



EMPLOYMENT TRIBUNALS

Claimant: Mr I M Holliland

Respondent: Chief Constable of Derbyshire Constabulary

Heard at: Leicester **On:** Monday 1 October 2018

Before: Employment Judge Moore (sitting alone)

Representatives

Claimant: Mrs H Barney of Counsel

Respondent: Mr J Davies of Counsel

JUDGMENT

1. The Claimant's application for a Restricted Reporting Order that his identity should not be disclosed is refused.

REASONS

2. This was an application made on 9 July 2018 for an order under Rule 50(3)(b) that the identity of the Claimant should not be disclosed or anonymised. In support of the application the Tribunal had sight of 2 witness statements, one from the Claimant and one from Mr Edward Thomas McBryde-Wilding of the Respondent. Neither were present to give oral evidence. In addition I heard submissions from Counsel for the Claimant and Counsel for the Respondent and representations from a Mr Crowson of the Derby Telegraph. I was also referred to a number of authorities namely **A v B** [2010] IRLR 844 and **A v British Broadcasting Corporation** [2014] 2 All ER 1037 relied upon by Counsel for the Claimant and authorities from the Respondent's Counsel referred to **British Broadcasting Corporation v Roden** [2015] IRLR 627 and **Fallows and Others v News Group Newspapers Limited** [2016] IRLR 827.
3. The application by the Claimant relied on both elements set out in Rule 50 that an order should be made as it was necessary in the interests of justice and to protect the Convention rights of the Claimant in these proceedings, namely Article 8, the right to a private and family life. The application was advanced on the following grounds:-
 1. That the Claimant in his capacity of a Digital Forensic Specialist had been involved in assisting the prosecution of a number of criminals involved in organised crime and terrorism and there was a risk of retribution to him

and his family if his name was not anonymised and effectively could be found on the internet. His identity would be central in employment tribunal proceedings compared to him being on the peripheral of criminal proceedings he has been involved in. Judgments in criminal cases were not published online whereas Employment Tribunal Judgments are.

- II. That the Claimant had sought and taken active steps previously throughout his employment to restrict and minimise his digital footprint for the above reasons.
- III. That defence lawyers in future proceedings where the Claimant was a witness could use an online judgment to attack the Claimant's credibility.
- IV. That the Employment Tribunal judgments are published online.
- V. That the publication of the Claimant's identity in the context of a judgment could affect his security clearance.
- VI. In relation to proportionality Counsel for the Claimant submitted that the order being sought to anonymise the Claimant's identity was proportional as the critical elements of the Judgments and details of the justice arrived at would all still be part of the public record.

4. The Respondent opposed the application for the following reasons.

- I. In relation to the first ground in respect of the risk of the Claimant's identity being made public, there was no credible evidence the Claimant was at risk of an attack and the Claimant's identity had already been referred to and the Claimant had been present in open court criminal proceedings. Therefore any potential criminals in cases where the Claimant had been involved in giving evidence for (in his capacity as Digital Forensic Specialist) had been present in person. No anonymity orders had ever been sought in those proceedings or been granted. Mr McBryde's witness statement described that special measures were available if anonymity was sought by police or other officers or police staff but these had never been sought for or applied for by the Claimant and it was not normal practice for a police officer or police staff to give anonymous evidence unless there were exceptional circumstances or they were engaged in undercover activities. It was normal practice for the police officer's domestic address not to be identified when giving evidence.
- II. In respect of the submission concerning defence lawyers and also the Claimant's submissions that his identity may affect his security clearance, Counsel for the submitted that this equally could be taken as supporting reasons to not grant such an application. If there were issues found with the Claimant's credibility or conduct in the Judgment it should be a matter for public record.
- III. In respect of security clearance there was no evidence available to the Tribunal that this would be affected other than the fact that the Claimant had brought Employment Tribunal proceedings against a previous employer.

5. Representations were made by Mr Crowson from the Derby Telegraph. These were limited to his employer would respect any Order, the press and media stand for open justice, the Respondent being a large local employer and open justice was paramount.

Conclusions

6. Rule 50 (2) provides that in considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression. When considering whether to make anonymity orders three Convention rights are engaged and must be reconciled; Article 6, Article 8 and Article 10 (**BBC v Roden**).
7. The Claimant's identity had already been named in open criminal proceedings. There was no evidence that there was any risk to the Claimant and furthermore his identity was already in the public domain. Clear evidence is required to consider departing from the principles of open justice and in order to balance the Convention rights of the Claimant against the principles of open justice and none had been advanced in this case of a risk to the Claimant.
8. Applying the Claimant's logic in this case, it would follow that potentially any police officer or staff ever involved in criminal proceedings who brought an employment tribunal claim should have their identity kept a secret.
9. The fact that the Claimant would be the focus in the Tribunal proceedings whereas he was on the peripheral of a criminal proceedings did not make any difference to this point neither did the publication of Tribunal Judgments online. This was because the Claimant had been in open court proceedings in person, identified in court papers in the criminal trials. This in my view provided similar exposure to the Claimant's identity as an online Judgment.
10. In respect of the digital footprint submission I accept that he has taken the activities he describes in his witness statement to restrict his digital footprint. However as relayed above the Claimant's identity had already been disclosed in open criminal proceedings. These were not sufficient reasons in my judgment to outweigh the principle of open justice and the fact that the principle of open justice is of paramount importance in considering such an application.
11. Any subsequent judgment of the Employment Tribunal will make findings of fact and reach conclusions which may contain matters that should be available not just specifically to defence lawyers and future employers but to the public in general and this is one of the underlying principles on which the principle of open justice is based. These should not be hidden due to the nature of the Claimant's job or future employment and future employers and security clearance should not be hindered by anonymisation as sought in this case. Further there was no evidence that the Claimant's security clearance would be affected or why.

12. In relation to Counsel for the Claimant's point about proportionality that there could be no interest in the fact of the Claimant's identity and other elements of the case would be open to justice if the identity was protected. **Fallows** assisted on this point specifically at paragraph 48 where it was emphasised the open justice principle was grounded in the public interest, irrespective of any particular public interest in the facts of the case itself. It is no answer therefore for a party seeking restrictions on publication in an employment case to contend that the Employment Tribunal proceedings are essentially private and have no public interest accordingly.
13. For these reasons the application is refused.
14. I agreed, following the Respondent's consent, that an order should be made preventing the identification of the Claimant's address. A separate Order is made in those terms.

Employment Judge Moore

Date 15 October 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE