



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss S Larkin

v

Kattz (AH) Ltd

Heard at: Watford via CVP

On: 8 March 2021

Before: Employment Judge Bartlett sitting alone

Appearances

For the Claimant: no appearance

For the Respondent: Ms Murphy, of Counsel

JUDGMENT

1. The Respondent's application to strike out of the entirety of the claimant's claims on the basis of unreasonable conduct under rule 37(1)(b) is refused.
2. The respondent's application for a strike out order or a deposit order in respect of the claimant claims victimisation is refused.
3. The claimant's public interest disclosure claim relating to a disclosure on 12 April 2019 only is struck out.
4. A deposit order in the amount of £100 is made in respect of the claimant's public interest disclosure claim relating to a protected disclosure taking place on 1 May 2019.
5. The respondent's application for a deposit order in respect of the claimant's claims of harassment and/or direct discrimination claim is refused.

REASONS

Application for strike out of the entirety of the claimant's claim

1. The respondent made an application that the claimant's entire claim should be struck out on the grounds of unreasonable conduct of proceedings by the claimant pursuant to rule 37(1)(b).

2. The respondent relies on an unreasonable and escalating course of conduct in which the claimant made allegations against the respondent's solicitor and against their main witness Ms Ibitoye.

Background

3. The claimant submitted her ET1 on 18 June 2019. A preliminary hearing took place on 8 March 2020 at which Judge Palmer noted:

I read the claim and response. I read the further information provided to Employment Judge McNeill in about November 2019, in response to her order for the claimant to provide further information about the protected disclosure claim. I spent over an hour asking the claimant for clarification about her claims and the facts on which she was relying but she found it difficult to provide the relevant information. The claimant told me that she suffered race discrimination (on the basis that she was not black African Caribbean unlike the perpetrators), detriment and detriment for whistleblowing and unfair dismissal. She found it difficult to understand the detail that was required, including the factual basis, to prove these claims. I stressed the importance to the claimant of the tribunal and respondent being about to understand the claims and advised her that if she could not explain them at this hearing I would consider adjourning to have an Open Preliminary Hearing to decide if the claims should be struck out or a deposit order made.

Because I could not get a clear answer to my questions, I adjourned so that the claimant could get some help from Mr Khaleel, who was supporting her.

4. On 3 October 2019 the claimant first raised allegations against the respondent's solicitor which included that she was misinforming the tribunal by "fabricating false allegations" and "misleading".
5. The claimant made a written request for a direction concerning disclosure. The tribunal wrote to the claimant stating that she should first approach the respondent for copies of the documents. The claimant responded to the tribunal copying in the respondent on two more occasions prior to a preliminary hearing requesting disclosure orders.
6. After the preliminary hearing on 25 February 2020 the claimant sought the respondent's consent to amend her claim and within two hours of that communication the claimant wrote to the tribunal copying in the respondent making additional allegations against the respondent's solicitor specifically that the claimant had been "bullied and harassed and victimised by the respondent's lawyer" and making an application to amend.
7. On 16 March 2020 the respondent objected to the claimant's amendment and applied for a strike out and/or deposit order on the grounds of no reasonable prospect of success and unreasonable conduct of proceedings.
8. During April 2020 the claimant made various applications and re-consideration requests relating to the refusal of her application to amend her claim.

9. On 17 April 2020 the claimant repeated to the tribunal that the respondent was under criminal investigation and repeated the allegations against the respondent's solicitor that she was misleading, misinforming the employment tribunal and fabricating allegations and that her behaviour was bullying and she was carrying out harassment.
10. On 25 June 2020 the claimant again repeated the allegations against the respondent's solicitor copying this correspondence to the tribunal. These allegations included that the respondent solicitor acted in a racist way, "she constantly lies to the police, OFSTED, LADO and the tribunal", she made "barefaced lies to the tribunal". In the same letter the claimant made similar allegations against Ms Ibitoye, the respondent's main witness and that she had committed unlawful criminal acts.
11. In further correspondence to the tribunal copied to the respondent the claimant repeated allegations that the respondent's lawyers and the respondent had created fraudulent documents and that the respondent's solicitor and Ms Ibitoye lied.
12. On 4 September 2020 the claimant emailing the tribunal and copying the respondent repeated allegations that the respondent solicitor lied.
13. On 5 September 2019 the claimant's email was almost entirely in capital letters and warned of consequences including costs orders and punishments as stated by the employment tribunal rules and regulations.
14. On 7 September 2020 the claimant repeated allegations that the respondent's solicitor had lied, committed criminal acts, was guilty of dishonest practices and had deleted CCTV footage. Threats were repeated about making complaints to 3rd parties.
15. On 7 September 2020 the respondent wrote to the claimant expressing disappointment at the tone of this correspondence and hoping that the parties could work together.
16. On 7 September 2020 the claimant wrote to the tribunal and the respondent repeating allegations against the respondent's solicitor and Ms Ibitoye.
17. On 1 October 2020 the claimant made an application for costs orders and other appropriate punishments for the respondent.
18. On 25 October 2020 the final hearing was converted to this preliminary hearing to consider strike out/deposit and case management issues.
19. Correspondence to the tribunal on 4 and 5 March 2021 repeated some of the claimant's allegations against the respondent's solicitor and Ms Ibitoye.

The law

20. Rule 37 of the Employment Tribunal Rules sets out the following:

37.— Striking out

(1) 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—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing...

21. I was also referred to the authorities of **Force One Utilities Ltd v Hatfield 2009 IRLR 45, EAT, Bolch v Chipman 2004 IRLR 140, EAT, Edmondson v BMI Healthcare and Ahir v British Airways Plc**

Decision

22. As can be seen from the above outline the claimant has engaged in a course of conduct over a period of time which extends to almost 18 months. She has been asked to desist and act reasonably by the respondent and she has been on notice of the application to strike out on the basis of her unreasonable behaviour for almost one year.

23. Having reviewed the correspondence I consider it to be voluminous and verbose. The claimant's documentation is lengthy, it is repetitive, it is wholly disproportionate and largely irrelevant to the matters on which she should be corresponding. It is wholly inappropriate for her to be sending documentation of this kind, length and contents to the tribunal with the regularity with which she is. It is contrary to the overriding objective for the Tribunal's limited resources to be spent on dealing with this correspondence. It is also contrary to the overriding objectives for the respondent to have to deal with the volume and content of these communications on these matters in light of the claim which arose from a period of one month's employment.

24. In addition significant parts of the claimant's correspondence are underlined other parts are the capitals. This adds an aggressive edge to the correspondence.

25. The respondent also relied on the contents and tone of the correspondence from the claimant. Its position was that the nature of and repetition of the allegations made against the respondent's main witness Ms Ibitoye affected her ability to give evidence. It was submitted that the claimant's behaviour was oppressive and would not permit a fair trial to take place because Ms Ibitoye's reputation in front of the tribunal would be harmed and/or Ms Ibitoye would be prevented from giving her best evidence.

26. I have carefully considered the claimant's correspondence in terms of volume, subject matter, contents, tone and style and effect on the recipients and the tribunal. I consider that the claimant's correspondence and therefore conduct of the case has been unreasonable. The correspondence she has made to the tribunal is simply not the place for its contents. The ET1, witness statement and submissions at the final hearing are the place to argue the merits of her case and put forward the arguments that she wishes to do so to make her case. Correspondence to the tribunal about case management and procedural issues should not concern these matters. It is contrary to the interests of the overriding objective and this conduct must cease immediately.
27. I have taken into account the respondent's submissions about the effects of the claimant's conduct on Ms Ibitoye and her reputation in front of the tribunal. I accept that the claimant's correspondence makes threats which were carried out to make reports to 3rd party bodies such as the police, OFSTED, LADO and the ICO. Given the context of the claims which was an alleged assault on the claimant in the course of her work at a children's home I do not consider that the making of complaints to 3rd parties is itself unreasonable or scandalous. These are avenues that are open to the claimant to pursue and it is not unusual for claimants to pursue remedies in other forums as well as the Employment Tribunal on matters which have some relation to their claim.
28. I do not consider that Ms Ibitoye would be prevented from giving her best evidence. The Employment Tribunal at the final hearing is required to ensure that a fair hearing takes place and unreasonable or scandalous conduct by the claimant will not be permitted.
29. In addition, I do not consider that the claimant's allegations would damage Ms Ibitoye's reputation in front of the tribunal. The tribunal is very familiar with hearing cases where it is alleged that one party or witness is untruthful and I have every faith that the final tribunal will be able to determine matters fairly to all involved.
30. However this is not to diminish the inappropriate nature and contents of the claimant's correspondence. She must not continue to raise these allegations against the respondent's solicitor and Ms Ibitoye in correspondence. As I will set out below now she has been warned by the tribunal that this behaviour is unreasonable and must stop, if she continues with it the respondent may well seek to make another application for strike out and the tribunal hearing it will take into account what I have said in this judgement about the claimant's conduct.
31. I carefully considered the case law to which I was referred to and other case law in this area. I bear in mind the respondent's point from case law which is that it is most appropriate to deal with application to strike out on the basis of unreasonable conduct at a stage prior to the final hearing. Therefore this preliminary hearing is an appropriate stage which to consider the application for strike out.
32. It is important set out my findings relating to the general situation:

- 32.1 the claimant is a litigant in person;
- 32.2 there is medical evidence setting out the claimant suffers from anxiety and depression which is mental ill health;
- 32.3 the claimant has not been informed by the tribunal at any point that she should alter the tone or contents of her correspondence or amend her approach. I find that the claimant has been informed of this by the respondent, she has been on notice of the respondent's application for strike out on this basis and she should have appreciated the seriousness of her conduct and its inappropriate nature.
33. To apply the relevant law I must consider whether the claimant's conduct involved deliberate and persistent disregard for procedural steps or has made a fair trial impossible and in either case strike out must be a proportionate response.
34. I find that the claimant's conduct has been unreasonable but I am not satisfied that it was deliberate or willful because she is a litigant in person, who states that she has not received any legal advice and I am not satisfied that she fully understood the potential consequences of her conduct. Following this judgement there can be no argument that she has not fully understood the seriousness and inappropriate nature of her conduct and its potential consequences. The claimant's conduct in correspondence must cease.
35. I must consider the three questions set out in **Bolch** which are:
- 35.1 does the conduct relate to the conduct of proceedings;
- 35.2 has the conduct made it impossible to hold a fair trial;
- 35.3 is there some sort of response short of barring the wrongdoing party which would be proportionate.
36. I find that the appellant's conduct relates to the conduct of the proceedings because it concerns correspondence sent to the tribunal and the respondent about the employment tribunal claim.
37. For the reasons set out above I do not accept that her conduct has made it impossible to hold a fair trial.
38. At this stage I consider that there are appropriate steps short of strike out that can be taken and I find that strike out would be disproportionate.
39. The appropriate steps short of strike out are as follows:
- 39.1 the claimant must stop the volume and contents of her correspondence to the respondent and the tribunal. She has already set out repeatedly the allegations that she makes against the respondent solicitor's and Ms Ibitoye these are not to be repeated in correspondence. If they form part of her case she is to make her case at the appropriate stage in the hearing;

- 39.2 the claimant must carefully consider the contents and length of correspondence she sends to the tribunal;
- 39.3 the claimant must only correspond with the tribunal on matters that are necessary to the proceedings. The tribunal should not be copied in on all correspondence between the parties;
- 39.4 no correspondence from the claimant that is longer than one type side of A4 in size 12 font will be considered by the tribunal unless there are exceptional circumstances.
40. It is necessary to specifically address the claimant's conduct towards the respondent's solicitor, Ms Beale. I have read the correspondence from Ms Beale and it has been very mild in tone. I see a considerable amount of correspondence between parties involved in tribunal proceedings some of which is aggressive. The correspondence from Ms Beale is mild mannered and she cannot be criticised for her correspondence. To the contrary she has had to endure unpleasant allegations simply from carrying out her job. It is unnecessary and the claimant's conduct in this regard must cease. The claimant's claim does not comprise any allegations against Ms Beale and she is reminded that solicitors and barristers owe professional duties to the courts and tribunals.
41. Finally, the claimant is reminded that she should think carefully about what she writes to the Employment Tribunal. Correspondence to the employment tribunal is not the same as talking to a friend or posting on social media. Making allegations of dishonesty, fraud and misleading the tribunal are serious allegations and they can have serious consequences such as strike out of claims or part of claims and orders for costs.

Application for strike out or deposit order in respect of the allegations of victimisation

42. The claimant's claim is that she made an oral allegation of race discrimination on 1 May 2019 to Ms Ibitoye and the following day she was dismissed (the detriment). The claimant's written complaint dated 12 April 2019 sets out allegations of discrimination though she does not link them to a protected characteristic at that stage. Given that the claimant raised issues about discrimination on 12 April 2019 and given the seriousness of the allegations that she claims were made on 1 May 2019 I am not satisfied that there are no or little reasonable prospects of success of this claim. At its heart this issue is a dispute between what was said orally between two people. The tribunal frequently has to decide such claims. A lack of supporting documentary evidence does not establish that a claim has little or no reasonable prospects of success.

Application for a deposit order in respect of the public interest disclosure issue

43. The claimant relied on two protected disclosures one in an oral conversation on 1 May 2019 and the second in a letter dated 12 April 2019. I have

reviewed the letter dated 12 April 2019 and I do not accept that this sets out a public interest disclosure. It simply makes complaints about other members of staff and does not have the necessary elements of a protected disclosure. Therefore this part of the claimant claim is struck out on the basis that there is no reasonable prospect of her establishing that a protected disclosure occurred on 12 April 2019. I note that the respondent did not make an application to strike out this issue however I am permitted to do so of my own violation and I do so.

44. In relation to the alleged oral disclosure on 1 May 2019 this is a dispute about a conversation between the claimant and Ms Ibitoye. I find that this claim has little reasonable prospects of success because the claimant has not identified on what basis it is a qualifying disclosure i.e. the claimant needs to identify that she had a reasonable belief that the disclosure was made in the public interest and show that one of the relevant failures has occurred. The claim as pleaded by the claimant is at best very unclear about the public interest.

Application for a deposit order in respect of the harassment (race) issue

45. The claimant's race discrimination claim has two prongs: harassment and direct discrimination. The respondent put its case re the harassment claim on the basis that that was the easiest claim on which the claimant could succeed and if there were little prospects of success of the harassment claim succeeding this would equally apply to the direct discrimination claim.
46. It is accepted that the facts of the assault are disputed. There is one contemporaneous written record of the assault however it is alleged that this was written by one of the employees whom the claimant claims discriminated against her. This issue will most likely be decided on the basis of whose oral evidence the tribunal prefers. A dispute about what witnesses say about an event are common disputes in an Employment Tribunal. The fact that there is little written documentation to support either side's claim is not a reason to determine that there are little prospects of success. On the evidence before me I am not satisfied that there are little prospects of success. There may be some evidential difficulties in establishing the claim but I do not accept that this amounts to little prospects of success.
47. Therefore I reject the application for a deposit order in respect of the harassment claim.

Amount of deposit order

48. Under Rule 39 I am required to make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit. The claimant has not attended today's hearing. I have seen correspondence which states that she is on universal credit and struggling with her finances. Therefore I have decided to make the deposit order in the amount of £100.

Employment Judge Bartlett

Date: 9 March 2021.

Sent to the parties on: .17/03/2021.....
THY

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For the Tribunal Office