EMPLOYMENT TRIBUNALS

Claimant: Mr A Haydar

Respondent: Pennine Acute NHS Trust

HELD AT: Manchester **ON:** 31 March 2017

BEFORE: Employment Judge Sherratt
Mr C Clissold
Mr D Roxburgh

REPRESENTATION:

Claimant: In person
Respondent: Ms R Wedderspoon, Counsel

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR A PREPARATION TIME ORDER

JUDGMENT having been sent to the parties on 13 April 2017 and written reasons having been requested by the claimant on 14 April 2017 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The first issue for consideration is whether or not the application was made in time and then if it was not is it appropriate for the Tribunal to allow the application to proceed because under rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules whether or not the time has expired.

2. In this case the final judgment was the remedy judgment sent to the parties on 6 August 2014. Rule 77 provides that a party may apply for a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

3. The Tribunal has heard submissions from both sides on the time point. Dr Haydar in response to the submissions made on behalf of the respondent said he believed that he had made an application for a preparation time order in or around

August of 2014 but that he no longer had the evidence of it because his then computer died and that which was in its memory went with it.

4. I have the Tribunal file before me. I have looked through it in open Tribunal in the presence of the parties and I have found an e-mail sent by the claimant on 17 September 2014 at 12:07. It was sent to the Manchester Employment Tribunal and copied to the respondent's solicitor. Attached to that email was a letter from the claimant dated 15 September 2014. The letter was an application that the Tribunal should not to proceed to hear the respondent's application to stay payment of the award and for costs for the reasons which were then set out, but at paragraph 17 it says this: "I would also like to ask the Tribunal to consider this document as an application for a preparation time order on the basis of …" and I do not need to repeat the basis of it. The important thing is that there is a request for a preparation time order received on 17 September within a fortnight or so of what would appear to be the time limit for a normal application for preparation time following the judgment on remedy being sent to the parties on 6 August 2014.

5. The discovery today of that letter following Dr Haydar's recollection of it causes the Tribunal to take the view that it would be wholly wrong to not allow the application for preparation time to proceed today on the basis of the delay being very small in the overall scheme of this case and bearing in mind that at the time of that application the Tribunal had not yet considered the respondent's costs application, so all things were then still current and in the minds of the parties. For these reasons we consider it appropriate to extend the time limit under rule 5 to allow the claimant's application for a preparation time order to be made.

6. Rule 76 provides that a Tribunal may make a costs order or a preparation time order and shall consider whether to do so where it considers that (a) a party or that party's representative 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 or (b) any claim or response had no reasonable prospect of success.

7. The claimant's application has been set out in writing. The claimant has also made oral submissions. The respondent has made submissions in response. We have considered all that we have seen and heard before reaching our conclusions.

8. The claimant sets his case out under various different headings the first one being unreasonable conduct of the Trust. In his written application he sets out at paragraphs 4 to 29 inclusive various actions of the Trust. We take the view that these actions are a matter of background to the application for a preparation time order because they do not relate to the way in which the tribunal proceedings have been conducted.

9. The next heading used by the claimant is in relation to the case management stage where the claimant suggests that the orders were perhaps made unnecessarily, and that the time of the Tribunal and the parties was taken up when it should not have been.

10. The first case management order was a hearing before Employment Judge Russell on 10 June 2011. That is likely to have been the first time the matter came before the Tribunal. It would be normal for a case of this nature involving allegations of discrimination to have a preliminary case management hearing. At that hearing

the claimant was seeking permission to amend his claim to add allegations of sex discrimination and under the Part-time Workers Regulations 2000. The respondent did not object to the amendments proposed but sought further particulars. In our judgment this was a proper and necessary preliminary hearing

11. The parties then came before Employment Judge Wardle on 5 September 2011when the solicitor for the respondent, Mr Hatfield, explained to the Tribunal that the particulars provided by the claimant had been extremely detailed. They had had one extension of time for the presentation of their response and they sought another one. Having regard to the length of the claimant's document, the timescale, and the number of individuals involved, Employment Judge Wardle granted the application for further time for a response. Again, that was a finding of Employment Judge Wardle which does not appear to us to have been unreasonable in the circumstances described. However, in paragraph 2 of that case management order Mr Hatfield suggested many of the matters raised by the claimant were out of time and it was a case where a Pre-Hearing Review might be viewed as appropriate to establish the extent of the Tribunal's jurisdiction with a view to saving time and expense for the parties. Employment Judge Wardle has recorded that the claimant was vehemently opposed to this suggestion and directed the respondent to make any application in writing. He made further case management orders. We do not find anything unreasonable in the way in which the respondent acted with reference to the preliminary hearing held on 5 September 2011.

12. The next preliminary hearing was on 15 May 2012 before Employment Judge Holmes. There would be no stay upon the Tribunal proceedings pending the determination of the claimant's defamation claim. Permission was granted to the claimant to add an allegation of associative disability discrimination arising out of matters concerning his late mother who was at the relevant time unwell. Case management orders were made. The Tribunal today does not find anything unreasonable was done on behalf of the respondent in relation to the 15 May hearing before Employment Judge Holmes.

13. Employment Judge Lancaster met the parties on 22 October 2012 for a case management discussion. It was at that hearing that case management orders were made leading to the listing of the claimant's claims for hearing over a period of six weeks starting on 6 January 2014. On the basis of the information before the Employment Judge we take the view that it was a proper decision to list for six weeks and indeed when the case came before this Tribunal the case took the whole of the time allocated to it.

14. Regional Employment Judge Doyle, as he then was, met the parties on 1 March 2013 to consider an application made by the claimant. He refused the claimant's application to amend his claim finding that it was misconceived. The respondent did not act unreasonably in opposing the application given the outcome. There was at the end of the hearing a note that the claimant had raised again the question of whether alternative dispute resolution might be appropriate. The respondent's position was that it was not a viable option but Mr Hatfield undertook to take his client's instructions. We know that there was no successful ADR because we heard the case over six weeks but we do not find that the refusal of the respondent to resolve this matter through ADR represents unreasonable conduct on the part of the respondent.

15. The next preliminary hearing was of the respondent's application under rule 37 to strike out the claimant's claims on the grounds the manner in which he had conducted the proceedings had been scandalous, unreasonable or vexatious together with the claimant's application to strike out the response for the same reason. The applications came before Employment Judge Ross on 16 and 17 December 2013.

16. Although Employment Judge Ross took the view that the claimant had behaved unreasonably she did not find it proportionate to strike out his claim because she found that a fair trial was still possible. She dismissed the claimant's application to strike out the response.

17. Neither application succeeded but in the light of the comments made by Judge Ross throughout her judgment as to the conduct of the claimant, we do not find that the respondent's application was made unreasonably and we do not find it merits any award to the claimant in respect of preparation time.

18. The claimant's claims came before this Tribunal starting on 6 January 2014 resulting in a judgment on liability sent to the parties on 14 April 2014 in respect of which we found the claimant was unfairly dismissed but with a reduction of 50% to his basic and compensatory awards. Although there were nine separate claims the claimant succeeded only in one.

19. The way in which the claimant put his case was that he alleged that there was a conspiracy being undertaken within the respondent to get him out. Caroline Beirne was the principal conspirator and he referred to her today as being very much involved in the way in which the decision to dismiss him was taken. Looking at the way in which the claims were put by the claimant, given that the witnesses called by the respondent in the main dealt with more than one allegation, it seems to us that the respondents could not reasonably have defended the claims brought by the claimant without calling them. It would not have been reasonable to have split off the unfair dismissal given the way in which the case was put.

20. The claimant asks us to conclude that various people told lies when they were giving their evidence. He has in his document submitted that many people told lies during the course of our hearing. The Tribunal did not make such findings of fact when it sat to consider the whole of the evidence. The Tribunal is not in a position today to make such findings retrospectively in respect of matters that were heard before it some three and a quarter years ago. We are unable today to find that the respondent's witnesses lied their way through the Tribunal hearing in support of a conspiracy against the claimant.

21. The claimant refers to the remedy hearing on the basis that the respondent offered him £30,000 some three days before the hearing at which the Tribunal ordered the respondent to pay him £38,000. However, nowhere does the claimant produce to us a letter which indicates he was willing to settle for a figure anywhere near £38,000. We are aware that the claimant was hoping to get substantially more than the sum we awarded. In our judgment it was not unreasonable in such circumstances for the respondent to proceed to the remedy hearing.

22. The claimant referred us to rule 76(2) which provides that a Tribunal may also make a preparation time order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the

application of a party. This relates to two matters, one in relation to the respondent's failure to pay the sum due under the Tribunal's award until the claimant took steps to enforce it and the other in relation to a delay in the provision by the respondent of its witness statements.

23. As to the failure to pay the award the respondent after the Tribunal's remedy judgment was made applied for a stay in payment of the award, it being concerned, we understand, that if monies were paid to the claimant under the judgment those monies might not be available to meet an order for costs if the respondent made such an application and it was successful. In the particular circumstances of this case, given the way in which the claimant had indicated that his funds had sadly been depleted because of the unfortunate circumstances in which he had found himself, we do not take the view that the respondent in failing to pay the award acted in a way that was unreasonable. We do not find it appropriate for there to be any award of preparation time in respect of the respondent's failure to pay the award on time.

24. As to the late witness statements, Employment Judge Ross dealt with that at paragraph 39 in her judgment in relation to the strike-out applications. She noted that it was not disputed that there was a delay in exchanging witness statements. The Regional Employment Judge ordered an exchange on 6 September 2013. Mr Hatfield gave evidence about the way in which they were preparing the statements. It was found that there were nineteen witness statements, sixteen of which were served on 8 November, two on 15 November and the final one on 18 November. Employment Judge Ross found that the claimant had had the statements in advance of the hearing due to commence on 6 January 2014 and was able to prepare cross-examination in good time. She found there was no prejudice to him and that it would be disproportionate to strike out the response on this basis.

25. We find that whenever the respondents provided their statements to the claimant he would have had to spend the same amount of time in perusing them and preparing his cross-examination. The lateness did not add to this. We do not in the circumstances find it appropriate to make a preparation time order in respect of the late delivery of witness statements.

26. In conclusion for the reasons set out above we do not make a preparation time order in favour of the claimant.

Employment Judge Sherratt

15 May 2017

JUDGMENT SENT TO THE PARTIES ON

19 May 2017

FOR THE TRIBUNAL OFFICE