EMPLOYMENT TRIBUNALS

Claimant ***Respondent***

Mr A G BADITA **AND**

(1) HAYS PLC
(2) REED SPECIALIST RECRUITMENT LTD
(3) MARKS SATTIN (UK) LTD
(4) SF RECRUITMENT LTD
(5) WHITEFURZE LTD
(6) LORD SEARCH AND SELCTION LTD
(7) RANSTAD UK HOLDING LTD
(8) ROBERT WALTERS PLC
(9) SEYMOUR JOHN LTD
(10) SAMUEL HEATH & SONS GROUP SERVICES LTD
(11) JS RECRUITMENT UK LTD
(12) JONATHAN LEE RECRUITMENT LTD

Heard at: London Central **On**: 12 April 2019

Before: Employment Judge Oliver Segal Q.C. (Sitting alone)

Representation
For the Claimant: In person
For the Respondents: **R1**, Mr S Sanders, counsel
R2, Mr A Khandhar, solicitor
R3, No response entered, no appearance
R4, Response entered, wrote saying would not attend PH in person
R5, Ms P Hall, consultant
R6, Ms S Tanner, solicitor
R7, Response entered, wrote saying would not attend PH in person
R8, Ms D Craig, solicitor
R9, No response entered, no appearance
R10, Response entered, no appearance
R11, Response entered, wrote saying would not attend PH in person
R12, Mr Kelly, solicitor

OPEN PRELIMINARY HEARING

JUDGMENT

The claims against all 12 Respondents listed above are struck out pursuant to Rule 37(1)(a)

REASONS

The claims

1. The Claimant has brought 12 claims in this region, and many others in other regions totalling he says 69 including these 12, against recruitment companies in the main and a few employers, alleging in each case before me (and the Claimant suggested in the other 57 also) *"discrimination by way of victimization by refusing employment because I am a Romanian national and I have complained against discrimination, having a claim after being discriminated against [2 tribunal case numbers are given], non compliance with GDPR, accepting instructions from third parties to discriminate me or to refuse the disclosure of requested information, being fully aware of my situation."*

2. In each claim presented, there are identical details of claim over almost 2 closely typed pages, which (in brief summary) allege:

    1) Having been previously unfairly dismissed and 'blacklisted as a sex offender' by DHL.

    2) Applying and being rejected for various positions because of that, and sometimes meeting with direct discrimination when it became known he was Romanian;

    3) Having been offered one job as a warehouse manager, which he refused.

3. The Claimant told me that he has not had a substantive hearing in any of his claims, including the one brought some time ago against his ex-employer

DHL (which has been listed for November 2019). Indeed the only hearing he has had, he says, was at London East, at which he understood the claims being considered were transferred to the Birmingham tribunal. The Claimant is convinced that the delay in dealing with his claims, particularly that against DHL, is a response to pressure exerted by central government to deprive him of justice.

The issues and documents before me

4. Today's hearing was convened following a Notice of Hearing dated 25 February, to determine the issue: **The Claimant has brought identical proceedings against all the companies named. The particulars of claim do not provide evidence of discrimination against all the named respondents. The tribunal is considering striking out the claims on the basis that they have no responsible prospects of success and that the bringing of these claims is an abuse of process and is unreasonable**.

5. As well as the tribunal file containing the claims and responses and the parties' correspondence until early this week, I had before me today:

   1) A skeleton argument from Mr Sanders, together with a copy of the ***Ahir*** case (referred to below).

   2) A lengthy email dated 11 April 2019 from the Claimant to the tribunal and R4, explaining how he believes he is being deprived of access to justice, essentially because DHL has bribed the government and organs of state including the courts to achieve that. The email refers to matters included within the original details of claim and then, in bold, there is a section responding to and contradicting allegations in the response of R4 and putting R4 to "strict proof" that they did not receive instructions to discriminate against him from DHL.

   3) At the Claimant's request, I obtained and looked at, after the hearing concluded, what turned out to be similar emails sent to the other respondents, the majority of each of which was in identical terms to the email to R4, but in each case with a different passage in bold, responding

to and contradicting the response of that respondent. Attachments, intended to show the accuracy of the Claimant's assertions and the unreliability of the respondent's, were included with each email.

The law

6. Rule 37 provides that: *"(1) At any stage of the proceedings, … a Tribunal may strike out all of part of a claim … 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 proceedings have been conducted … has been scandalous, unreasonable or vexatious …"

7. In the context of this rule, "scandalous" connotes what is irrelevant and abusive of the other side: ***Bennett v Southwark LBC*** **[2002] ICR 881, CA**; and "vexatious" means in abuse of process and in particular a claim which is not pursued with an expectation of success but to harass the other side: ***ET Marler Ltd v Robertson*** **1974 ICR 72, NIRC**.

8. It is well-established that discrimination claims should not be struck out at a preliminary stage, before hearing the evidence, *"except in the most obvious and plainest cases"*: ***Anyanwu v South Bank Student Union*** **[2001] UKHL 14, [2001] ICR 1126**. Mr Sanders fairly stressed that at the outset of his submissions, also referring me to other parts of the speeches in that case and in ***Ezsias v N Glamorgan NHS Trust*** **[2007] EWCA Civ 330, [2007] ICR 1126** confirming and explaining the importance of adopting that approach.

9. However, that does not mean that discrimination cases are immune from the application of Rule 37, as ***Anyanwu*** itself made clear at [37] by reference to the need to ensure that *"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"*.

10. That was expanded on by Underhill LJ in ***Ahir v BA plc*** **[2017] EWCA Civ 1392** at [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 … 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".

11. In that regard, Underhill LJ also noted that if there is an *"ostensibly innocent sequence of events leading to the act complained of"*, then *"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"* (see at [19]). It is not enough merely for a claimant to make an assertion as to the factual position without identifying potential supportive evidence or basis, all the more so if that assertion is *"speculative"* or *"highly implausible"* (see at [21]).

12. Finally, Mr Sanders correctly reminded the tribunal, that where one of the tests to strike out a claim in Rule 37 is apparently met, the decision whether to go on to strike that claim out remains one of the discretion of the judge.

Respondents' submissions

13. Mr Sanders submitted that the crux of the Claimant's case was that DHL was operating a blacklist; yet R1 had had no dealings with DHL regarding the Claimant and thus the allegation was indeed *"speculative"* and *"highly implausible"*.

14. However, he accepted that if there was a reasonable prospect of the Claimant showing communication between a respondent and DHL concerning the Claimant, then it would not be appropriate to strike out a claim against such a respondent where it might well turn out that such communication had included

the fact of a protected act (the Claimant's claim against DHL, which he says included a claim of discrimination).

15. He criticised the Claimant for abusing the processes of the tribunal by making a "scattergun" series of baseless claims, with no attempt to discern a proper basis for the claims.

16. He submitted that this was one of those rare cases where it was appropriate for the claims to be struck out at an early stage even though the Claimant was unrepresented; this was not a situation where the tribunal should have a concern that the claims could be more cogently set out.

17. The other represented respondents adopted those submissions and each made reference to the facts, as they presented them, applicable to those respondents. At this stage I am not prepared to take into account those supposed facts, save to note that in each case there was an *"ostensibly innocent sequence of events leading to the act complained of"*. It is to be noted that the Claimant has challenged, in terms, the accuracy of those accounts.

18. All the respondents before me asked, in the alternative, for deposit orders to be made.

19. Mr Kelly contended that the claims should also be struck out for being vexatious, being designed to subject the respondents to cost, harassment, etc., out of all proportion to any plausible gain; indeed that the Claimant was abusing the tribunal's processes by using them as a vehicle to air his complaints against DHL.

20. He also argued that the manner in which the Claimant had conducted proceedings justified striking out his claims, given the references to intimidation and humiliation of others by the Claimant in his details of complaint; and given his intention to mislead the tribunal by referring to a claim he had brought against DHL being one which DHL had *"lost"*, although it transpired that it had not yet been heard and the Claimant meant only that the evidence he had would, he believed, cause DHL to lose that claim.

Claimant's submissions

21. I spent some considerable time with the Claimant assisting me to understand the basis for his claims and why I should find that they had a realistic prospect of success.

22. He invited me at the outset to infer from the fact that two of the respondents had not entered an appearance that they must have recognised the validity of his claims and that this should influence my view of all of his claims.

23. He relied on various bits of evidence, some attached to his recent emails to the tribunal, some he was able to show me on his phone as electronic attachments, which he asserted showed that DHL had conspired to deprive him of any future employment opportunity. Those documents fell into various categories. These are the ones which were advanced as the most significant:

    1) Documents, and one voice recording, showing the Claimant being contacted by agencies/employers and/or not obtaining employment from them, sometimes with friendly suggestions of his being in touch again/keeping his details on file – which the Claimant put forward as evidence of his applications having been prejudiced by DHL;

    2) Correspondence between himself and DHL as part of a SADR, where DHL accepted they had some documents containing his personal data as well as the personal data of other individuals (which the Claimant accepted probably were employees of DHL), which DHL had not provided to the Claimant, on the basis that given the *"context relating to the allegations against you [when he was their employee], along with your subsequent behaviour … it was not possible to redact the documents in part without disclosing the personal data of the third party"*.

    3) The details of claim in a claim form presented by the Claimant against a company, CT Group, where the Claimant accuses that company of having taken him on and then letting him go without payment because of DHL,

but noting that the company had said that the reason for letting him go was because the company ran out of money.

24. It quickly became clear, and the Claimant expressly confirmed this, that the Claimant understands the position in the UK labour market to be as follows. Anyone, or at least anyone who has been employed in the UK, has *"personal details"* retained on a file which is accessible to recruitment agencies or potential employers, provided they have *"basic information, such as full name, date of birth and postcode"*; indeed the Claimant stated his understanding that such *"personal details"* are readily available to various companies, firms and agencies and have, in his case, been accessed to his detriment by inter alia law firms, the police and CPS.

25. It is because of that belief that he asserts that DHL, by having entered false and defamatory statements into his *"personal details"*, have ruined his prospects of employment in the UK, because if any agency or company is contemplating employing him, they will consult (as he put it, *"click on"*) his *"personal details"* and be immediately put off by what DHL has included there. He summed up the position as *"Everything is around my personal details"*.

26. Further, he repeated his assertion noted above, that, where necessary, DHL had successfully intervened directly in bribing or otherwise corrupting decision makers including the government, police and courts.

27. Almost, it seemed, as an afterthought, the Claimant, in response to a question from the Judge, asserted that the other reason for his not being offered employment was because he was Romanian. As evidence of that he pointed out that he had not been provided, when he requested them from potential employers/agencies, with details of how many Romanian staff are on their books.

Discussion

Direct discrimination

28. I begin with the claim that the Claimant has been the victim of direct discrimination because he is Romanian.

29. There are two immense hurdles in the way of those claims.

    1) First, it became very clear that the Claimant believes that the real reason for his not obtaining employment was because of potential future employers/agencies discovering prejudicial material about him when clicking on his personal details, placed there by DHL. That is, if not inconsistent, at least scarcely supportive of a claim of direct race discrimination.

    2) Secondly, there appears to be no basis for the claim other than the bare facts of his not obtaining employment and his nationality.

30. As I noted above, there is, according to each respondent who has entered a response, an *"ostensibly innocent sequence of events leading to the act complained of"*. However, that is not enough to satisfy the test for striking out a claim, let alone a discrimination claim. I must go on to ask myself whether the Claimant has satisfied the *"burden … to say what reason he … has to suppose that things are not what they seem and to identify what he … believes was, or at least may have been, the real story, albeit … that they are not yet in a position to prove it"*.

31. In the context of his direct discrimination claims, I am satisfied that all the Claimant has done is to make a *"speculative"* or *"highly implausible"* assertion as to the factual position, without identifying potential supportive evidence – and moreover an assertion which is barely consistent with his primary case as to why he was not offered employment.

Victimisation

32. The claims of victimisation depend, critically, on there being some prospect of the Claimant proving that DHL had provided information directly or indirectly to the Respondents to the effect that the Claimant had brought a claim of discrimination against DHL and that this put off the Respondents from offering the Claimant employment.

33. There is absolutely no basis for any assertion of such communication being direct and the Claimant does not as regard these respondents really suggest that it was. Certainly a generalised reliance on DHL being able to control the decisions of other organisations is far-fetched.

34. The heart of the Claimant's case, however, is that such communication was indirect, via entries made by DHL into his "personal details". I regard that suggestion as simply untenable and based on a fundamental misunderstanding of what information is available, and to whom, about individuals who have worked in the UK. Again, I am satisfied that all the Claimant has done in this regard is to make a *"speculative"* or *"highly implausible"* assertion as to the factual position – and one which, in this case, contradicts experience.

Conclusion

35. I therefore have no hesitation in finding that these claims have no reasonable prospect of success and I strike them out.

Postscript

36. Although not strictly relevant, I was also concerned at various aspects of the claims and common details of claim, which seem to be to fall within the descriptions of "scandalous" and/or "vexatious", as explained above. I have in mind:

    1) Bringing 69 claims, without apparent distinction as to the plausibility in any given case of the Claimant's applications for employment being innocently rejected.

2) Declaring that the Claimant had "humiliated and dismissed" the senior management of DHL (against whom no claim has yet succeeded); and that he had "humiliated" the whole of 3 Paper Buildings (a barristers' chambers) which he had promised to turn into "3 Paper Toilets" – declarations which, in the context of claims against other respondents, could be seen as attempts to intimidate those respondents.

37. However, in the end, I do not rely as a separate ground for striking out these claims that they are scandalous" and/or "vexatious". I only note that, had I been required to determine that issue, I would have considered it one deserving of thought.

38. For completeness, I note that the tribunal has no jurisdiction to adjudicate claims for non-compliance with the GDPR and in so far as the claims before me include such complaints, they are also dismissed.

Employment Judge Segal

Date: 12 April 2019

Judgment and Reasons sent to the parties on:

15 April 2019