further information;

c. the claimant has made no application to amend and because (amongst other things) of a. and b. above, it is very unlikely I would grant permission to amend were such an application to be made;

d. the claimant does not allege he expressed any beliefs in the videos over and above those recorded in paragraph (3)(ii) of the written record. I don't see it as any part of my job to go online and watch the videos on the off-chance that they contain expressions of philosophical belief.

Employment Judge Camp

16 May 2017

SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

APPENDIX TO JUDGMENT & REASONS OF 16 MAY 2017:
BODY OF THE WRITTEN RECORD OF A PRELIMINARY HEARING ON 10/4/2017

CASE MANAGEMENT ORDER

STRIKE OUT WARNING – RULE 37

(1) The Employment Judge is proposing to strike out the claimant's entire claim because it appears to have no reasonable prospects of success for the reasons set out in paragraph (3) below. If the claimant objects to this proposal, he must provide his objections in writing to the tribunal and to the respondent ***by 24 April 2017****. Any written objections must include the following information:*

- *(i) if he is claiming he was wrongfully dismissed, i.e. dismissed in breach of contract, what is the term of the contract he alleges was breached when he was dismissed and how was it breached when he was dismissed?*
- *(ii) if he is claiming he was subject to unlawful discrimination because of religion or belief, what is the relevant religion or belief, what is the act of discrimination he relies on, and how did that act have anything to do with religion or belief?*
- *(iii) if he is claiming he was dismissed because he made protected disclosures –*
  - *a. when and how did he make the protected disclosure(s) relied on?*
  - *b. to whom did he make them?*
  - *c. as precisely as possible, what words did he use?*
  - *d. which subsection(s) – (a) to (f) – of section 43B(1) of the Employment Rights Act 1996 ("ERA") does he rely on?*
  - *e. if he relies on subsection (b) – "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" – what legal obligation, and whose legal obligation, is he referring to?*

(2) To assist the claimant in providing the above information (should he wish to do so):

- *(i) the following is an extract from part of the decision of the Employment Appeal Tribunal in an important case called Grainger plc and Ors v Nicholson [2009] UKEAT 0219_09_0311, [2010] ICR 360, [2010] IRLR 4, a case that the employment tribunal is legally obliged to follow:*

24. I do not doubt at all that there must be some limit placed upon the definition of "philosophical belief" … I shall endeavour to set out the limitations, or criteria, that are to be implied or introduced … :

(i) The belief must be genuinely held.

(ii) It must be a belief and not, as in McClintock [v Department of Constitutional Affairs [2008] IRLR 29], an opinion or viewpoint based on the present state of information available.

(iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.

(iv) It must attain a certain level of cogency, seriousness, cohesion and importance.

(v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others (paragraph 36 of Campbell [and Cosans v United Kingdom [1982] 4 EHRR 293] and paragraph 23 of Williamson).

(ii) the following is part of ERA section 43B, which is the relevant piece of whistleblowing legislation:

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(3) The reasons referred to in paragraph (1) above are:

(i) the claimant suggests in his ET1 he wishes to pursue a "wrongful dismissal" complaint, but he seems to be confusing such a complaint with an unfair dismissal complaint. Wrongful dismissal is dismissal in breach of contract, e.g. failing to give contractual notice of dismissal, or

to make a payment in lieu of notice. He has ticked box 6.3 on his claim form, accepting that he worked or was paid for his notice period. The compensation he is seeking is the compensation he might get if he had a valid complaint of unfair dismissal and won it; but his period of continuous employment with the respondent was less than 2 years, so he can't bring an unfair dismissal complaint under ERA sections 94, 98 and 111;

(ii) the claimant suggests in his ET1 that he has been the victim of unlawful religion or belief discrimination. In the ET1, he alleges he was dismissed because, outside of work hours, he expressed gladness at Donald Trump winning the US election to a Muslim manager, Mohammed Salameh. The Equality Act 2010 protects religious or philosophical beliefs, not expressions of political belief. Orally, at this telephone hearing, he alleged he was dismissed because he [allegedly] said the following – or something along these lines – to Mr Salameh: "Islam is a fascist ideology. The Prophet Mohammed was a barbarian and a paedophile. His 13th wife was 9 years old when he raped her. Islam is a threat to the world. It will never be compatible with the West. Therefore I am glad Donald Trump won the US election because he will get tough on Islam." (this is as close to word-for-word as the claimant can recollect). Even if the claimant were permitted to amend his claim form to make this this allegation, what he alleges he said would not, in my provisional view, meet all of criteria (ii) to (v) set out in paragraph 24 of Grainger plc v Nicholson (referred to above);

(iii) the claimant mentions "Whistle Blowing" in section 15 of his ET1. However, no discernible allegation that he made one or more qualifying disclosures under ERA section 43B is raised. Instead, what he alleges in his ET1 (section 8.2) is merely that he voiced concerns about the respondent's IT arrangements being unsatisfactory and their IT systems not working properly – he "had no access to Unity or EDynamix … headset not working … when you decide to move people about it makes sense to make sure computer ports are working and systems running for all employees first"; he was "raising IT issues".

Existing case management order

(4) The case management orders set out on the second page of the tribunal's "NOTICE OF A CLAIM" dated 13 February 2017 are, for the time being, suspended. As things stand, however, this case remains listed for trial in Lincoln in September.

Correspondence

(5) Unless and until the case is settled, or is otherwise concluded: the claimant must not copy into the tribunal correspondence with ACAS or correspondence between him and the respondent's solicitors (or anyone else) about offers of settlement; he

must not tell the tribunal about any offers of settlement or the contents of any settlement negotiations.

(6) Generally, the claimant must not copy the tribunal into correspondence between himself and the respondent's solicitors.

(7) Further, the claimant is asked to stop, when writing to the respondent's solicitors in relation to this case, copying in representatives of the Toyota Motor Corporation, which has nothing to do with this case, and copying in people associated with the respondent other than the respondent's solicitors.

General

(8) Anyone affected by this order may apply under rule 29 for it to be varied, suspended or set aside. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/

*(9) The parties are reminded of rule 92: "Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so." **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written**.*

(10) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.

(11) Under rule 6, if any of the above Orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

EXPLANATORY

19. The respondent consists of Toyota car dealerships in Grimsby, Hull and Scunthorpe. It employed the claimant, Mr Harvey Stone, as a Contact Centre Operative in Grimsby for 9 days in December 2016. It dismissed him, with pay in lieu of notice, with effect on 14 December 2016. The given reason for dismissal is that, following an incident on 13 December 2016 described in the response form, he was deemed unsuitable for the role. After going through early conciliation from 16 to 17 January 2017, he presented his claim form on 7 February 2017.

20. The tribunal complaints the claimant would like to pursue are explained in paragraphs (1) and (3) above. On the face of the claim form, and at the start of this telephone hearing, it seemed that what he was aggrieved about was being dismissed without warning and without any kind of disciplinary hearing. When I explained that what he was describing was an unfair rather than a wrongful dismissal complaint, and, in connection with his alleged comment about Donald Trump, that the Equality Act 2010 protects religious or philosophical beliefs and not political beliefs, he made the new allegation about what he had said to one of his managers that is set out in paragraph (3)(ii) above.

21. The respondent's case, as I understand it (and the respondent has not responded formally to this new allegation, because it has only just been made) is that the dismissal had nothing to do with any comments Mr Stone made; and that, in any event, even if the claimant's allegations of fact are true, his claim is bound to fail, broadly for the reasons set out in paragraph (3) above.

22. If, as he told me he will, the claimant provides written objections to my proposal to strike his claim out in accordance with paragraph (1) above, I or another Employment Judge will consider those objections and will then very likely do one of three things:

a. strike out the claim, or part of it, pursuant to rule 37(1)(a);

b. set up a preliminary hearing in public to deal, as a preliminary issue, with whether the claim, or part of it, should be struck out pursuant to rule 37(1)(a) or whether one or more deposit orders should be made pursuant to rule 39;

c. leave the case to go to trial, either because, in light of his objections, his claim has obvious potential merit if his factual allegations are true and/or because the case is factually relatively simple and a full trial wouldn't take much longer than the preliminary hearing described in subparagraph b. immediately above.

23. If the parties have strong views on which of the above three options should be chosen, they are welcome to express them. If they want to express them, and they want the tribunal to take their views into account, they should do so in writing to the other party and to the tribunal by 25 April 2017.

[End]