



EMPLOYMENT TRIBUNALS

Claimant

Mr J Bassey

Respondent

**v The Commissioners for Her
Majesty's Revenue and Customs &
Others**

Heard at: Leeds

On: 1 October 2018

Before: Employment Judge Keevash

Appearance:

For the Claimant: In Person

For the Respondents: Mr R Moretto, of Counsel

JUDGMENT

The claimant's applications for a strike order against all respondents dated 20 July 2018 and 29 August 2018 and his application for a strike out order against the sixth respondent dated 2 September 2018 are refused.

REASONS

1. The claimant made an application on 20 July 2018 for a strike out order against all respondents on the ground of their conduct which he said was scandalous, vexatious and/or unreasonable. The basis of his contention is Ms Bovill's witness statement which has since been corrected by a supplementary witness statement. I accept Mr Moretto's submissions and I have refused the application. I have power in Rule 37 of the 2013 Rules to make a strike out order, of course a strike out order is a draconian step to take in any set of proceedings whether it be against the claimant or against the respondent, so I recognise that such a discretion that I have should not be exercised lightly and in accordance with **Bolch v Chipman [2004] IRLR 140** I should not exercise my discretion unless I am satisfied that a fair trial is no longer possible. In my judgment at a final hearing the claimant will be in a position to cross examine Ms Bovill, the Tribunal will also be able to ask questions and the claimant will be able to make submissions as to her honesty and her credibility. I am unable at

this stage to find that the respondents have behaved unreasonably, I am unable to find that the proceedings have been conducted unreasonably and in my judgment a fair trial is still possible and therefore I refuse that application.

2. The second application was made on similar grounds by a letter dated 29 August 2018 and for similar reasons I reject that application.
3. The third application was made on 2 September 2018 and was made seeking an order against the sixth respondent only. It still remains unclear whether the suspension of IT services on 12 February 2018 is a detriment on which the claimant complains. The respondents contend that IT access should be suspended in cases of long term sickness for data security reasons, see paragraph 17 of their Response. In that paragraph the respondents denied that the sixth respondent suspended the claimant's IT services but now in his submission Mr Moretto accepts that that denial is wrong and that the sixth respondent did indeed suspend the claimant's access between 9 February and 20 February 2018. Mr Moretto accepts that an error was made and he has asked that the Response be amended in order to correct that error. At the final hearing the claimant will be able to draw attention to this initial error and if nothing else submit that the respondents' defence cannot be relied upon. In the circumstances I am unable to find that the respondents have behaved unreasonably, I cannot find that proceedings have been conducted unreasonably and in my judgment a fair trial is still possible and therefore that application is refused.
4. For the avoidance of doubt it still remains open to the Tribunal at the full hearing to determine that indeed the respondents have behaved unreasonably or conducted the proceedings unreasonably and they can reach a view that an order, such as a preparation time order, can be made in favour of the claimant and nothing that I have said today excludes the possibility.

Employment Judge Keevash

Date: 13th November 2018