EMPLOYMENT TRIBUNALS

Claimant: Mr Farrukh Husain

Respondent: Croner Group Ltd (1) Amanda Beattie (2)

Heard at: London South (via video) **On:** 24 October 2024

Before: Employment Judge Boyle

Representation

Claimant: in person
Respondent: Mr R Kohanzad (Counsel)

RESERVED JUDGMENT

1. The claimant's application to strike out the respondents' response under Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is refused.

2. The respondents' application to strike out the claimant's claim under Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is refused. The respondents' application for deposit orders is refused.

REASONS

Introduction

1. The claimant worked for the first respondent as a field litigation consultant from 29 September 2021 to 24 August 2023. The respondent is a national company that provides business support to companies in the areas of Human Resources, Health and Safety, Tax and Reward. The second respondent is an employee of the first respondent and was the claimant's line manager at the relevant time.

2. The claimant issued a claim against the respondents on 30 November 2023. The respondents lodged their defences on 24 January 2024.

3. The case was subject to a case management hearing before EJ Sudra on 27 August 2024. The claimant's claims were clarified at that hearing and are as follows:
    a. whistleblowing detriments (s.47B Employment Rights Act 1996 ('ERA 1996'));
    b. direct religion or belief discrimination (s.13 Equality Act 2010 ('EqA 2010'));
    c. discrimination arising from disability (s.15 EqA 2010);
    d. indirect religious discrimination (s.19 EqA 2010)
    e. failure to make reasonable adjustments (s.21 EqA 2010);
    f. harassment related to disability (s.26 EqA 2010);
    g. unauthorised deductions from wages; and
    h. automatic unfair dismissal for making a protected disclosure.

4. At the case management hearing, the respondents reiterated their earlier application to strike out the claimant's claims on the grounds that they are scandalous or vexatious or have no reasonable prospects of success and that the claimant's indirect religious discrimination claims are out of time. Alternatively, the respondents applied for deposit orders to be made.

5. The claimant alleged that part of the respondents' response had no reasonable prospects of success and should be struck out.

6. On this basis, EJ Sudra ordered a public preliminary hearing to take place to determine these issues.

Public preliminary hearing

7. This public preliminary hearing was listed on 24 October 2024 to consider:

    a. The claimant's application to strike out the respondent's response;
    b. The respondent's application to strike out the claimant's claim and/or to make deposit orders;

8. At the start of the hearing I received a bundle of 78 pages prepared by the respondent. I further received a bundle of 381 pages from the claimant. I was referred to some documents in these bundles during the hearing.

9. At the start of the hearing, the claimant produced a letter from his GP , Dr Kooner dated 16 October 2024. It stated

    "Mr Husain has a diagnosis of anxiety and depression and is on regular antidepressant medication.
    Mr Husain has consulted regularly with symptoms of deteriorating mental health in relation to disciplinary action at work.
    Mr Husain suffers with disturbed sleep and wakes up at least four to five times during the night with symptoms of anxiety and worrying about impending court hearings. He feels tired and drowsy during the day on

most days. The chronic disturbance of sleep has an adverse effect on his ability to concentrate, his concentration span is reduced and he experiences difficulty in focusing on matters requiring his attention.
In relation to the duration of a Court hearing, Mr Husain would benefit from having a Court hearing with a duration of half a day as opposed to a full day Court hearing as this would better enable him to focus on the matters being discussed."

10. I took this note into account for the purposes of the public preliminary hearing. We were able to hear both applications and submissions during the morning and I then reserved my decision.

11. With regard to the full hearing (which is listed for 2-6 June 2025), I asked the claimant to contact the respondent first to see whether they would agree to 'half day' hearings and thus increasing the hearing to 10 days. I urged the claimant to consider this carefully as the likelihood would be that if granted, the current hearing dates might need to be vacated and his claims might not be heard until 2026.

12. I determined that I would hear both applications before making any decision. As the respondents had made their application first, I asked them to go first. I then heard the claimant's application. Both parties supplied written skeletal arguments which they used during their submissions.

Background and events leading to the strike out applications

13. **The Law on Strike out**

Rule 2 of the Employment Tribunal Rules 2013 ("the ET Rules") provides:

Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
(a) ensuring that the parties are on an equal footing;
(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
(c) avoiding unnecessary formality and seeking flexibility in the proceedings;
(d) avoiding delay, so far as compatible with proper consideration of the issues; and
(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

Rule 37 of the ET Rules provides:

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

14. I was referred by both parties to the cases of Jaffrey v Department of the Environment, Transport and the Regions {2002}, Chandhok v Tirkey [2015] QDOS Consulting Ltd UKEAT/0495/11, and Ahir v British Airways [2017].

15. The main thrust of the first three cases is that whilst care should be taken before striking out discrimination or whistleblowing cases due to their being so fact-sensitive, nonetheless, the Tribunal does have a power to do so.

16. The *Ahir* case reminds Tribunals that if the claimant's argument regarding their dismissal (or some other form of detriment) is so implausible, this can justify a finding that a claim has no reasonable prospect of success. This would apply equally to an implausible defence.

17. In hearing both applications, I reminded myself of the Draconian nature of the strike out power; the importance of taking into account the overriding objective and of asking whether a fair trial is possible in the future and whether any alternative to strike out is proportionate.

Respondents' application to strike out the claim

18. The respondents' application was made in two parts.

19. Its primary claim is that the claimant's claims (as set out in the agreed list of issues) have either no or little prospect of success.

20. Their secondary argument is that the claimant's conduct post-dismissal is such that that the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable or vexatious; and /or it is no longer possible to have a fair hearing in respect of the claim.

21. The claimant was a practicing solicitor. The claimant made the respondents aware during October 2022 that he was to be the subject of a Solicitors Disciplinary Tribunal (SDT) in respect of his activities on social media. The respondents say that once they became fully aware of the nature and extent of the allegations against the claimant by the SDT and, by implication, their impact on the first respondent, that they made the decision to dismiss the claimant.

22. A SDT hearing took place from September 2023 and concluded on 23 February 2024. The decision of the SDT was that the claimant's actions had impacted on his role as a solicitor and that he should be struck off the solicitor's roll with immediate effect and prevented from further practicing as a solicitor. I understand from the claimant that he is appealing that decision.

23. Following the claimant's dismissal, the first respondent discovered (relatively recently and after it had made it primary application for strike out,) that the claimant had sent documents (after he had been dismissed) relating to an employment tribunal case he had been handling for one of the first respondent's clients to the solicitor for the claimants in that case ("Sandhills").

24. I was taken to various emails from the claimant to Sandhills' solicitor and the documents the claimant sent to them. The claimant candidly confirmed at the hearing that he had sent the documents and did not regret doing so. It is part of his case that he believed the first respondent was covering these documents up and failing in their disclosure duties. The documents related to the first respondent's client's decision to make redundancies and views on the merits of their defence. Clearly these were important documents to come into Sandhills' possession.

25. The respondent made the argument that this was quite outrageous behaviour from the claimant: not only in retaining documents that do not belong to him but also sending them to the other side in a case in the way he did.

26. The respondents argues that the claimant, in his actions, was seeking to not only punish them but also to gain leverage. They asked how many other documents had he retained and was willing to send to other solicitors? They said that in effect the claimant was blackmailing them with his actions. They made the argument that as the claimant was no longer a practicing solicitor since being struck off, he had nothing to lose from causing more damage to the respondents and was free from any professional obligations. They argued that a fair trial was no longer

possible as they felt coerced into a large settlement in order to prevent the claimant sending more documents to other solicitors.

27. The respondents then took me through the claimant's claims and made arguments as to why these claims had left the respondents in a position where they believed the claims had either no or little reasonable prospects of success.

28. These are largely set out in the respondent's helpful skeleton argument and I won't repeat them in detail here.

29. The main argument is the first respondent clearly had a good reason to dismiss the claimant when they did. Their head of legal, Mr Andrew Willis, having viewed the SDT bundle regarding the claimant, reasonably concluded that the allegations against the claimant were so serious that he could not be permitted to remain in the first respondent's employment. They say these concerns were well-founded because the claimant was then struck off as a solicitor for posting offensive tweets on social media. They say that clearly this was the reason for dismissal and not for any reasons suggested by the claimant (which include, his whistleblowing, his disability, his race or religious beliefs).

30. The respondents also proceeded to analyse the claimant's remaining claims and why these also had no or little reasonable prospect of success. Again these are set out in the respondents' skeleton argument.

31. The claimant responded to confirm that he had sent the emails and documents to Sandhills but that he had not told the respondents he was doing so and therefore could not be blackmailing them. He confirmed that he had no other such documents in his possession and had no intention of doing this again – this was a "one off" and went back to one of central issues in his whistleblowing claim. He went through in detail why he believed all his claims had some merits and therefore argued that none should either be struck out or the subject of a deposit order. The claimant made the argument that the respondents had known since October 2022 about the SDT but only chose to act in September 2023. If it was as bad as they say, why didn't they dismiss him much earlier? He says that if the reason for his dismissal was in fact matters that occurred in the months closely preceding his dismissal.

32. In respect of the respondents' arguments regarding the claimant's post-termination conduct and its effect on these proceedings, I do not accept the respondents' argument that a fair trial is no longer possible. Putting aside any judgment on the claimant's activities, it is not proportionate to use the Tribunal process to punish the claimant here. The respondents have avenues to pursue, if they so wish, regarding the claimant's activities. The claimant has assured the Tribunal that this was a one-off and not an attempt to blackmail the respondents into settling his case. Clearly, the Tribunal would take incredibly seriously any situation where

the claimant went on to repeat this and his motives would be put under very close scrutiny.

33. As regards the respondents' arguments regarding the relative merits of the claimant's claims. I am satisfied that none of the claimant's arguments in relation to his various claims are so implausible to justify either a strike out or any deposit orders or that they show the claimant's claims have either no or little reasonable prospects of success.

34. I consider that the prospects of all these claims cannot be determined without evidence. In reaching my decision in this case I have had regard to the guidance set out by the EAT in Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT, which incudes the advice that where factual issues are disputed, it is highly unlikely that strike out will be appropriate.

35. I have also considered whether a deposit order is warranted. Although, on the facts I have considered, and the submissions made, I can see some difficulties for the claimant in relation to the indirect religious discrimination due to time limits, and to causation in relation to his other claims, I take the view that that any arguments regarding whether this claims was brought in time or it would be just and equitable to extend the time period or causation generally are best determined by a full Tribunal hearing all the evidence.

36. For these reasons I am refusing the respondents' application for strike out and/or deposit orders.

Claimant's applications to strike out the response

37. The claimant made an application to strike out the response. The claimant supplied the Tribunal with a helpful written skeleton argument citing the same cases as the respondent.

38. In essence, the claimant argues that the respondents did not have a good reason to dismiss the claimant and were not motivated by any concern over the forthcoming SDT but rather were motivated by a desire to punish the claimant either for his whistleblowing, his religious beliefs or his disability (or a combination of all of these things).

39. The respondents opposed this application. Counsel reminded me that is rare for a response to be struck out and the respondents have strong arguable defences to all of the claimant's claims.

40. Again I considered the "implausibility" argument. I am satisfied that none of respondents' defences in relation to claimant's various claims are so implausible to justify a strike out or that they show the respondents' defences have either no or little reasonable prospects of success.

41. I again remind myself that the prospects of all these defences cannot be determined without evidence. In reaching my decision in this case I have had regard to the guidance set out by the EAT in Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT, which incudes the advice that where factual issues are disputed, it is highly unlikely that strike out will be appropriate.

42. For these reasons I am refusing to grant the claimant's application. The claimant did not ask me to make any deposit orders, but if he had done so I would not have ordered these either as no part of the respondents' defence appears to have little reasonable prospects of success.

Employment Judge Boyle

Date 8 November 2024

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/