Case numbers : 3306236/2021, 2206714/2021, 2204457/2022 & 2208248/2022

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
AZ	**v**	BY

Heard at: Bury St Edmunds (CVP)

On: 5 March 2024

Before: Employment Judge Laidler

Appearances

For the Claimant: Not attending and not represented.
For the Respondent: Mr T Wilkinson, Counsel

RESERVED JUDGMENT

1. Applying the provisions of Rule 37 Employment Tribunal Rules 2013 the tribunal has found that the claimant has:
    a. Acted scandalously and/or vexatiously
    b. The manner in which the proceedings have been conducted by him has been unreasonable
    c. Failed to comply with tribunal orders
    d. Not actively pursued his claims.

2. In consequence the tribunal has concluded that it is only proportionate and in accordance with the overriding objective that all claims brought by the claimant are struck out.

3. Of her own volition the judge has made an order under Rule 50 of the Employment Tribunal Rules 2013 that the names of the parties be anonymised in the interests of justice, to protect the Convention rights of the claimant and in the circumstances identified in section 12 of the Employment Tribunals Act 1996.

REASONS

1. This hearing was listed to determine the respondent's strike out application.

It was originally made on the 29 June 2023. No action appears to have been taken by the Employment Tribunal on it and a further application was made by the respondent on 11 December 2023. Notice of hearing was sent to the parties on 18 January 2024 advising that the strike out application would be determined as a hearing conducted on the Cloud Video Platform (CVP) with a time estimate of one day. The respondent was represented at this hearing by counsel. The claimant neither attended nor was represented.

2. Solicitors for the respondent filed Counsel's written skeleton argument with the tribunal on 1 March 2024 at 10:34 copied to the claimant. The heading to their email clearly stated that it was for the preliminary hearing listed for 5 March. The claimant must have received it as he emailed the Employment Tribunal on 1 March 2024 at 17:15 copied to the respondent's solicitor, the EAT and a J Miles at Oakwood solicitors. It is not known who that is as there is currently no solicitor on the tribunal record as acting for the claimant. The claimant's email set out details of the law on whistleblowing and seemed to contain extracts from the website of the Judicial Conduct Investigations Office.

3. Being satisfied that the claimant was aware of this hearing it proceeded in his absence. The judge having already read the written skeleton argument sought clarity on certain points with Counsel for the respondent which will be set out in more detail below. Written reasons are being provided as the claimant did not attend this hearing. The hearing concluded at 11:30 and the judge is not aware of any attempts made by the claimant to join the hearing during that time.

4. The tribunal had a bundle of documents from the respondent's solicitors of 332 pages. References to page numbers are to pages in that bundle. The judge did not have the tribunal files and did not have them at the time of finalising these written reasons.

Rule 50 Employment Tribunal Rules 2013

5. In writing these reasons it has been necessary to refer to the claimant's mental health conditions. The judge is conscious that the judgment and reasons will be entered onto the public register of Employment Tribunal Judgments. She has therefore decided, of her own volition, in accordance with Rule 50 of the Employment Tribunal Rules 2013 that the names of the parties should be anonymised to protect the rights of the claimant. The identity of both parties has been anonymised otherwise it might be possible to identify the claimant.

6. As provided in Rule 50(4) any party or other person with a legitimate interest who has not had a reasonable opportunity to make representations before this order was made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, a hearing.

Procedural background

7. The claimant has issued 4 claims which have now been formally consolidated:

   22 April 2021 - Case number 3306236/2021 – claims of disability discrimination.
   20 October 2021 – Case number 2206714/2021 - claims of disability discrimination
   30 June 2022 – Case number 2204457/2022 – claim of automatically unfair dismissal and claim for interim relief.
   29 October 2022 - Case number 2208248/2022 – claims of automatically unfair dismissal and disability discrimination.

8. In relation to claims 1 and 2 the claimant was represented by didlaw. Their name is not on the first ET1 but was on the second. Further and better particulars undated but provided in relation to the first claim (page 33) appear to have been professionally drafted. The tribunal saw correspondent from 31 October 2021 addressed to that firm.

9. In relation to the other two claims the claimant was represented by Setfords Solicitors and a Ms T Barrett, of that firm, appeared at the Case Management hearing before E J Lewis on 5 April 2022 and the interim relief hearing on 24 February 2023.

10. At the preliminary hearing for case management before Employment Judge Lewis on 5 April 2022 he recorded that was a continuation of the hearing that had started on 23 February. Attached to the case management summary was an agreed list of issues of the first two claims. It appears that a preliminary hearing was also listed to take place on 10 October 2022 to determine the respondent's strike out/deposit order applications.

11. Following the issue of the third claim the claimant's application for interim relief was heard and rejected on 24 February 2023.

12. On 27 February 2023 the parties were sent a notice of hearing for a 10 day hearing commencing on 19 June 2023. It was expressly recorded in that notice of hearing that it was a hearing to consider all of the claims. Directions were made for trial preparation.

13. By letter of 15 March 2023 the respondent's solicitors wrote to the Employment Tribunal indicating that they had attempted to agree proposed directions with the claimant's representative and understood from an email of that date from the said representative that they had yet to receive instructions from the claimant. The respondent's solicitors set out proposed directions in view of the consolidation of the claims and suggested that in all the circumstances the June hearing be vacated and a new hearing listed after 22 October 2023 taking account of the dates and availability they had provided.

14. A telephone case management hearing was listed for 23 May 2023 and this

took place before Employment Judge Richard Wood. His summary records how the claimant did not attend and was not represented. He decided to come out of the conference call facility and call the claimant direct at approximately 2:30 p.m. He describes the claimant as being "agitated and upset to learn who was calling him. The claimant was angry at being contacted directly. He seemed aware of the hearing, but he insisted that he was a "victim" of abuse and that the tribunal service should only contact him in writing. He seemed to suggest that he was not well enough to participate in the proceedings at the moment, but it was difficult to understand all of what he said due to the levels of agitation. He repeatedly refused to let me speak. I ended the call after about five minutes, when it became apparent that we were not making any progress, and the call was upsetting the claimant" (page 206). It was at that hearing that the June full merits hearing was vacated. The judge directed a further preliminary hearing be listed. The claimant was also ordered to provide the respondent and the tribunal with a full update on his health situation including 'whether he is able to attend hearings (remote or face to face) and to participate in the case management aspect of proceedings. It should also include medical evidence if the claimant is suggesting that he is unable to take part in any aspect of his claims'. This tribunal has not seen any response to that order.

15. From information provided at this hearing by the respondent it appears there were no further steps taken in the litigation save for the respondent's applications of June and December 2023 that the claims should be struck out.

16. The tribunal was further informed at this hearing that save for a an email from the claimant of 1 March 2024 (referred to above) in response to the skeleton argument the respondent's solicitors had received no correspondence from the claimant since 30 November 2023 (page 330)

17. As the tribunal had seen reference to an Appeal by the claimant the respondent was asked for any correspondence in connection with it. The respondent forwarded a copy of a letter from the Employment Appeal Tribunal (EAT) dated 10 August 2023. This referred to the claimant's Notice of Appeal from the decision of the Employment Tribunal held at Watford and sent to the parties on 1 March 2023 (the interim relief judgement). The EAT advised that having received this appeal on 30 June 2023 it was deemed to be 79 days out of time. The letter explained to the claimant that if he wished to pursue the matter he must send to the Registrar his application to extend time within which to lodge his Notice of Appeal together with his reason(s) for the lateness. Counsel for the respondent took further instructions and ascertained that the claimant did submit a further document to the EAT on 11 August 2023. It is understood that as that document was not what was required no further action was taken on the Appeal.

Employment with the respondent

18. The first ET1 described the claimant's role with the respondent as IT officer. It gave his start date as the 27 March 2015. The respondent pleaded that

the claimant had started working for it as a temporary agency worker on the 23 March 2015 not commencing permanent employment until 29 March 2016. In his further and better particulars served following the first ET1 the claimant refers to issues he was having in the workplace from February 2017. He stated that he raised a formal complaint on 3 February 2020 alleging a failure by the respondent to support him and his mental well-being whilst he had been in the workplace (page 35). The first and second claims are concerned with the investigation of that complaint.

19. The claimant was dismissed on 23 June 2022 and the third and fourth claims are concerned with that dismissal which the claimant asserts was automatically unfair for the raising of protected disclosures and disability discrimination. It is the respondent's pleaded case that the dismissal was due to there being an 'irreparable breakdown' in the relationship between the claimant and his managers. Also that there was a similar breakdown in relationships with colleagues broadly and that this represented a serious risk to the operation of the team and the health and well-being of the teams members.

Disability

20. In the further information served following the first ET1 it was made clear that the claimant relies upon post-traumatic stress disorder, bipolar affective disorder and schizophrenia as disabilities for the purposes of the Equality Act 2010. The respondent has accepted that the claimant is disabled by virtue of PTSD and bipolar affective disorder but it states that it does not have sufficient medical evidence in support of the contention that the claimant also suffers from schizophrenia. The only medical evidence this tribunal has seen in the was a general practitioner letter dated 2 May 2023 which appears to have been written in relation to an application for universal credit. It is one paragraph long and refers to the claimant suffering from chronic pain, PTSD, bipolar disorder, as diazepam dependent, suffering from insomnia and obesity. It states that the claimant has poor mobility and uses a walking stick.

21. The claimant was ordered to and did provide a disability impact statement but that has not been seen by this tribunal.

The respondent's applications

22. The respondent first made a limited application to strike out the claimant's claims in its Grounds of Resistance to the third and fourth claims (paragraph 74, page 152). The first substantive application was made in a letter of 29 June 2023 which was, in accordance with the Rules, copied to the claimant who was by then no longer represented. No action seems to have been taken by the Employment Tribunal on that application and it was renewed on 11 December 2023. It appears that no steps had been taken in the litigation during that time.

23. The skeleton argument provided for this hearing relies upon all the points made in the earlier written applications. In summary the respondent bases its application to strike out on three limbs appearing in Rule 37 of the Employment Tribunal Rules 2013 namely that:

    23.1 the manner in which the proceedings have been conducted by the claimant has been scandalous and/or unreasonable and/or vexatious,
    23.2 the claimant has failed to comply with tribunal order,
    23.3 the claims are not being actively pursued

Vexatious and/or unreasonable and/or scandalous

24. The respondent relies upon correspondence that the claimant has sent to the respondent's solicitor and to the Employment Tribunal (on some occasions copied to others including EAT). The following are examples relied upon.

25. 27 April 2023 (page 240) - email to the respondent's solicitor in which the claimant refers to a criminal investigation and a "disability hate crime". He stated that the respondent must "answer for the outcome of the interim relief application, for the criminality at the root of a five year disability hate crime that involves police to investigate gather sufficient evidence for the CPS to assess whether or not to prosecute". Other than stating that he would be writing to the Employment Tribunal the next day to request a postponement of the two cases listed for June 2023 until the EAT had dealt with the appeal against the interim relief judgement the email did not seek to progress the litigation.

26. 4 May 2023 (page 245) - email to Watford Employment Tribunal, the EAT and the respondent's solicitor. This email was headed "disability hate crime". It primarily focused on the interim relief application and the claimant's criticisms of not only the outcome but his then solicitor. The claimant referenced again speaking to the police about submitting a "disability hate crime for the CPS to assess whether pressing charges against the Royal Free London NHS trusts". The claimant in this email seemed to be suggesting that the criminal investigation must be concluded first.

27. 18 May 2023 (page 266) - email to Watford Employment Tribunal and the respondent's solicitor. In this email the claimant refers to "my former solicitor was dismissed as the result of lying to a disabled client to do as much as possible for misleading me into not appealing against the judgment of the Interim Relief Application". He refers to wanting an opportunity to settle with financial compensation to provide enough "until I retire from the NHS in 2029". The claimant again refers to disability hate crime but this time 'during ongoing acts of discrimination and maltreatment of an Outpatient of a Mental Health Hospital'.

28. 22 May 2023 (page 270) - email to Watford Employment Tribunal and respondent solicitor. This email appears to be a response to the respondent's email to the tribunal of the previous day copied to the claimant sending a draft agenda and draft list of issues and case summary in preparation for the preliminary hearing listed to take place on 23 May 2023. The claimant starts

his email by setting out what he considers are his "extensive legal rights embodied employment and discrimination law" as summarised in the handbook to the NHS constitution. The claimant states he is not the claimant but "a victim and survivor of five years related to hate crime by the respondent over the course of so many years that beforehand exploited and manipulation as including an Appeal against the verdict". The claimant asks the tribunal to acknowledge "its duties under the Equality Act 2010" to protect a whistleblower. He alleges that the solicitor for the respondent is not complying with the NHS Constitution and the tribunal is not acting under the equality duty owed to "vulnerable NHS staff when deprived of their employment rights when compared to clinical employees". The claimant again criticises his former solicitor and this time the respondent in not providing the essential documentation to enable him to appeal the interim relief judgement.

29. 23 May 2023 (page 309) - email to Watford Employment Tribunal and the respondent solicitors. This was sent on the day of the preliminary hearing at 15:32 the hearing having been listed to take place at 2pm. The claimant requested all communication from the tribunal in writing and asked for the case to be transferred to another tribunal. The claimant said that the tribunal had no right to call him and that he had not been provided with information by his former solicitor. He accused a judge of a hate crime and his former solicitor of lying to him. The claimant alleged there had been a breach of his human rights.

30. 14 June 2023 (page 311) - email to Watford Employment Tribunal, the EAT, the respondent's solicitor, The Times and 'enquiries@solicitorsdt.com' (which is believed to be the Solicitors Disciplinary Tribunal). This email initially focused on the public interest requirement for a protected disclosure and cited various case law. With regard to the interim relief judgment the claimant asked 'is the Watford Tribunal supportive of robbing Nationwide Patients of human rights to access safe delivery of patient care?' The claimant then appeared to cut and paste information in connection with Interim Relief applications including references to previously decided cases. The claimant again made reference to 'sacking' his solicitor as she had 'failed to meet the professional standards especially responsible for the breakdown of Trust and Dishonesty lying and to her Disabled Client'. He made reference to the Solicitors Disciplinary Tribunal. He stated that a 'crime reference is available, including a complaint against Judges for harassment and disability discrimination for not having considered the adverse outcome other vulnerabilities of a Disabled person when decision making…'. There is also reference to being an Outpatient of a Mental Health hospital 'denied a medication review for over three years…'

31. 20 June 2023 (page 316) - to Watford Employment Tribunal, '!enquiries', the EAT, 'DPS Mailbox – CRU', headed 'Hate Crime Warning'. This asserted that the claimant had been deprived of his rights to participate at the interim relief application (he had been represented by his solicitor). He accused the tribunal of acting 'corruptly and sarcastically after invading my personal space without my consent to call me on my private telephone number'. The

claimant asserts he had requested the Metropolitan Police to aid him 'in lodging disability discrimination Hate Crime against both judges…'

32. 23 June 2023 (page 321) - to the Watford Employment Tribunal, EAT and the respondent's solicitors stating of the Regional Employment Judge 'you are all the same, shared the same rooms at the same University' and that the cases could have been properly allocated but were not 'from the moment your fellow Employment Judges prevented me from participating to the Interim Relief Hearing…which amounts to harassment and Disability Discrimination'.

33. 29 June 2023 (p323) – to Watford Employment Tribunal, '!enquires @police conduct.gov.uk', DPSMailbox, CRU@met.police,uk, a Jamie Brown at Unison and 'sobellmedcentre.admin@nhs.net', accusing the tribunal of 'sabotaging' his interim relief application.

34. 2 July 2023 (page 327) - to Watford Employment Tribunal, the respondent's solicitor, and two police email addresses. The heading to the email is 'why is the Tribunal harassing and victimising a vulnerable disabled person the Respondent never met before?'

35. 30 November 2023 (page 330) - to Watford Employment Tribunal and others accusing Employment Judges of encouraging 'the respondent's unlawful retaliations in response to Disability Discrimination, intolerance and harassment…' and that they 'contributed to a five-year Hate Crime, through their exploitation of a vulnerable victim and whistleblower…' There is again reference to 'depriving Patients all over the Country of their Human Rights to access safe delivery of patient services and care' and there was another reference to being deprived of medication reviews.

Failure to comply with Orders

36. Reference has already been made above to E J Lewis making various directions for the parties to prepare for the full merits hearing. These included that there be disclosure of all relevant documents by the 4 November 2022, the bundle to be agreed by the 6 January 2023 and witness statements to be exchanged by the 3 March 2023.

37. The claimant emailed the tribunal and the respondent on the 29 March 2023 indicating he was trying to instruct new solicitors Leigh Day. He asked for 'any deadline' be pushed back further perhaps by one week. The respondent's solicitors replied asking that the claimant confirm by 21 April 2023 whether he had appointed new solicitors. They proposed sending their disclosure documents to either the new solicitors or the claimant on 24 April 2023. At this point the trial of the first two claims was still listed for June 2023.

38. The claimant replied on the 27 April 2023 stating he intended to request a postponement of the June hearing 'until the EATribunal, has not made a determination of the interim relief application, besides a criminal investigation'. The claimant made no reference to the disclosure of relevant

documents.

39. The respondent provided disclosure on the 27 April 2023 directly to the claimant not having been informed that new solicitors had been instructed by him. No disclosure was received from the claimant and the respondent's solicitors followed this up by email of the 17 May 2023.

40. By email of the 18 May 2023 the claimant stated that he could not be expected to provide the requested documentation 'if the claimant was denied access to the evidence required to submit a Formal Grievance and defend oneself. Against a continued course of disability hate crime during ongoing acts of discrimination and maltreatment of an Outpatient of a Mental Health Hospital.' No documents were disclosed.

41. As already mentioned the claimant failed to attend the preliminary hearing on the 23 May 2023. He stated that he had not been provided with the details of it by his previous solicitors.

42. The judge at that hearing ordered the claimant to provide a full update on his health condition, his ability to attend and participate in hearings. He had not done so.

Failing to actively pursue the claim

43. The respondent relies upon all of the above to suggest that the claimant is not actively pursuing the claim. In an email of the 23 May 2023 (sent about 1 ½ hours after the hearing had been due to start) the claimant stated he could not be expected to join 'because of a hate crime against the respondent'. The claimant failed to attend this hearing and the question remains how the claimant will participate in a full merits hearing, the issues for which have yet to be clarified.

44. On the 14 June 2023 the claimant sent a lengthy email about whistleblowing and the 'public interest requirement' but said nothing about the conduct or preparation of the case for a full hearing. Another lengthy email was sent by the claimant on the 20 June 2023 headed 'hate crime warning'.

Relevant provisions of the Employment Tribunal Rules 2023

45. **Striking out – Rule 37**.—

(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.

46. **Overriding objective - Rule 2.**

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.

Relevant Law

46. It has been made clear in previously decided cases that in considering strike out on the grounds of scandalous, unreasonable or vexatious conduct a tribunal must consider whether a fair trial is still possible. It was made clear in De Keyser Ltd v Wilson [2001] IRLR 324 that certain conduct, including a deliberate flouting of tribunal orders can lead to strike out but the tribunal must have reached the conclusion, also, that a fair trial is no longer possible.

47. In Bloch v Chipman [2004] IRLR 140 applying De Keyser it was stressed that the tribunal must consider not only whether the conduct fails within the Rules but if a fair trial in unachievable whether a lesser penalty might be more appropriate, for example, making a costs or preparation time order. This was also emphasised in Laing O'Rourke Group Services Ltd and ors v Woolf and anor 0038/05 EAT.

48. It was emphasised in Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327 EAT that the question of whether a fair trial is still possible need not be determined in absolute terms. The court held that the power to strike out is triggered when a party's unreasonable behaviour has resulted in a fair trial not being possible within the allocated window. Whether it should be struck

out requires a consideration of proportionality. The then President Choudhury J stated that account must be taken of various factors which include:

> …the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

49. Guidance was given more recently in Smith v Tesco Stores Limited EA – 2021 – 000062-00. Whilst upholding the tribunal's decision that the claimant had acted unreasonably, that a fair trial was no longer possible and that strike out was a proportionate sanction, the EAT urged caution in reaching such a conclusion. In the introduction to his judgment HHJ Tayler stated:

> 1. This appeal concerns the exceptional circumstances in which, when all that can reasonably be done to get to grips with the issues in a claim brought or defended by a litigant in person has been done, an employment judge may reluctantly conclude that person is refusing to comply with the obligation to assist the tribunal to further the overriding objective, through conduct that can properly be described as scandalous, unreasonable or vexatious, so that a fair hearing is no longer possible, and there is no proportionate lesser sanction than striking out the whole claim or response.
>
> 2. Good case management requires strong judicial skills. I appreciate it is easier to comment on than to undertake. It is particularly important at the early stages of a case. From the outset, the aim should be to identify the core claims and to manage them through to a full hearing, without the fundamental claims becoming encrusted with lengthy further particulars, in which more and more subsidiary claims and issues get added that obscure the real dispute between the parties. That is why it is best to avoid sending litigants in person away to provide additional information, whenever practicable.
> 3. If a claim form, or response, is of excessive length, and is not set out in a logical format (generally chronological), effective early case management is extremely difficult, and the more likely it is that there will have to be some form of further particularisation and case management before a hearing can be fixed. Litigants in person may not know the law, but they should generally be able to set out a coherent history of the events and explain the claims they consider arise. Claims rarely succeed because of the quantity of the allegations, it is the quality that matters.
>
> 4. The longer case management goes on, the greater the risk that a litigant in person will become embattled and fail to engage properly with the employment tribunal. Good case management requires that the parties work with the employment tribunal and each other in a constructive manner. Even litigants in person must focus on their core claims

> and engage in clarifying the issues. It is not the fault of a litigant in person that she or he is not a lawyer, but neither is it the fault of the other party or the employment tribunal. While the employment tribunal should take reasonable steps to assist litigants in person, this must not be at the expense of fairness to the other parties to the claim, and to litigants in other proceedings who seek a fair determination of their disputes, having regard to the limited resources of the employment tribunal.
>
> 5. Regrettably, those who are confused by, or disagree with, proper case management decisions that are fair to both parties, sometimes jump to the conclusion that the employment judge is biased and that the employment tribunal and its staff are adversaries to be challenged and attacked. If such a mistaken view results in a withdrawal from the required co-operation with the employment tribunal and the other party, necessary to advance the overriding objective, it puts a fair trial at risk.

50. In setting out the relevant law HHJ Tayler referred to Cox v Adecco Group UK & Ireland and others [2021] ICR 1307 in which there was express reference to the responsibilities on litigants assisting the tribunal in complying with the overriding objective and particularly represented parties when the other is a litigant in person. However he then cited the following paragraph from the judgment:

> 32. This does not mean that litigants in person have no responsibilities. So far as they can, they should seek to explain their claims clearly even though they may not know the correct legal terms. They should focus on their core claims rather than trying to argue every conceivable point. The more prolix and convoluted the claim is, the less a litigant in person can criticise an employment tribunal for failing to get to grips with all the possible claims and issues. Litigants in person should appreciate that, usually, when a tribunal requires additional information it is with the aim of clarifying, and where possible simplifying, the claim, so that the focus is on the core contentions. The overriding objective also applies to litigants in person, who should do all they can to help the employment tribunal clarify the claim. The employment tribunal can only be expected to take reasonable steps to identify the claims and issues.

51. In upholding the decision to strike out the claim HHJ Tayler stated that:

> 47. This judgment should not be seen as a green light for routinely striking out cases that are difficult to manage. It is nothing of the sort. We must remember that the "tribunals of this country are open to the difficult". Strike out is a last resort, not a short cut. For a stage to be reached at which it can properly be said that it is no longer possible to achieve a fair hearing, the effort that will have been taken by the tribunal in seeking to bring the matter to trial is likely to have been as much as would have been required, if the parties had cooperated, to undertake the hearing. This case is exceptional because, after conspicuously careful, thoughtful and fair case management, the claimant demonstrated that he was not prepared to cooperate with the respondent and the employment tribunal to achieve a fair trial. He robbed himself of that opportunity.

52. The EAT stated that there were three steps to be followed:

> first, whether there has been scandalous, unreasonable or vexatious conduct of the proceedings; if so,
>
> second (save in very limited circumstances where there has been wilful, deliberate or contumelious disobedience of an order of the employment tribunal), whether a fair trial is no longer possible; if so,
>
> third, whether strike out would be a proportionate response to the conduct in question.

[Paragraph 38]

53. The decision in Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167 was cited in which it was said at paragraph 55 that:

> a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court

54. In another recent EAT decision the strike out due to unreasonable conduct was not upheld, Hargreaves v Evolve House & Support EA-2022 -000569-BA. The tribunal had found that the claimant's objective was to use the proceedings to damage the respondent by in his own words 'a relentless campaign 'through protracted legal actions' continuing 'for years' and 'high profile media political campaigning in forthcoming local and national elections' to change the 'narrative' to what the claimant wants it to be. The EAT however held that it was not clear how a conclusion that a fair trial was no longer possible had been reached and the available evidence did not support that finding:

> 23…I conclude that the Claimant has surmounted that hurdle in demonstrating that the Tribunal's conclusion that a fair trial was not possible was an error of principle, or perverse on the material with which it had been provided. In those circumstances, the
>
> Tribunal also erred in principle in proceeding to strike out the claim, irrespective of its findings as to the Claimant's conduct... However justified the opprobrium which the Tribunal attached to the Claimant's conduct, the Respondents' remedy for any repetition of it lies elsewhere…

The 'elsewhere' could include an application for costs.

Conclusions

55. The tribunal has concluded that the claimant has failed to comply with tribunal orders, not actively pursued his claims and has acted vexatiously and/or unreasonably and/or scandalously within the meaning of Rule 37 and that the only proportionate sanction is that all claims should be struck out.

The claimant's behaviour

56. Reference has been made above to the emails that the claimant has sent to the Employment Tribunal, the respondent's solicitors and to other third parties who are not involved in these proceedings. The claimant has chosen to characterise his treatment whilst employed by the respondent as a 'hate crime'. He has, he says reported this to the police. The Employment Tribunal, as a creation of statute is concerned with statutory employment law claims. It has no jurisdiction to deal with 'hate crimes'. It has no evidence before it that the police are investigating such. Even if they are that is a matter for them and not this tribunal.

57. The claimant has expanded his allegations of 'hate crimes' and discrimination to include the Employment Tribunal, judges and the respondent's solicitor. He makes threats to 'trash' the reputation of his former representative. He also accuses the tribunal and the respondent of concealment, dishonesty and corruption.

58. The tribunal has noted that in a number of the claimant's emails he refers to his 'mistreatment' as a patient of a different NHS trust. Again that is not something that the Employment Tribunal has jurisdiction to consider.

59. The claimant did not attend the hearing on the 23 May 2023 and has not complied with the case management orders made at it. He failed to attend this hearing although he clearly was aware of it, received the respondent's skeleton argument and responded to it.

60. The tribunal is very conscious of the fact that the claimant has PTSD and Bi-Polar Effective Disorder. The respondent accepts that those two conditions amount to disabilities under the provisions of the Equality Act 2010. In preparation for this hearing the judge considered the Equal Treatment Benchbook and in particular the possibility of the appointment of an Intermediary. At Chapter 2 of the Benchbook paragraph 96 states:

> Their job is to facilitate communication between all parties and to ensure the vulnerable person's understanding and participation in the proceedings. This includes making an assessment and reporting, orally or in writing, to the court about the communication needs of the vulnerable person and the steps that should be taken to meet those needs.

The judge was prepared to have a discussion with the claimant on these issues had he attended the hearing but he did not. The tribunal service cannot make reasonable adjustments for the claimant if he is not prepare to attend hearings and engage in the proceedings. It is unable without his co-operation to assess his needs.

61. The authorities make it clear that if the tribunal finds unreasonable, scandalous or vexatious conduct, which it does in this case, it must consider whether a fair trial is still possible. This tribunal has had to come to the conclusion that it is not.

62. The first claims were issued in 2021 and covered events going back to 2017. That is now 7 years ago. Multi day cases in this region are currently being listed from the middle of 2025. This case has not been listed, the listing having been vacated and it is difficult to see when it will be ready to be listed. It is now likely that would not be until 2026 which would be nearly 10 years from some of the earlier events.

63. The authorities are clear that the tribunal is entitled to take into account under the overriding objective that whilst a fair trial will no doubt involve costs and preparation time for all concerned that should be within limits. The respondent has no doubt incurred significant costs to date but with no progress towards a finalisation of the litigation. The tribunal is also entitled to take account of the demands of other litigants who wish their cases to be heard and are doing all they can to co-operate with the tribunal process. The employment tribunal only has finite resources to deal with all the cases that are presented to it. Every time a judge is allocated to this case means that they are not free to deal with other cases in the system.

64. Employment judges have to conduct robust case management so that the issues in the case are clear to all concerned before the case reaches a final hearing. This requires the co-operation of all parties including litigants in person. Whilst recognising that the task may sometimes be difficult for such litigants, in the absence of legal advice, it is crucially important that the claims and issues that are within the jurisdiction of the employment tribunal are clarified and clearly set out well before the final hearing takes place. Litigants in person have responsibilities, as does any other party, to assist the tribunal in clarifying their claim. The claimant has demonstrated that he is not prepared to co-operate with the tribunal or the respondent's representative. As HHJ Tayler said in Smith good case management 'requires that the parties work with the employment tribunal and each other in a constructive manner'. That is not happening in this case due to the behaviour of the claimant.

65. The tribunal must also consider whether rather than striking out the claims a lesser sanction would be more appropriate. There is power in Rule 38 of the Employment Tribunal Rules 2013 to issue an Unless Order. This provides that an order may 'specify that if it is not complied with by the date specified the claim…shall be dismissed without further order'. Having considered this provision the tribunal is satisfied that it would have no effect in these proceedings. It is likely that it would lead to even more correspondence and unreasonable behaviour by the claimant, which would not have the result of progressing the litigation. That is not speculation but is taken from the evidence of how he has behaved to date in these proceedings.

66. Another sanction is to consider making or indicate that at a future date, a costs order might be made. The tribunal has power under Rules 74 – 84 to make costs orders in certain circumstances which include where it is satisfied that a party has 'acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted'. The tribunal still has a discretion and 'may' (under Rule 84) have regard to the paying party's ability to pay. There is no reason to believe that a threat of costs would assist the progression of these proceedings in anyway. Such is more likely than not to lead to further excessive correspondence.

Failure to comply with orders

67. As has been set out above orders were made by E J Lewis for the disclosure by the parties of all relevant documents by 4 November 2022 with a bundle to be finalised by 6 January 2023. Despite responding to the respondent's correspondence about disclosure the claimant failed to disclose his documents.

68. The claimant failed to attend the hearing on the 23 May 2023. The judge recorded that the claimant 'seemed aware of the hearing'. He was ordered to provide a full update on his health condition by the 23 June 2023 but failed to do so.

69. The claimant did not attend this hearing and has provided no reasons for his non attendance. He was aware of it and had the respondent's written skeleton as he responded to it in his letter of the 1 March 2023. In his response he referenced the Mental Health Act 1983 and the Equality Act 2010, stating he was not a claimant or an appellant but a 'whistleblower and a victim of a Hate Crime'. He then seems to have cut and paste from perhaps the internet some guidance of the law of whistleblowing and the extracts from the Judicial Conduct Investigations Office website.

Failure to actively pursue the claims

70. For all the matters already set out above the claimant has clearly demonstrated that he has no intention of progressing these claims by engaging constructively in the tribunal process. His only intention seems to be to write to the tribunal and the respondent with further allegations against the respondent, its representative, the tribunal and the judges. A claimant who is committed to progressing their case, complies with tribunal orders and attends hearings. When they are unable to do so they seek extensions of time, adjournments or make applications explaining to the tribunal the difficulties they are facing in complying. The tribunal is then in a position to consider any such non – compliance on its merits. It cannot do that with a claimant, who like the claimant in this case, is demonstrating that they are not prepared to engage with the tribunal process.

71. Nothing constructive has occurred in these proceedings since the interim

relief hearing in February 2023 over one year ago. There was an attempt at another preliminary hearing on the 23 May 2023 but it was not possible to progress matters without the attendance of the claimant.

72. Even though the claimant did not attend this hearing he has been aware of the application since it was first made in June 2023 and again in December 2023. He received the respondent's skeleton argument. He has had every opportunity to make representations as to why his claims should not be struck out but has failed to do so.

73. The tribunal is satisfied that it is proportionate and in accordance with the overriding object that all the claims brought by the claimant are struck out.

Employment Judge Laidler

Date: 21 March 2024

Sent to the parties on:

…16 April 2024….....

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For the Tribunal Office