



RM

EMPLOYMENT TRIBUNALS

Claimant: A

Respondents: (1) STM Group (UK) Ltd
(2) B
(3) C
(4) D
(5) E
(6) F

Heard at: East London Hearing Centre

On: 8 March 2018

Before: Employment Judge W A Allen (sitting alone)

Representation

Claimant: In person

1st & 2nd Respondents: Mr G Young (Head of Human Resources)

JUDGMENT ON A PRELIMINARY HEARING

1. The Tribunal does not have jurisdiction to hear the Claimant's unfair dismissal claim as she had less than 2 years service when she was dismissed.
2. The claims of unpaid wages (unlawful deduction of wages / breach of contract) are dismissed upon the Claimant having failed to particularise them and upon the Claimant indicating that any monies which were not initially paid, have now been paid.
3. The Tribunal does not have jurisdiction to hear any other claims referred to in the Claimant's claim form other than under the Equality Act 2010.
4. All Equality Act 2010 claims relating to matters taking place prior to the 16 May 2017 are out of time and therefore the tribunal lacks jurisdiction. It is not just and equitable to extend time.

5. **Those of the Claimant's Equality Act 2010 claims which are potentially within the Tribunal's jurisdiction are all struck out as having no reasonable prospects of success.**
6. **The claims against the 3rd to 6th Respondents are struck out as having no reasonable prospects of success.**
7. **For the avoidance of doubt, no claims will proceed.**
8. **Under Rule 50, the publicly available version of this judgment will be redacted to remove the names of all individuals. The identities of the parties shall not be disclosed to the public.**

REASONS

1. The Claimant presented her ET1 claim form to the Tribunal on 25 September 2017. She named her former employer STM Group (UK) Ltd (referred to below as the 1st Respondent) and also named individual Respondents, B, C, D, E and F. The last 4 Respondents are not employees of the 1st Respondent. The addresses given by the Claimant for C, D and F are the Respondent's address and a separate address was given for E.

2. The Claimant had obtained ACAS early conciliation certificates for all of the people listed. The addresses given for the 3rd to 6th Respondents may not adequately comply with the Regulations. The ACAS early conciliation certificate for the 1st Respondent states that the date of receipt of notification by ACAS was 15 August 2017 and the date of issue of the certificate was 15 September 2017. The relevant date prior to which a claim against the 1st Respondent would be out of time is therefore 16 May 2017.

3. At section 4.1 of the Claim Form, entitled 'Cases where the respondent was not your employer' the Claimant has stated that the following types of claim are brought: "Discrimination (gender, race); Harassment; Bullying; Slander; Fraud; Theft; Breach of Contract".

4. At section 8.1 of the Claim Form entitled 'Type and Details of Claim', the Claimant ticked the boxes for unfair dismissal, race and sex discrimination, notice pay, holiday pay and 'other claims' listing: "slander, harassment on the grounds of sexuality, sexual harassment, bully, mental torture, victimisation, abuse, race (gender), discrimination, fraud, theft, loss of my reputation, lack of my work, breach of contract".

5. Section 8.2 states: "Please set out the background and details of your claim in the space below. The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed." The claimant stated that she had been employed by the 1st Respondent since 16 September 2016 as a security officer which involved liaison with the office, colleagues and customers, maintenance of crowd safety and security, directing people in the right direction, helping them to find the right information and getting their tickets from the ticket vending machine. She said that upon starting the

job, she had explained to B, her line manager, that she had been victimised by E and the Claimant's step father in Bangladesh, G, but that she had not been 'protected' by the 1st Respondent. She stated that in February 2017 the 1st Respondent had leaked information about her to the metropolitan police and that as a result F and E had prevented her referees from completing references for her. She stated that malicious rumours that the Claimant was gay and a prostitute had been spread around her workplaces, having been started by E. She stated that in her first 3 months at the 1st Respondent (September, October, November 2016), she had been paid for fewer hours than she had worked. She said that D was bullying her for no reason. She said that C was too aggressive, bullying, abusive and sexually motivated towards her and that another colleague, H, had prevented a sexual assault of the Claimant. She stated that without warning the 1st Respondent had stopped giving her any work.

6. Section 9.2 of the claim form says "What compensation or remedy are you seeking". The claimant's stated that she sought the dismissal of C, job security for the future with a guaranteed 6 days per week, compensation for loss of work places, a ban of E from her current employment and any future employment, compensation for personal injury (injury of feelings), compensation for slander, under the Defamation Act 2003, compensation for harassment and sexual harassment.

7. That claim form is unclear. It does not adequately particularise any part of the claim. It makes reference to a number of types of legal proceeding outside the jurisdiction of the employment tribunal. It does not make it clear how the named Respondents are responsible for anything that comes within the jurisdiction of the employment tribunal.

8. On 5 October 2017, the tribunal wrote to the Claimant asking her to say what claim, within the jurisdiction of the employment tribunal, she was bringing against the 5th and 6th Respondents. She responded on 9 October 2017 stating "Respondent 5 & 6 is the main body to create all the intentional troubles for both of me and STM. If they were not there then nothing would have happened. They have got serious disturbed personality". She then listed the Aiding and Abetting Act 1861, Theft Act 1968, Fraud Act 2006, Equality Act, Defamation Act and Protection from Harassment Act. The tribunal replied on 11 October 2011 referring to the Equality Act 2010 as the only legislation cited that is within the jurisdiction of the employment tribunal and requesting that the Claimant state by 18 October 2017 how she can pursue claims against the 5th and 6th Respondents under that Act. On 18 October 2017, the Claimant asked for an additional 2 weeks to respond. On 5 November 2017, she responded. Much of the response is a repetition of the matters referred to in the claim form as set out above but in relation to F, she stated that on 9 November 2016 the police had attended her home following a request by her for the address for the then Metropolitan Chief Constable and that they had taken down the number of her Security Industry Authority (SIA) security badge. The response did not set out any way in which a claim within the jurisdiction of the employment tribunal might be brought against either the 5th or the 6th Respondents.

9. A notice of a case management Preliminary Hearing was sent out by the Tribunal dated 8 November 2017. The 1st Respondent wrote to the tribunal on 21 November 2017 indicating that it was unaware of the 3rd to 6th Respondents. It is likely that none of those Respondents are aware of this litigation or this hearing.

10. In its response form, dated 4 December 2017, the 1st Respondent made its case

clear stating that the Claimant had been employed on a zero hours contract from 16 September 2016 to 12 October 2017 and that she was dismissed on 12 October 2017 following a period of non contact / absence. The Respondent listed a series of meetings that the Claimant had been invited to and which she did not attend or did not participate in, culminating in a meeting on 11 October 2017, at which a decision was taken to dismiss her. The Respondent made it clear in its response that it did not know who the 3rd to 6th Respondents were and recorded that B denied having the conversation with the Claimant alleged by her.

11. By letter dated 3 January 2018, the tribunal re-listed the matter for this open Preliminary Hearing on 8 March 2018 to consider whether the claims should be struck out because they have no reasonable prospect of success and / or whether the Claimant should be asked to pay a deposit order in respect of any allegation or argument which had little reasonable prospect of success. I have interpreted the reference to 'strike out' as including a reference to identifying whether the tribunal has jurisdiction in relation to any of the matters relied upon by the Claimant and also I have looked at whether the claims should be struck out for any of the grounds set out in Rule 37.

12. Directions were given to enable the preliminary hearing to take place and the Claimant was asked to provide addresses for the Respondents who were not employed by the 1st Respondent.

13. On 25 January 2018 the Claimant wrote to the tribunal stating that E was tracking her smart phone and had contacted the claimant's union to prevent them from helping her. On 27 January 2018 the Claimant wrote to the tribunal stating that E had somehow obtained a copy of the previous email to the tribunal and was now in contact with her teacher.

14. The Claimant did not comply with the directions of the tribunal. In her emails in January 2018 she asked for extensions of time – but it was not clear what those extension were for.

15. On 29 January 2018 the 1st Respondent requested a strike out of the Claimant's claims on the additional grounds that she had failed to comply with directions.

16. On 14 February 2018 the Claimant wrote to the tribunal asking for an extension of 1 month to "do a lot of online research". On 17 February 2018 the Claimant wrote to the tribunal asking that the Respondent be ordered to produce the full names of the 3rd and 4th Respondents and their home addresses and again repeating her claim that the police were tracking her smart phone. The tribunal indicated by email dated 23 February 2018 that no further orders would be made until the hearing on 8 March 2018.

The Hearing

17. Mr Young made it clear that he was only representing the 1st and 2nd Respondents. He did also volunteer that the 3rd Respondent may be a former employee who had a stroke last year – but the spelling of the name given by the Claimant was quite different to that employee. Mr Young explained that the Respondent provided support to Arriva Rail, supplying extra customer service staff and support staff at ticket offices in Hackney Central, Shoreditch High Street and Surrey

Quays.

18. Initially the Claimant handed in two letters dated 8 March 2018 in which the first indicated that she was reluctant to participate in the hearing unless I ordered the attendance of E, F, C and D. However after discussion, she agreed to try to assist me to understand the case that she wished to bring. In the second letter the Claimant set out that E was trying to force her to work as a prostitute, had blocked her mother's immigration application; and was in contact with the Claimant's step father in Bangladesh.

19. The 1st Respondent had supplied witness statements: from Mr Young himself, setting out the frustrating series of meetings arranged by the 1st Respondent to try to understand the claimant's concerns and to deal with her failure to attend; and from B denying that he had any discussion with the Claimant when she started (or at any time) about E or G, denying that he was aware of any malicious rumours at work concerning the Claimant and again setting out the series of meetings at which the 1st Respondent tried to get to the bottom of the matters troubling the Claimant.

20. In the bundle of documents before me was a High Court Order of Master Davison dated 22 February 2018 dealing with seven claims which the Claimant had attempted to bring in that jurisdiction against E and a number of other police officers, the 1st and 3rd Respondents, the Claimant's landlord (a Housing Association) and 11 of her neighbours, her GP and his staff, staff of the Isle of Dogs Mental Health Team, and academic staff at the City of Westminster College. Some of the wide range of matters alleged overlaps with the matters referred to in this employment tribunal claim. The Order of 22 February 2018 records that those claims had either been struck out or were being stayed and would be struck out on 30 March 2018 if the Claimant did not articulate them adequately and that the court wished to be satisfied that the Claimant had the capacity to litigate.

21. I was also shown by the Claimant one of the Claim Forms from one of the High Court cases dealt with by Master Davison, HQ17X04261, claiming £731,000 against the 2nd to 6th Respondents for slander, harassment, sexual harassment, fraud, offences against the person, ABH s47, discrimination and data protection; and an amended version of the particulars of claim adding (or attempting to add) claims of Misfeasance in Public Office and Computer Fraud.

22. Most of the hearing was taken up with the Claimant explaining to me what had happened to her and why she was bringing these claims. I will summarise matters that she explained in some detail:

22.1 how in October 2016 on the very first day that she worked at Hackney Central station for the 1st Respondent, the British Transport Police had visited the station – which made the Claimant suspicious;

22.2 how she felt that F on 9 November 2016 had wrongly recorded her SIA number when attending her home, which she felt enabled the police to get in touch with the 1st Respondent;

22.3 how she felt that this attendance at her home in itself was an improper police response to an attempt by the Claimant to get the correspondence address for the former Metropolitan Police Commissioner in order that

she could complain about E;

- 22.4 how she felt that E and the Metropolitan Police generally were in contact with the 1st Respondent in order to make trouble for the Claimant including to stop her referees giving a good reference for her – their change in stance having occurred on or about January / February 2017;
- 22.5 how the 3rd Respondent had made unwanted advances towards her at Hackney Central in the period up to February / March 2017, when she was moved to Shoreditch High Street station;
- 22.6 that when she had complained to the 1st Respondent, she had an initial helpful reaction but then she felt that the 1st Respondent was influenced – even blackmailed – by E into failing to assist her;
- 22.7 how other relationships had soured over time, including with a local MP, which the Claimant felt must be due to the actions of E;
- 22.8 how she had felt that the 1st Respondent had inadequately protected her from E, who was in league with the Claimant’s step father in Bangladesh, who was trying to ruin the Claimant’s life;
- 22.9 how other employment had been affected by similar treatment and how other employment had soured over time – the only possible explanation being the negative influence of E in particular exercised through formulating untrue rumours that the Claimant was a prostitute;
- 22.10 how previous employment tribunal and other claims and complaints (e.g. to the IPCC) had failed to adequately explore the root cause of the Claimant’s problems;
- 22.11 that although initially not paid for the hours that she worked, she had eventually been properly paid by the 1st Respondent;
- 22.12 that due to the influence of E, the 1st Respondent began offering the Claimant less and less work.

23. In submissions, Mr Young stated that the 1st Respondent struggled to understand what it was that it had done wrong and that it had tried to follow its disciplinary and grievance procedures and had tried to understand and assist the Claimant. He stated that after hearing the Claimant give her account at the tribunal, he was still baffled as to what part the 1st Respondent had played in any allegation made by the Claimant. He pointed to some intemperate and difficult to comprehend correspondence from the Claimant to the Respondent in the bundle including an email on 20 July 2017 at 23:31 in which she stated “I can not lose my job for some psychopath, prostitution ruler, inhuman, cruel, immoral, uncivilised, uncultured, illiterate, nasty and personality disorder personality’s.”

24. Mr Young said that he could not identify any particular payment that the Claimant had not received. He said that she had not collaborated with him in order to prepare for this hearing (as directed by the tribunal) and that the information from the High Court indicated to him that the Claimant was a very vexatious serial litigant. He said that the

Claimant has had an opportunity to explain her claim in great detail today and yet she has not set out any claim against any of the Respondents which is capable of falling within the jurisdiction of the employment tribunal and that the claims should be struck out as they have no reasonable prospect of success and are outside the tribunal's jurisdiction.

25. The Claimant in her submissions explained again to me the network of control and negativity that had followed her now through a number of different employers with E at the centre of the web. She said that the 1st Respondent had failed to protect her and that there must be some claim that can be brought in that regard. She explained that she could not go to workplaces where she perceived herself to be in danger and that the only answer to the problems that she had been suffering was that E was behind it.

26. Both parties agreed that the publicly available version of this judgment and reasons should be redacted to remove all names given that there were allegations of criminal offences and sexual misconduct which will not be adjudicated upon. I take into account the importance of open justice but I consider that such redaction is in the interests of justice and will therefore make the appropriate order under Rule 50 of the 2013 ET Rules.

The Law

27. The following section of the Equality Act 2010 is relevant

123 Time limits

(1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 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.

...

(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; (b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something— (a) when P does an act inconsistent with doing it, or (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

28. It is important for a claimant to set out her claim clearly in order to facilitate a fair hearing. It is for the claimant to set out the case in a relevant claim form. It is common, particularly when individuals are not represented, for there to be deficiencies in the initial documentation. Those deficiencies can sometimes be addressed by what are generally referred to as further and better particulars. It is important to recognise that, rather than being an inevitable part of the claim, the use of further and better particulars is a remedial response to an initial failure to particularise a claim.

29. It is frequently the case that further and better particulars, when provided, identify new facts. The addition of facts will normally require an amendment (see *Selkent Bus Company Limited v Moore* 1996 ICR 836). However, a tribunal should avoid excessive formality. Where neither party makes specific objection to a new fact, it is included as part of the claim without the need for a formal amendment. However, this reflects a pragmatic approach; it is not a right. Care should be taken to prevent the remedial process of further and better particulars from circumventing the exercise of a tribunal's

discretion to grant amendments.

30. In short, the process of providing further and better particulars may be a pragmatic way of rectifying a deficiency in a claim form.

31. The issues are a distillation of the pleaded case. It is a way of identifying what are the causes of action and what are the specific factual allegations, said to be some form of detrimental treatment, that are to be determined in the action. Care should be taken to ensure the identification of issues does not circumvent the exercise of a tribunal's discretion to grant amendments.

32. It should be noted that there are limits as to how far a tribunal can read into a claim form. The citing of a fact and a reference to discrimination may not be sufficient to plead the claim. The Court of Appeal's decision in *Housing Corporation v Bryant* 1999 ICR 123 emphasises the importance of clarity of pleading. The claim form did not specifically refer to the causal link of retaliatory victimisation as a reason for the dismissal. The mere fact that elements existed within the claim form did not mean the claim had been brought; there needed to be the statement of causal connection. Buxton LJ put it as follows:

...it is not enough to say that the document reveals some grounds for a claim of victimisation, or indicates that there is a question to be asked as to the linkage between the alleged sex discrimination and the dismissal. That linkage must be demonstrated, at least in some way, in the document itself.

...the words making the necessary causative link between the making of the complaint of discrimination and the dismissal were absent from the application.... the absence from the document of any such linkage must be fatal: because the issue of construction is whether the document makes a claim in respect of victimisation.

33. In *Price v Surrey County Council and another*, UK EAT 450/2010, Lord Justice Carnworth confirmed that the tribunal must exercise control over the form of the issues, even if agreed by the parties. In that case, the issues were described as a confused amalgam of factual allegation and major issues. The tribunal should not simply accept the issues provided by the parties, even if the parties agree them between themselves. It is part of the tribunal's role to exercise control over the way in which the issues are presented. The point was re-emphasised by Langstaff P in the case of *Chandhok v Tirkey* [2015] ICR 527.

17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or

denying amendments; it allows issues to be based on shifting sands; It ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.

18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that anyone case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.

34. Clarity is important because it is necessary to understand the specific allegations in order to have a fair hearing. For allegations of discrimination, it is necessary for the tribunal when deciding a case to determine a number of specific points. For example, in the case of direct discrimination, victimisation, and harassment, the first question to be asked is whether the particular factual allegation is made out? This point was addressed at paragraph 9 in *Anya v University of Oxford and another* [2001] ICR 847, CA (per Sedley LJ)

9 This reasoning has been valuably amplified by Mummery J In *Qureshi v Victoria University of Manchester* (EAT 21 June 1996), a decision which Holland J in the present case in the Employment Appeal Tribunal understandably described as 'mystifyingly unreported'. It is therefore worth quoting at length from Mummery J's judgment.

'On the basis of (a) those authorities, (b) the experience of the members of this tribunal and (c) the experience of the parties, the advisers and the tribunal In this case, we tentatively add the following observations and thoughts to the guidance in Neill LJ's judgment in *King v The Great Britain-China Centre* [1991] IRLR 513-

The complainant

The industrial tribunal only has jurisdiction to consider and rule upon the act or acts of which complaint is made to it. If the applicant fails to prove that the act of which complaint is made occurred, that is the end of the case. The Industrial tribunal has no jurisdiction to consider and rule upon other acts of racial discrimination not included in the complaints in the originating application. See *Chapman v Simon* [1994] IRLR 273 at paragraph 33(2) (Balcombe LJ) and paragraph 42 (Peter Gibson LJ)....

The issues

As the industrial tribunal have to resolve disputes of fact about what happened and why It happened, it is always important to identify clearly and arrange in proper order the main Issues for decision eg:

(a) Did the act complained of actually occur? In some cases there will be a conflict of direct oral evidence. The tribunal will have to decide who to believe. If it does not believe the applicant and his witnesses, the applicant has failed to discharge the burden of proving the act complained of and the case will fail at that point...

35. It is clear that if the factual allegation is not made out, then the claim will fail at that point.

36. It is important the claimant gives, as far as is practicable, the detail of the specific allegations. For example, the claimant may complain that particular words were used. The claimant should, if practicable, give details of when it occurred, who was present, and importantly whether there were any witnesses. Those details should be made plain. Equally, if the claimant cannot give that detail, the claimant should confirm that,

and be bound by it. Difficulty arises when the claimant seeks to set out a claim in the most general terms, for example by simply suggesting someone was aggressive or acted inappropriately, and then seeks to add the detail, if at all, by evidence at some later time.

37. If the claimant does not give the available detail, the respondent is unable to properly prepare. The respondent may be denied the chance to identify and call the relevant witnesses. The respondent may lose an opportunity to defeat the claim at the first stage by showing the circumstances alleged never occurred. Denying the respondent that opportunity is fundamentally wrong and denies the respondent its right to a fair hearing.

38. It is also important to identify the specific allegation because the tribunal must next ask whether there is evidence which would turn the burden. If the respondent is not given adequate particulars of the matter said to amount to discrimination, the respondent may not be able to produce relevant evidence concerning the circumstances which would be relevant to the question of whether the burden turns.

39. It also follows that if the allegation is not adequately identified, the respondent will fundamentally be prevented from producing the relevant cogent evidence which may demonstrate a reason which is free from discrimination. Denying the respondent that opportunity is to deny the respondent a fair hearing. It follows that the claimant's withholding of such information about the allegations of discrimination is unfair and may deny a fair hearing.

40. When a claimant makes an allegation of discrimination, it is appropriate for a tribunal to ask whether the allegation is sufficiently clear such that it would be reasonable to say that the respondent is on sufficient notice such that the respondent can produce relevant cogent evidence disputing the circumstances, explaining the circumstances, and setting out an explanation. If the answer is no, it may not be possible to hold a fair hearing.

41. In the case of *Barts Health Trust v Kensington-Oloye* EAT 137/14 the tribunal's decision was overturned because it decided an allegation that had not been adequately set out in the issues. The respondent had not had a fair opportunity to meet the claim, such that it could not be expected to produce the relevant evidence in support of its explanation. At paragraph 33 HHJ Richardson deals with some general propositions:

33. It is convenient to begin by saying a word about the function of a list of issues. This is an important feature of current employment practice and procedure especially in more complex cases such as this. In many cases before Employment Tribunals claim forms are prepared by litigants in person or else by lay or inexperienced representatives. It is common to see a narrative accompanied by a list of quite general allegations. Sometimes the narrative and the complaints can be very long and complicated indeed. Employment law, however, especially equality law and whistleblowing law, can be prescriptive and detailed; rightly so, for the allegations are serious ones for those who are implicated in them. Moreover unless allegations are carefully identified it is impossible to prepare properly for a hearing, identifying and calling the correct witnesses. It is therefore often essential to drill down from a lengthy narrative and a general set of complaints to identify specific legal complaints defined properly for an Employment Tribunal to adjudicate. It is therefore good general Employment Tribunal practice in a case of any complexity to hold a Preliminary Hearing to ascertain and define the issues, generally by agreement.

42. At paragraph 43 HHJ Richardson deals with the specific failure in the case:

43. I am not without sympathy for the position of the Employment Tribunal. The point concerning Miss McCrindle had been addressed only in the briefest of terms in a hearing almost entirely concerned with other matters. But if the Employment Tribunal was minded to make a finding on this issue, it was required to give a fair opportunity to the parties first. This would, to my mind, have involved consideration of the definition of a new issue following an application for permission to amend in accordance with the procedure suggested in Traynor.

43. I have gone into some detail about the law in order to demonstrate why it is necessary to ensure that there are clear claims. Requiring clarification is not an exercise in pedantry: it is a necessary process to ensure equality of arms, and fairness of treatment. If the respondent cannot identify the circumstances sufficiently so that evidence can be brought to dispute the circumstance, explain why the burden should not shift, or give an explanation, then there can be no fair hearing. If the burden shifts, the tribunal is entitled to ask if the respondent has cogent evidence and if so, has it been produced? If the evidence is not produced, then the respondent will lose. It is fundamentally unfair to allow a case to proceed in a manner which prevents the respondent being able to identify that relevant allegation, explanation, and evidence. Moreover, the identification of such evidence may be time consuming and expensive. The respondent must be given the detail that allows it to focus its resources on the relevant allegation. Failure to identify the allegations sufficiently leads directly to an unfair hearing.

44. An employment judge or tribunal has power, at any stage of the proceedings, either on its own initiative or on the application of a party, to strike out all or part of a claim or response. The power to strike out a claim is set out in rule 37 Employment Tribunal Rules of Procedure 2013.

(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...

45. As a general principle, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute (see, e.g., *North Glamorgan NHS Trust v Ezsias* [2007] EWCA Civ 330).

46. As a general principle, discrimination cases should not be struck out except in the very clearest circumstances. In *Anyanwu v South Bank Students' Union* [2001] IRLR 305, HL, Lord Steyn stated (at para 24):

For my part such vagaries in discrimination jurisprudence underline the Importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive. and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.

47. This is not a fetter on the tribunal's discretion, but the power to strike out in discrimination cases should be exercised with great caution.

48. A tribunal should not take the view that *Anyanwu* creates some form of public policy that prevents claims being struck out. The test is whether there is no reasonable prospect of success, as is made clear by Lord Hope at paragraph 39 of *Anyanwu* itself.

Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to [be] taken up by having to hear evidence in cases that are bound to fail.

49. The Court of Appeal in *Ahir v British Airways Ltd* [2017] EWCA Civ 1392 made it clear there is no general proposition that where there is a potential for disputed facts a claim must proceed. It is necessary to look carefully at the facts, and to consider the nature of the dispute.

50. Underhill LJ put it as follows:

16 ... Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment, and I am not sure that that exercise is assisted by attempting to gloss the well understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be 'little reasonable prospect of success.'

51. At paragraph 19 he went on to say:

... in a case of this kind, where there is an ostensibly innocent sequence of events leading to the act complained of, there must be some burden on a claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was, or at least may have been, the real story, albeit (as I emphasise) that they are not yet in a position to prove it.

52. And at paragraph 24:

... As I already said, in a case of this kind, where there is on the face of it a straightforward and well documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so...

53. It can be seen from *Ahir* that it is not enough for a claimant to assert there is a dispute of facts, and that, therefore, the tribunal is compelled to find there is a prospect of success. First, the claim must be clear. Second, the facts alleged and relied on should be clear. Third, resolution of those facts should be capable of demonstrating discrimination, whether directly or by way of inference. Fourth, the respondent's explanation should be considered. Fifth, if the explanation is disputed, there should be some plausible explanation for this from the claimant.

54. There is nothing in *Ahir* which conflicts with the general proposition that the claimant's case should be taken at its highest on the pleadings.¹

55. *Ahir* is authority for the proposition that the tribunal should treat with caution references to "exceptional" circumstances (see paragraphs 13, 14 and 16 of *Ahir*). A tribunal should be cautious not to be distracted by the application of adjectives that are a gloss on the plain wording of the rules.

56. What is clear from all the cases is there are two stages. The first stage, may be seen as the threshold stage, and that involves asking whether any of the grounds for striking out are met. The second stage is the exercise of discretion. There must, at least, be consideration of whether there can still be a fair trial, and second, a consideration of whether strike out is proportionate.

57. Where a tribunal considers that a claim has little reasonable prospect of success, it can make a deposit order under rule 37 Employment Tribunal Rules of Procedure 2013 which states:

39 Deposit orders

(1) Where at a preliminary hearing (under rule 53) 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.

Conclusions

58. My first task was to identify what it was that the Claimant wished to present as claims before this tribunal and whether such allegations fell within the statutory jurisdiction of the employment tribunal. This was not an easy task. From the Claim Form, I could identify that the claimant referred to unfair dismissal, discrimination and harassment under the Equality Act 2010 and unpaid wages. These are all potentially matters in which an employment tribunal has jurisdiction. All other matters including slander, fraud and theft are not within the employment tribunal's jurisdiction.

59. Under section 108 of the Employment Rights Act 1996, a claim for unfair dismissal can only be brought if an employee had 2 years service at the point of dismissal. The Claimant did not have that length of service and therefore the employment tribunal has no jurisdiction to bring an unfair dismissal claim.

60. The Claimant was unable to particularise her claims of unpaid wages (unlawful deduction of wages / breach of contract) and therefore they are dismissed upon the Claimant having failed to particularise them (which means that they do not have reasonable prospects of success and that a fair trial would not be possible) and upon the Claimant indicating that any monies which were not initially paid, have now been paid.

61. All Equality Act 2010 claims relating to matters taking place prior to the 16 May 2017 are out of time and therefore the tribunal lacks jurisdiction. The Claimant did not present me with any reason which would make it just and equitable to extend time.

62. In any event, all claims brought under the Equality Act 2010 for discrimination,

¹ see e.g. *Ukegheson v London Borough of Haringey* [2015] ICR 1285

harassment and / or victimisation which are potentially within the Tribunal's jurisdiction are all struck out as having no reasonable prospects of success and because a fair trial would not be possible. For a claim to be viable it must be capable of being articulated. This need not be done in a lawyerly manner – any claim should be able to be expressed in fairly simple terms. The Claimant did not articulate any claim that appeared to have any chance of success. Her focus was on a network of activities centred on E which was fanciful in the extreme and even if accepted at face value did not reveal anything that could actually be the subject of a determination. There could not be a fair trial and there was nothing identifiable to have a trial about.

63. The claims against the 3rd to 6th Respondents are struck out as having no reasonable prospects of success because the Claimant failed utterly to show how those Respondents were sufficiently connected to her employment to enable a claim to be brought within the jurisdiction of the employment tribunal. No fair hearing of a case against them is possible.

Employment Judge Allen

23 April 2018