



THE EMPLOYMENT TRIBUNALS

Claimant: Mr J Alom

Respondent: (1) Ms A Shaukat
(2) The Financial Conduct Authority (FCA)

Heard at: East London Hearing Centre (by Cloud Video Platform (CVP))

On: 18 October 2022

Before: Employment Judge Martin

Representation:

Claimant: In person Respondents:
Miss R Thomas

JUDGMENT

1. The Claimant's complaint of harassment on the grounds of sex set out at paragraph 6.9 of the draft list of issues and the Claimant's corresponding complaint of sex discrimination at paragraph 7.1 of the draft list are both hereby dismissed. The Tribunal does not consider they have any reasonable prospect of success.

2. The Claimant is ordered to pay a deposit order in the sum of £200.00 in respect of each of the 14 remaining allegations of harassment on the grounds of sex and each of the 14 remaining allegations of sex discrimination. The Claimant is also ordered to pay a deposit order in the sum of £200.00 in respect of his complaint of harassment on the grounds of race. The Claimant is therefore ordered pay a total deposit order in the sum of £5,800 to pursue all of his complaints or pay a deposit order in relation to each of those complaints which he wishes to pursue.

3. The Claimant's cross application to strike out the Respondent's response is refused.

REASONS

1. This case came before me, firstly by way of an application by the Respondents to strike out the Claimant's complaints of harassment on the grounds of sex against the first Respondent and the corresponding claims of sex discrimination against the Respondents on the basis that they were vexatious, scandalous and/or had no reasonable prospect of success and/or that the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious. Alternatively, the Respondents were seeking a deposit order on the basis of jurisdiction, namely that the claims were presented out of time on time, and that the claims had little reasonable prospect of success.

2. The Claimant had made a cross application to strike out the Respondent's response because the Respondents had made an application to strike out his claims and because of the subsequent allegation of disclosure under the Data Protection Act (DPA Disclosure).

3. The Claimant had also made a subsequent application for leave to amend his claim to add victimisation, harassment on the ground of race and race discrimination in relation to the DPA Disclosure. There was insufficient time to deal with that application and further orders were made in relation to that application.

4. The Tribunal was provided with a large bundle of documents on behalf of the parties. Neither party gave evidence. Both had submitted written submissions and also gave oral submissions.

5. Rule 2 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sets out the overriding objective which is to enable Employment Tribunals to deal with cases fairly and justly, which includes ensuring that the parties are on an equal footing.

6. Rule 37 Employment Tribunals (Constitution and Rules of Procedure) of schedule 1 Regulations 2013 provides that at any stage of the proceedings, either on its own motion 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 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 either party has been scandalous, unreasonable or vexatious.

Rule 37 (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.

7. Rule 39 Schedule 1 of the ET (Constitution and Rules of Procedure) Regulations 2013 - Where at a preliminary hearing, the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (the paying party) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

Rule 39 (2). The Tribunal shall 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.

Rule 39 (3). The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

Rule 39 (4). If the paying party fails to pay the deposit by the date specified, the specific allegation or argument to which the deposit order relates shall be struck out.

Rule 39 (5). If the Tribunal at any stage, following the making of a deposit order, decides that specific allegation or argument against the paying party for substantially the reasons given in the deposit order:-

- (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purposes of Rule 76, unless the contrary is shown; and
- (b) the deposit shall be paid to the other party (or if more than one), to such other party or parties as the Tribunal orders, otherwise the deposit shall be refunded.

Rule 39 (6). If a deposit has been made to a party under paragraph 5b and a costs or preparation time order has been made against the paying party in favour of the party receiving the deposit, the amount of the deposit shall count towards the settlement of that order.

8. Section 123 of the Equality Act 2010. Proceedings on a complaint (of discrimination) should be brought before the end of:
- (a) the period of three months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.

Section 123 (3). For the purposes of this section:-

- (a) conduct extending over a period is to be treated as done at the end of the period.

9. The Tribunal was referred to a few cases by the Respondent's representative including:-

- 9.1 The well-known case of **Anyanwu v South Bank Students Union 2001 IRLR 305** which underlined the importance of not striking out claims for an abuse of process except in the most obvious of cases. Discrimination cases are generally fact sensitive and their proper determination is always vital in a plural society.

- 9.2 The case of **Cox v Adecco Group UK Limited 2001 ICR 1307** where it was held that strike out is not prohibited in discrimination, but special care must be taken in such cases. It goes on to say that there should be a fair assessment of the claims and issues on the basis of the pleadings and other documents and that the claims should be taken at their “highest”. It refers to the overriding objective of co-operation between the parties.
- 9.3 The case of **Blockbuster Entertainments Ltd V James 2006 IRLR 130** where Lord Justice Sedley examined the power of strike out, which he noted was a draconian power which should not be exercised too readily. Where it relates to the issue of conducting proceedings unreasonably, the two conditions are either that the unreasonable conduct has taken the form of deliberate and persist disregard of (in that case procedural steps) or that it has made a fair trial impossible.
- 9.4 The Respondent’s representative also referred to a number of other cases:- **Community Law Clinic Solicitors v Methuen 2012 EWCA Civ 51** which held that it is wrong as a matter of principle that cases cannot be struck out and the case of **Tree V South East Coastal Ambulance FT 2017 UKEAT 0043** where it was held that strike out was permitted where a Claimant could not make good their claims.
- 9.5 The Tribunal also took account of the case of **Wright v Nipponkoi Insurance Europe Limited UKEAT/0113/14** where it was held that, when making deposit orders employment tribunals should stand back and look at the total sum awarded and consider the question of proportionality before finalising the orders made. It was noted in that case that the employment judge did not make the maximum awards that he could have done, but made orders which gave rise to a total sum that seemed proportionate when taking account of the number of allegations to which the orders related and the Claimant’s means. This was a proportionate view on the totality of the award and a conclusion that was entirely open to the employment judge as an exercise of his discretion.
10. The Tribunal considered the submissions made by both parties; reviewed the substantial bundle of documents submitted by both parties and considered the Law.
11. This Tribunal has serious concerns about the way which the Claimant is conducting these proceedings. It notes that, since the commencement of these proceedings, the Claimant has sent LinkedIn messages to a number of colleagues of the first Respondent referring to the allegations; he also sent WhatsApp messages again referring to the alleged allegations of harassment by the first Respondent and asking former colleagues if they had experienced similar alleged harassment by the first Respondent He has also sent messages to colleagues who were members of the second Respondent’s Muslim faith group again criticising the first Respondent and has made numerous Freedom of Information (FOI) requests to the second Respondent.

12. These actions are very close to being both vexatious and unreasonable on the part of the Claimant. However, the Tribunal acknowledges that the Claimant is acting in person and seems to be trying to deal with these proceedings in his own way. His explanation for some of his actions appears to be a misguided attempt by him to obtain evidence. That is not the way to obtain evidence in Employment Tribunal proceedings. He should not be going to the lengths which he appears to be doing to obtain evidence in support of his case. He either has evidence in support of his case or he does not. If the Claimant continues with this course of action, he may be faced with a further application to strike out his claims on the basis of the way he is conducting the proceedings.
13. This Tribunal reminded itself of the overriding objective set out at Rule 2 of the Rules of Procedure which obliges tribunals to deal with cases fairly by ensuring the parties are placed on an equal footing. The Tribunal has also taken account of the cases referred to above, in particular the case of **Anya V South Bank University** and **Blockbuster V James**. The Tribunal has also taken account of the fact that the claims against the first Respondent are connected to all the other claims which the Claimant is pursuing. For those reasons, the Tribunal is not minded to strike out the Claimant's complaints at this stage because of its concerns about the way in which the Claimant is conducting these proceedings, particularly in respect of the first Respondent. The Claimant is however warned to desist from continuing to conduct the proceedings in the way he has done to date.
14. This Tribunal does however consider that the Claimant has no reasonable prospect of succeeding in relation to his complaint of harassment on the grounds of sex against the Respondents relating to the allegation at paragraph 6.9 of the draft list of issues and the corresponding claim of sex discrimination at paragraph 7.1 of that draft list of issues at pages 271-272. In his detailed written response to the application to strike out his claim, the Claimant has produced numerous documents, which include the various messages upon which this claim is founded. Those documents are at page 136 - 137 of the bundle and clearly show that, in no way was the conduct unwanted. It is quite clear from the exchange of messages from that online discussion, that the Claimant was engaging in that online discussion and, indeed at times, appeared to be leading the discussion. The conduct cannot therefore be unwanted conduct, if the Claimant is not only engaging in the conduct, but on occasions leading the discussion.

An essential element of any claim of harassment involves the conduct being unwanted. The Claimant's claim of harassment in relation to that allegation could not succeed based on his own documentary evidence.

15. The remaining 14 other claims of harassment on the grounds of sex and the corresponding claims of sex discrimination are all substantially out of time. On the face of it, they appear to be unrelated claims, often with substantial time gaps, so it is difficult to see on the face of it, how they could be part of a continuing act. However, reminding itself of the case law, the Tribunal does not consider that, without hearing evidence on that issue, it would be appropriate to strike out those claims. Nevertheless, the Tribunal does consider that those claims have little reasonable chance of success for that reason. It is therefore minded to order the

Claimant to pay a deposit order in relation to each of those allegations. This may make him consider carefully, as parties are often urged to do where there are numerous complaints of discrimination, to concentrate on his main claims.

16. The Claimant's claim of harassment on the grounds of race is similarly substantially out of time. It is even more difficult to see how that claim could be part of a continuing action. However, for the reasons referred to above, the Tribunal is not minded to strike out that claim, either without hearing evidence. The Tribunal does however also consider that claim has little reasonable prospect of success for the same reason.
17. The Tribunal considered the Claimant's means. It noted that the Claimant had owned his own business until recently. The business had a number of employees/workers and he was taking home £250 a week. He said that he recently sold that business and received a payment for the sale of the business. He said part of that payment was pending. He mentioned a figure of £6000. The Claimant is living with his mother and says that he has no income at present but has apparently not signed on for any benefits. The Tribunal took account of the number of separate allegations being pursued and took a proportionate view of what it knew of the Claimant's means and considered the totality of the deposit order made; taking account of the case of **Wright v Nipponkoi**. The Tribunal therefore determined that the Claimant should pay the sum of £200 by way of a deposit to pursue each of his separate claims of harassment on the grounds of sex of which there are 14 separate allegations; and the sum of £200 for each of the corresponding allegations of sex discrimination he was pursuing. He is also ordered to pay the sum of £200 pound for his claim of harassment on the grounds of race. That makes a total deposit order of £5,800.
18. The Claimant's cross application to strike out the Respondent's response is refused. This Tribunal considers that the application is completely misconceived and is contradictory. On the one hand, the Claimant suggested that there could not be a fair trial of the case, yet in his application he suggested that the respondents should be producing documents and some of them should be attending to give evidence as witnesses. That position is wholly inconsistent with a request to strike out a response and is of course, as noted in relation to the Respondent's application, a draconian step.
19. From the documentary evidence and the Claimant's submissions, it is noted that Claimant's application has been made partly on the basis that the Respondent made such an application against him. That is another example of the Tribunal's concerns about the way this case is being conducted by the Claimant. That cannot be a proper reason for seeking to strike out another parties' claim or response.
20. It is quite clear to this Tribunal that there can be a fair trial of this case, irrespective of any DPA Disclosure, which is the other basis on which the Claimant has sought to strike out the Respondent's response. The tribunal which hears this case at the final hearing will hear oral evidence and be provided with detailed documentary evidence. That tribunal will be basing their decision solely on the evidence presented

before them, even if in the very unlikely event, any member of that panel had actually seen the DPA breach on the website, as the documents were taken down very quickly and are no longer on the website.

21. For that reason, the Claimant's application to strike out the response is refused.

Employment Judge Martin

Date signed: 10 November 2022