Appeal No. UKEAT/0585/12/LA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 2 April 2014

Before

HIS HONOUR JUDGE PETER CLARK

(SITTING ALONE)

MR B SANAK — APPELLANT

COMMUNITY LIVES CONSORTIUM — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	No appearance or representation by or on behalf of the Appellant
For the Respondent	MR JASON FRENCH-WILLIAMS (Solicitor) Eversheds LLP 1 Callaghan Square Cardiff CF10 5BT

SUMMARY

PRACTICE AND PROCEDURE – Striking-out/dismissal

Permissible strike-out. **Ezsias** considered. Appellant failed to co-operate in preparing the appeal for hearing and did not attend. Appeal dismissed on its merits.

HIS HONOUR JUDGE PETER CLARK

1. This is the full hearing of an appeal by Mr Sanak, the Claimant before an Employment Tribunal sitting at Port Talbot, Employment Judge John Thomas sitting alone, against the Tribunal's PHR judgment, promulgated with Reasons on 19 January 2012, striking out his various claims brought against his former employer, the Respondent, Community Lives Consortium.

Background

2. The Claimant was employed by the Respondent as a Support Worker from 5 October 2005 until his summary dismissal for alleged gross misconduct on 21 April 2011.

3. His dismissal followed a disciplinary hearing held on 19 April 2011. Those proceedings were recorded and transcribed. At that hearing the Claimant admitted that he had administered liquid to two service users without recording that or the deterioration in the health of those patients. Whilst agreeing that he was not authorised to administer the liquids, he asserted that it was done for the benefit of the patients. That was rejected by the Respondent. He was dismissed for serious breaches of the Respondent's Code of Conduct and Code of Practice for social care workers. That was said to be gross misconduct justifying summary dismissal. An internal appeal was rejected.

4. The Claimant lodged a detailed form ET1 to the Tribunal on 13 July 2011, complaining of both ordinary unfair dismissal and section 103A **Employment Rights Act** automatically unfair dismissal and racial discrimination.

5. By their form ET3, in addition to setting out their case on the merits, the Respondent made application to strike out the claims on the basis that they were misconceived and on limitation grounds.

6. Those orders, as asked, were made by Judge Thomas. A review application was dismissed by him on 12 March 2012.

The appeal

7. The appeal was initially rejected on the paper sift by HHJ Serota QC for reasons given in a letter dated 11 May 2012. At a rule 3(10) hearing before Cox J, the Claimant was represented by Mr Gavin Mansfield, now QC, under the ELAAS Scheme. He prepared supplementary grounds of appeal, and on the basis of those arguments the appeal was allowed to proceed to a preliminary hearing. At that hearing on 8 May 2013 Langstaff P allowed the appeal to proceed in part to this full hearing for the reasons given in a judgment delivered on that day. I have read the transcript. The President rejected complaints of procedural irregularity or bias (see paragraphs 10-13). The point which he considered required argument at a full hearing was the contention that, contrary to the Judge's expressed view, there were factual issues which ought to be determined at a substantive ET hearing.

8. Today the Claimant does not appear and is not represented. He has not co-operated in preparations for this hearing, such that by letter dated 25 February 2014 the Respondent's solicitors wrote to the EAT seeking an unless order, requiring the Claimant to agree the core bundle lodged by the Respondent for this hearing or, if not, to say why it was not agreed.

9. I considered and rejected that application on paper, which I regarded as unnecessarily extreme. My solution was simply to direct, by a letter dated 26 March, that the Respondent's bundle would be used at the hearing. A supplementary bundle containing the Respondent's documents at the PHR below has also been lodged.

The power to strike out

10. The Judge was referred to the leading Court of Appeal judgment in **Ezsias v North Glamorgan NHS Trust**, reported at [2007] ICR 1126. He had in mind the guidance given by Maurice Kay LJ at paragraph 29, drawing on the observations of Lords Steyn and Hope of Craighead in **Anyanwu v South Bank Student Union** [2001] ICR 391, referred to at paragraph 31.

11. Those general remarks do not preclude a strike-out in plain and obvious cases, as Mr French-Williams submits. Each case is fact-sensitive. Here, the essential facts leading to dismissal were not in dispute. The Claimant's explanation for his actions appeared to the Judge to be fanciful. He thought this was a plain case. I do not disagree. The Claimant has demonstrated by his writings in this case delusional tendencies. Whilst the importance of our discrimination laws, including whistleblowing protection, cannot be understated, it would be wrong, based on long experience, to assume that every complaint of discrimination is *prima facie* valid. They are not. Further, the observations referred to in **Anyanwu** do not extend to the other party to the litigation, the Respondent. Here the Respondent is a charity which will be put to considerable expense and inconvenience in successfully defending these claims. It is highly unlikely that it will recover any of its costs.

12. I note the Judge's reference (paragraph 37 of his Reasons) to the need to be fair to both parties. Fairness, on the facts of this case, required a strike-out for the reasons given by the Employment Judge. Accordingly this appeal fails and is dismissed.