



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Bassey

**Respondents:** 1. The Commissioners for Her Majesty's Revenue and Customs  
2. Ms K Finn  
3. Mr J Ritchie  
4. Ms G Cooper  
5. Mr N Lodge  
6. Mr M Rhodes  
7. Mr P Atkinson  
8. Ms A Khan  
9. Ms K Roger  
10. Mr S Billington  
11. Mr A Winkworth  
12. Ms T Boville

**Heard at:** Leeds      **On:** 9 July 2018

**Before:** Regional Employment Judge Robertson (sitting alone)

**Representation:**

**Claimant:** in person

**Respondents:** Mr P Smith, counsel

## JUDGMENT

1. The respondents' application for the claimant's complaints against the second to twelfth respondents to be struck out under rules 37(1)(a) and (b) of the Employment Tribunals Rules of Procedure 2013 on the ground they are scandalous or vexatious or it is unreasonable for the claimant to pursue them against such respondents is refused.

2. The claimant's complaint alleging breach of section 47B of the Employment Rights Act 1996 against the twelfth respondent, Ms T Boville, is struck out under rule 37(1)(a) on the ground it has no reasonable prospect of success.

3. For the avoidance of doubt, the second to twelfth respondents are not respondents to the claimant's complaint of unfair dismissal within section 103A of the 1996 Act.

4. The claimant's complaint of unlawful religion or belief discrimination within the Equality Act 2010 is struck out under rule 37(1)(a) on the ground it has no reasonable prospect of success.

5. No order is made on the respondents' application for a deposit order under rule 39 in respect of the claimant's complaints of unlawful public interest disclosure detriment and unfair dismissal within sections 47B and 103A of the 1996 Act. The respondents may, if so advised, renew the application following receipt of Further Particulars of the complaints ordered by way of separate Case Management Orders.

6. The respondents' application for a deposit order under rule 39 in respect of the claimant's complaints of unlawful sex and race discrimination and victimisation within the Equality Act 2010 is refused.

7. Case Management Orders for the continuing good conduct of the proceedings are made separately.

## **REASONS**

1. The respondents, the Commissioners for Her Majesty's Revenue and Customs, ("HMRC") and eleven named individuals, have applied for strike-out or deposit orders under rules 37 and 39 of the Employment Tribunals Rules of Procedure 2013 in respect of the claimant Mr Bassey's complaints in this case.

2. This has been the hearing of the application. The claimant has appeared in person and the respondents have been represented by Mr P Smith, counsel. I have considered the claim and response forms, the claimant's further details of claim dated 21 May 2018, the judgment and reasons of Employment Judge Lancaster on the claimant's application for interim relief, Employment Judge Lancaster's Case Management Orders made on 4 and 24 May 2018, and the respondents' application dated 23 June 2018. I have heard submissions from the claimant and Mr Smith. I have not heard any evidence.

3. The background is that the claimant was employed by HMRC as a Tax Specialist Programme Trainee from 8 September 2016 until his dismissal on 4 April 2018. The reason for dismissal was ostensibly that the claimant had failed to achieve the required performance "milestones" during his probationary period.

4. The claimant presented this claim to the tribunal on 10 April 2018. He complains of unlawful public interest disclosure detriment and unfair dismissal contrary to sections 47B and 103A of the Employment Rights Act 1996 and unlawful discrimination within the Equality Act 2010, the relevant protected characteristics being race, sex and disability.

5. The claim form names as respondents, in addition to HMRC, 11 individuals, these being fellow trainees and managers involved in the programme, or in the claimant's grievances about his treatment, or in the termination of his

employment. The claimant's applications dated 21 and 25 May 2018 to add a further six individual respondents were refused by Employment Judge Lancaster on 1 June 2018.

6. HMRC and the first two named individual respondents, Ms Finn and Mr Ritchie, responded to the claim on 9 May 2018 and the remaining individual respondents, the fourth to twelfth respondents, responded on 7 June 2018. The claim is resisted in its entirety.

7. The claim form is supported by extensive details of claim extending to 103 paragraphs. After an introduction, these set out particulars of the section 103A complaint (paragraphs 5-18), the alleged six protected disclosures (paragraphs 19-28), the claimant's reasons for believing the disclosures were the reason for dismissal (paragraphs 29-42), particulars of the section 47B detriment complaint (paragraphs 43-55), submissions regarding time limits (paragraphs 56-72), submissions about the responsibility of individual respondents (paragraphs 73-93) and particulars of the discrimination complaints (paragraphs 94-98). The claimant's letter of 21 May 2018 in support of his application to amend the claim contains additional information about the alleged acts of individual respondents.

8. Whilst it is helpful that the claimant has laid out the details of claim in this way, unfortunately it is not easy to identify what specific allegations of unlawful treatment the claimant is making. The events are not set out chronologically, some allegations are diffuse, and the narrative describes numerous instances of what the claimant alleges was unfair and inappropriate treatment of him, without stating what matters are alleged to have been unlawful treatment and on what grounds and what matters are simply background, history or context. The claimant has ticked the boxes in section 8 of the claim form to indicate that he is complaining about unlawful sex and disability discrimination, but the details of claim contain no particulars of such complaints whatsoever.

9. I have made separate Case Management Orders requiring the claimant to provide Further Particulars of his claim identifying what matters he says were unlawful conduct by each of the respondents, specifically as regards his complaints alleging breach of section 47B and unlawful discrimination. This has influenced the decisions I have made on parts of the respondents' application (and indeed how Mr Smith pursued the application).

10. For the moment, however, based on the claim and response forms, the identification of the complaints in Employment Judge Lancaster's interim relief decision, and the parties' submissions, the claimant's case is essentially as follows, and I have used this summary in deciding the application before me today:

10.1 The claimant accepts that he did not achieve his performance milestones, and this was HMRC's reason for dismissing him.

10.2 He says, however, that there was a campaign or conspiracy against him by colleagues and management that he should fail his probationary period and this was because he had made protected disclosures.

10.3 As part of this campaign or conspiracy, he was not given

management support during his training, work was taken away from him, the Training Manager (Ms Finn, the second respondent) no longer interacted with him, his location was changed, and all this meant that he could not achieve his performance milestones.

10.4 Also as part of the campaign or conspiracy, the day before a year end review meeting, he was given different performance criteria to justify awarding him the lowest possible performance score. Further, his grievances were not addressed and management gave inaccurate information concerning the grievances.

10.5 In respect of unlawful religion or belief discrimination, Ms Finn told him in February 2017 that other trainees considered him to be unapproachable because of his “attitude”, described to him as “borderline rude”, which he contends denotes a settled way of thinking and therefore a belief within the 2010 Act.

10.6 As to race discrimination, at a training session on 29 June 2017 the eleventh respondent, Mr Winkworth, made a gratuitous comment about the slave trade whilst looking at him and smirking. He was the only black trainee in the room.

10.7 As to sex discrimination, the seventh, eighth and ninth respondents, Mr Atkinson, Ms Khan and Ms Roger, stared at his crotch during a training session, and after he raised a grievance about their behaviour, victimised him by pursuing their own grievance against him alleging his grievance was malicious, which management did not immediately reject.

11. Against this background, I turn now to consider the respondents’ application dated 23 June 2018 which is before me today. In fact it consists of eight separate sub-applications, and I shall consider each of these individually.

12. First, the respondents apply for the claimant’s claims against the individual respondents, the second to twelfth respondents, to be struck out under rules 34 or 37(1)(a) and (b) of the Employment Tribunals Rules of Procedure 2013.

13. Rule 34 provides, relevantly, that the tribunal may remove any party apparently wrongly included as a party. Mr Smith says that the second to twelfth respondents have wrongly been made parties to the claimant’s section 103A unfair dismissal complaint, which can only be pursued against the former employer, namely the first respondent, HMRC.

14. It is far from clear from the claimant’s claim form and details of claim what is alleged against the individual respondents. The claimant’s additional information dated 21 May 2018 does not take matters much further. Of course individuals may be parties to complaints alleging infringement of section 47B of the 1996 Act or unlawful discrimination within the 2010 Act, but I am very doubtful whether Mr Smith is correct in asserting that the claimant has made the individuals also respondents to his complaint alleging unfair dismissal within section 103A.

15. I note in particular that in several places in the details of claim, for example paragraphs 15, 27 and 28, the claimant refers to the “employer”, namely HMRC,

in the context of the section 103A complaint.

16. I do not conclude, therefore, that the individual respondents are parties to the section 103A complaint. A complaint alleging unfair dismissal can only be made against the employer, and I think it sufficient to record that the second to twelfth respondents are not parties to the complaint, without making any order under rule 34.

17. Rule 37 provides that a tribunal may strike out all or part of a claim on the ground that it is scandalous or vexatious or has no reasonable prospect of success (rule 37(1)(a)), or that the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious (rule 37(1)(b)).

18. Mr Smith accepts that the claimant may pursue his complaints alleging breach of section 47B or unlawful discrimination against the alleged individual wrongdoers as well as the employer. However, he says that in terms of rule 37(1)(b), it is unnecessary and unreasonable for the claimant to do so. He says that the claimant has included work colleagues or management as respondents regardless of what they actually did. Further, he says, HMRC accepts that it is liable for any proven unlawful acts by the other respondents, and does not seek to rely on the statutory defence under section 47B(1D) of the 1996 Act or section 109(4) of the 2010 Act, and there is no need for the individuals to remain parties.

19. Mr Smith says alternatively, in respect of rule 37(1)(a), that the claimant is pursuing the individual respondents in order to vilify them or for an improper motive of personal retribution, exposing them to inconvenience, harassment and expense out of proportion to the likely gain, and following **Bennett v London Borough of Southwark 2002 ICR 881** and **Attorney General v Barker 2001 FLR 759**, the claim against them is vexatious or scandalous as being pursued for an improper motive and should be struck out..

20. The claimant responds that he wishes to pursue his claims against the responsible individual employees, and it is open to him to do so, and he reminds me that it is not necessary for him to claim against the employer (**International Petroleum v Osipov UK EAT/0058/17**).

21. Section 47B(1A) of the Employment Rights Act 1996 creates the legal right for a worker not to be subjected to detriment by a worker of the employer done in the course of employment on the ground that the worker had made a protected disclosure. The worker is entitled to present a complaint under section 48(1A) alleging infringement of that right. Sections 109, 110 and 120 of the Equality Act 2010 provide for the liability of employers and employees for unlawful acts done in the course of employment and the tribunal's jurisdiction to consider claims relating to such acts.

22. Notwithstanding his contention at paragraph 19 above, Mr Smith has not invited me to investigate the claimant's motivation in bringing proceedings against the individual respondents, and I do not do so. I recognise that claiming against individual respondents will cause them inconvenience, and will not add to any financial remedy which the claimant may be awarded. But it seems to me that the claimant is entitled to exercise his legal right not to suffer unlawful detriment or discrimination at the hands of fellow workers, and to seek a

judgment from the tribunal as to individual responsibility for any unlawful acts. I reject Mr Smith's contention that to include individual respondents as a group amounts to unreasonable conduct of the proceedings or is scandalous or vexatious, and I decline to strike out the claim against them. Subject to what immediately follows, they will remain parties to the claim.

23. Second, the twelfth respondent, Ms Boville, applies to strike out the section 47B claim against her under rule 37(1)(a) on the ground it has no reasonable prospect of success.

24. Mr Smith acknowledges, here and elsewhere, that a discrimination or quasi-discrimination claim should be struck out only exceptionally and in the most obvious cases and not where there is any conflict of relevant fact: **Ezias v North Glamorgan NHS Trust 2007 ICR 1126** and **Balls v Downham Market High School 2011 IRLR 217**.

25. Mr Smith says that Ms Boville's only involvement was to chair the panel of three managers who made the decision to dismiss the claimant. Section 47B(2) of the 1996 Act provides that the right not to suffer detriment under section 47B does not apply where the worker is an employee and the detriment in question is dismissal within Part X of the 1996 Act. Accordingly, Mr Smith submits, the claimant's complaint alleging section 47B detriment cannot succeed against the twelfth respondent, Ms Boville, and should be struck out.

26. The claimant submits that the dismissal was pre-determined, and Ms Boville was chosen to carry out the dismissal because it would be difficult to challenge her. He says that he told her there were matters of misconduct which he wished to bring to her attention but she restricted herself to the issue of performance during the probationary period and refused to listen to him.

27. I agree with Mr Smith. A claim cannot be maintained in law alleging infringement of section 47B against Ms Boville in respect of her decision to dismiss the claimant. Ms Boville was not involved in the events beyond the dismissal and no other allegations are made against her. She cannot be a party to the claimant's section 103A unfair dismissal complaint, which may be pursued only against the employer. I am satisfied that the claim against Ms Boville is bound to fail and it is appropriate to strike it out as having no reasonable prospect of success.

28. Third, the respondents apply for the claimant's complaint of unlawful religion or belief discrimination within the Equality Act 2010 also to be struck out under rule 37(1)(a) on the ground it has no reasonable prospect of success.

29. I infer from the claim form and details of claim that the claimant's complaint is of unlawful direct religion or belief discrimination within sections 13 and 39 of the 2010 Act or possibly unlawful harassment related to religion or belief under sections 26 and 40.

30. Mr Smith directs me to paragraph 95 of the details of claim where the claimant sets out the basis of the complaint in terms that the second respondent Ms Finn's suggestion that fellow trainees believed he was unapproachable because of their perception of his "attitude" was clearly discriminatory in respect

of religion or belief as “attitude” was a reference to a settled way of thinking amounting in law to a belief. Mr Smith contends that this does not satisfy the requirements for a “belief” as set out by the Employment Appeal Tribunal in **Grainger plc v Nicholson 2010 ICR 390**.

31. The claimant was unable to tell me what it was about his behaviour, beliefs or way of thinking, actual or perceived, which constituted the “attitude” referred to by Ms Finn. But he contended that she was referring not to, for example, truculent or rude behaviour, but was adopting what he said was a standard dictionary definition of “attitude”, whereby she was referring to and meaning his settled way of thinking.

32. In my view this complaint is hopeless and should be struck out. Of course it would be a matter of evidence what Ms Finn was meaning when she used the word “attitude”, and at this stage I must take the claimant’s case at its highest. But the claimant goes no further than to suggest “attitude” denotes some settled way of thinking. He does not say what that settled way of thinking was, or identify any belief in the sense of some settled philosophical values, and I do not think he can mean anything more than his general approach to life.

33. What is clear from **Grainger**, particularly paragraphs 24 and 27 of the judgment, is that to qualify for protection, a belief must satisfy certain criteria, and there must be limitations placed on the definition. In this case the claimant does not say that he had any philosophical belief at all. The claimant’s contention that his actual or perceived “attitude” is sufficient to meet the definition is wholly without merit and this complaint has no reasonable prospect of success and must be struck out.

34. Fourth and fifth, the respondents apply for a deposit order under rule 39 on the ground that the claimant’s complaints alleging breach of sections 47B and 103A of the Employment Rights Act 1996 have little reasonable prospect of success. During the hearing, however, I indicated my intention to order the claimant to provide Further Particulars of the section 47B complaint to identify precisely what matters he was alleging amounted to detriment within section 47B, and against which respondent, and why he believed such detriment was in some significant way because he had made protected disclosures. Because of this Mr Smith did not pursue the application at this stage but may do so once the claimant has given his Further Particulars.

35. I have explained to the claimant that given his acceptance that HMRC’s reason for dismissing him was his failure to meet performance milestones, and the focus in the caselaw on the motivation of the decision-maker in establishing the reason or principal reason for dismissal, his complaint under section 103A might face difficulties. However, in my view the dismissal in this case is inextricably linked with the chain of events leading up to it which the claimant says amounted to a campaign or conspiracy to remove him or to cause him to fail his probationary period, and I did not consider it was appropriate in these circumstances to consider the section 103A complaint separately from that alleging infringement of section 47B.

36. Sixth and seventh, the respondents apply for a deposit order under rule 39 in respect of the claimant’s complaints of unlawful victimisation and race

discrimination within the Equality Act 2010. Separately, by way of their eighth application, the respondents contend that the complaints of unlawful sex discrimination and disability discrimination are wholly unparticularised and an Unless Order should be made against the claimant to provide particulars of them.

37. I have made separate Case Management Orders for the claimant to particularise these complaints, insofar as they go beyond what I now identify. But in respect of the complaint of unlawful race discrimination, Mr Smith directs me to paragraph 96 of the details of claim which he understands to be the claimant's only allegation. Although the claimant's additional information dated 21 May 2018 refers in places to "institutional racism" on the part of HMRC or certain individual respondents, the claimant has told me today that paragraph 96 does indeed contain his only allegation of unlawful race discrimination.

38. The allegation is that at a training event on 29 June 2017, the eleventh respondent, Mr Winkworth, whilst looking at him as the only black person in the room and smirking, made a gratuitous remark about the slave trade. He says that this amounted to unlawful direct race discrimination against him, and he refers also to the second respondent Ms Finn's refusal to investigate his grievance about the incident because, she said, it did not constitute harassment.

39. It appears to be common ground that Mr Winkworth's comment was made in the context of how the owners or previous owners of certain stately homes acquired their wealth. However, why Mr Winkworth made the comment at all, and whether he directed it towards the claimant, appear to me to involve disputes of fact which can only be determined by the tribunal after hearing evidence. For this reason, because evidence will be required to determine the complaint, I cannot say that the complaint has little reasonable prospect of success and I decline to make a deposit order under rule 39.

40. I have already said that the claim form and details of claim do not contain any particulars whatever of the complaints of unlawful sex discrimination or victimisation. During the hearing today, however, the claimant sought to explain his allegations, and Mr Smith did not object to his doing so.

41. The claimant says that the conduct of the seventh, eighth and ninth respondents, Mr Atkinson, Ms Khan and Ms Roger, at an event in August 2017 in staring at his groin amounted to unlawful sex discrimination against him. He says that their conduct in responding to his grievance about their behaviour by raising their own grievance alleging that his grievance was malicious amounted to an act of unlawful victimisation against him within section 27 of the 2010 Act, as did the respondents' failure to reject the grievance as immediately unfounded or to provide him with any conclusion to the grievance. (Mr Smith suggested that their grievance had been rejected but he was unable to say whether the claimant had been advised of the outcome.)

42. The claimant must provide proper particulars of this complaint and I have made separate Case Management Orders in this regard. However, it appears to me that as now articulated by the claimant, this complaint will require evidence of fact for the tribunal to determine it, and for this reason I am unable to say that the complaint has little reasonable prospect of success and I decline to make a deposit order under rule 39.



43. Mr Smith also says that the claimant's discrimination complaints, as now explained by him, are clearly out of time and I have explained to the claimant that he may well face difficulties in this regard. However, I have concluded that any time limit issues in respect of any of the claimant's allegations or complaints, including his complaints under the 2010 Act, are best determined by the tribunal as part of its overall determination of the case at the full merits hearing and I will make no order or decision as regards time limits at this stage.

44. Except therefore for the claimant's complaint against Ms Boville alleging infringement of section 47B, and his complaint of unlawful religion or belief discrimination under the Equality Act 2010, each of which is struck out, the claimant's complaints will now proceed to hearing in accordance with the Case Management Orders which I have made separately.

Regional Employment Judge Robertson

Dated 20 July 2018