# EMPLOYMENT TRIBUNALS

| **Claimant** | **AND** | **Respondent** |
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| Dr A Ahari ` | | University College London |

**Heard at**: London Central **On**: 1 April 2019

**Before:** Employment Judge Goodman

**Representation**
**For the Claimant:** In person
**For the Respondent:** Ms S Omeri, of Counsel

PRELIMINARY HEARING

## REASONS

1. This is a decision on the Claimant's application to strike out the response on two grounds, (1) that it was filed out of time and (2) that it contained false information and allegations.

2. The claim was presented to the Employment Tribunal on 24 November 2018, but not acknowledged and sent to the Respondent on until 28 January 2019, two months later. That is a long delay. I do not know the explanation; I assume it stems from the shortage of administrative staff in the Employment Tribunals Service.

3. The letter was sent to both parties. The Respondent was invited to reply by 25 February 2019. They did reply on 21 February 2019, in an email which was copied to the Claimant. The Employment Tribunal processed it and sent it to the Claimant formally on 7 March.

4. Rule 16 of the Employment Tribunal Rules of Procedure 2013 states that the response shall be on the prescribed form, and presented to the Tribunal office within twenty eight days of the date that the copy of the claim form was sent by the Tribunal.

5. The Claimant's application is made on the basis that it was ninety-seven days between presenting his claim and receiving the reply from the Tribunal. The answer to that has to be that the response was sent by the Respondent to the Tribunal within twenty-eight days of the claim form being sent to the Respondent. There is no breach of the rules, and no need to expand time under the rules. The application to strike out the response on the basis that it is out of time fails of that short point.

6. The other ground for striking out the response is on the basis that the response forms contains false information.

7. The Tribunal rule about striking out claims and responses is in Rule 37:

" at any stage in the proceedings the Tribunal may strike out all or part of the claim or response on any of the following grounds.

(a) If it is scandalous or vexatious or has no reasonable prospect of success

(b) that the manner in which the proceedings are being conducted by or on behalf of the Claimant or the Respondent as the case may be has been scandalous, unreasonable or vexatious."

8. Case law establishes that where a tribunal is considering striking out a claim (or response) at a preliminary stage, before evidence is heard, in an area which is particularly fact sensitive, like Equality Act claims (**Anyonwu v South Bank University**) it must take the party's claim at its highest (that is, assume he could establish in evidence what he asserts as fact) and then decide if the claim or response has any reasonable prospect of success.

9. The Claimant was invited to identify what the false information was. The first objection is to paragraph 2, where the Respondent says that the claim was brought more than twenty years out of time, that is, since he ceased to be employed by them. The Claimant says that in fact he is basing his claim on a *series* of acts of victimisation, the last of which was on 6 November 2018, which date is in time, and that therefore this is a false point. I comment only that this indicates that the point is in dispute. It is not fanciful – the list of detriments is long and involves different trusts and other bodies, and differing personnel. There are some gaps lasting d=several years. Whether there is a series of similar acts, or conduct extending over a period will have to be decided after considering the length of any intervals between acts of alleged victimisation, who was responsible for the acts alleged as detriment, and so on. It cannot be said that the Respondent's joining issue on a particular point is a false allegation, just because there is a dispute, r that the tribunal should reject it without more.

10. The second point made was about the dates of his employment. The response says that he was employed from June 1998 and ceased employment on 2 September 1998. Questioned about this, the Claimant said that he had *expected* to be employed until 2000, because it was, on his case, a fixed term appointment, but in fact he ceased work on 31 August 1998, that is three days before the Respondent says. Differences about termination dates can be important – for example on whether a claim is brought in time, or whether a claimant has qualifying service – but a difference of three days has no significance here.

11. The next point made is about personnel. The Respondent, in the response, cautiously said that they did not know if the Dr Ingram to whom the Claimant refers in his claim form is the same Dr Ingram who they have identified as a past employee. The Claimant has said that it was, so no confusion appears to arise from that point. The second was about whether a Dr Hamilton Davies who was also involved in this history is still employed by the Trust, as the claimant says, or by another Trust, though working one day a week for them under a service level agreement, as the respondent says. The Respondents have produced a screen shot of their HR payroll system, which identifies that he ceased to be employed in April 2015. The Respondents have also produced a witness statement (the witness

has yet to give evidence) saying that he is still employed once a week on a service level agreement. But even if that is untrue, and he is still employed by the Respondent, it is not of sufficient significance to justify striking out the response. It is a fact which has to be found on the evidence in the overall context of the facts of these claims.

12. Then the Claimant makes general points about the conduct of the action so far by the Respondent, on the basis that they are acting unreasonably. He says that a witness statement which was emailed to him on 28 March last week has not been provided to him in printed form until this afternoon. He also says that the bundles are "in total chaos". I took him through the index to the bundle. It became that there was nothing in the bundle which he has not previously seen, and they appear to be in some logical order. It seems that his real complaint is that he has sent the Respondent's solicitor a number of pages (perhaps as many as one hundred) which he wanted to have included in the bundle. They have printed and given him some this afternoon, but have not put them in the bundle. He says that he does have them in electronic form, but he has not produced them for the Tribunal, and argues therefore that there cannot be a fair hearing today.

13. I consider these points in the light of the claimant himself having asked permission to have a laptop in the hearing room because of reading difficulties and problems with his neck - he said he preferred to read things in electronic form, and I do not find that it is unreasonable that he should not have been provided with a printed copy of the witness statement which was emailed to him in any event. This is the normal practice, and he has not shown why he was unable to print the copy for himself if that was what he required. I cannot see how he is disadvantaged by not having a hard copy of the witness statement when he can read it on screen. If he needs to rely on a document which he has but is not in the bundle, he could get a paper copy made for the tribunal to read, or he could email them.

14. It is better that triable cases are tried, to use the words of **Blockbusters v James**. These are practical difficulties to be managed, while making sure that each side can see what the other relies on and not have documents sprung on

them without notice, so as to achieve a fair hearing, not reasons to strike out the response. The conduct alleged, even if it were unreasonable, which is not shown, does not preclude a fair hearing, and the response should not be struck out.

15. He has also complained about the timing of this hearing. It was originally listed at 10 a.m. for two hours for case management. It was then enlarged to three hours, so that it could be an open hearing, and when the Claimant said that because of back pain he was not able to function for two or three hours after waking, it was moved to 2pm to accommodate him. He then asked for the hearing to be 6 hours, not three. It seems difficult to portray the fact that the Respondent objected to the hearing being enlarged to a six hour hearing as *unreasonable* conduct. It is a matter where a party cam make representations, and it is for the Employment Tribunal to then decide what is an appropriate use of Tribunal resources.

16. In short, I do not accept that the response should be struck out on the basis either of time, or because it has no reasonable prospect of success, or because of unreasonable conduct.

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Employment Judge Goodman

Dated: 9 May 2019

Reasons sent to the parties on:

20 May 2019

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For the Tribunal Office