Case No: 2600488/19 **RESERVED**

EMPLOYMENT TRIBUNALS

Between:

Mr R Patel	**and**	Heart Security Services Ltd
Claimant		**Respondent**

At an Open Attended Preliminary Hearing

Held at: Nottingham

On: 24 June 2019
(and in chambers on 3 July 2019)

Before: Regional Employment Judge Swann (sitting alone)

Representation

For the Claimant: In person
For the Respondent: Mr Gilbert, Litigation Consultant

RESERVED JUDGMENT

1. **Application to strike out the claim**

The Respondent's application to strike out the whole of the Claimant's claim is granted. The manner in which the Claimant has conducted the proceedings has been scandalous and unreasonable. The conduct of the Claimant is such that it is no longer possible to have a fair hearing. The claim is therefore struck out in its entirety in accordance with rule 37(1)(b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 schedule 1.

2. **Application for costs by the Claimant**

The application for costs made by the Claimant against the Respondent is hereby dismissed.

REASONS

Background and issues

1. By an Originating Claim lodged with the tribunal on 8 February 2019, the Claimant brings claims of:
   - unfair dismissal;
   - that he was wrongfully dismissed in breach of contract;
   - that at the termination of his employment, there was outstanding holiday pay due;
   - that there have been unauthorised deductions of his wages;
   - that he was automatically unfairly dismissed and subjected to detriments by reason of raising protected disclosures and that he was subjected to less favourable treatment by reason of discrimination predicated on the protected characteristic of disability contrary to the Equality Act 2010.

2. In addition to the above substantive claims, there was an application for interim relief also submitted by the Claimant.

3. For the Respondent's part and as set out in its ET3 Response, it denies each and all of the claims pursued by the Claimant and maintains that the Claimant was dismissed during his probationary period for persistent lateness and misconduct issues relating to his behaviour and approach to visitors and staff on client sites.

4. The case was listed for an interim relief hearing before Employment Judge Blackwell which was determined at the Nottingham Employment tribunal on 25 February 2019, following which the Claimant's application was refused and a judgment with full reasons was promulgated and submitted to the parties on 26 February 2019.

5. Subsequent to that and within the period of time extended to them, the Respondent then lodged their above-mentioned ET3 Response.

6. On 4 March 2019, the Respondent made application for the striking out of the Claimant's claim in its entirety on the basis that pursuant to rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013 the Claimant had conducted the proceedings in such a manner that it amounted to scandalous, unreasonable or vexatious behaviour on the Claimant's part. The said application is copied within the bundle of documents referred to hereafter commencing at page 22.

7. In summary (and as set out within that application), the Respondent maintains that the Claimant, when questioned by Employment Judge Blackwell at the aforesaid interim relief hearing, as to whether he, as a Claimant and a litigant in person, had any previous experience of tribunal proceedings so that Judge Blackwell could outline the procedure for the day, the Claimant answered that he had not.

8. The Respondent submits within its application that this was "disregarding the tribunal's authority" and in itself amounted to scandalous, unreasonable and vexatious behaviour and an abuse of process in that the Claimant, it submits, attempted to mislead the tribunal by his answer.

9. The Respondent has produced within the bundle a copy of a first instance judgment in regard to case number 2200016/18 (the Claimant v Securitas Security Services (UK) Ltd and others) copied in the bundle at page 26 that was heard before Employment Judge Snelson sitting at the London Central Employment tribunal on 4 January 2019, which the Respondent submits was clear evidence of the Claimant misleading the tribunal in that regard.

10. In addition to the above submission, the Respondent further submits that the Claimant, through a series of emails, has informed various clients of the Respondent Company of the ongoing litigation proceedings (at least six major clients) which the Respondent maintains has caused significant detriment to them and has posed, and continues to pose, the risk of seriously harming the Respondent's reputation. The Respondent further submits that by doing this, the Claimant has conducted himself in a manner designed to intimidate and force the Respondent into considering an alternative resolution of the claim.

11. In an aside from that through various email correspondence letters to the Employment tribunal (which are referred to not only within the bundle but also separately within this judgment), the Claimant has raised numerous concerns about the averred actions of members of the judiciary who are dealing with, and have dealt with, his claim and other claims pursued by him which also forms part of the Respondent's overall application and which it also submits amounts to scandalous, vexatious or unreasonable conduct on the Claimant's part.

12. The matter was therefore listed for a hearing today to determine the Respondent's said application. In that regard, the Respondent was ordered by me to put together a bundle of all of the relevant correspondence it intended to rely on for the purposes of the application and to forward a copy of the same, both to the Claimant and to the tribunal. In addition, it was directed that by agreement with the parties, this hearing would be dealt with by way of submissions only, essentially because all of the evidence relied on by the Respondent for the purposes of its application is in written format and contained within the body of emails submitted by the Claimant, apart from the pleadings themselves and correspondence to and from the tribunal by both parties.

13. Separately and apart from the above said application, by way of an email letter from the Claimant to the tribunal (copied to the Respondent amongst others) dated 17 June 2019, the Claimant made an application for costs against the Respondent and the Respondent's representative, Mr Ellison. I directed a letter to be sent to the Claimant dated 19 June 2019 asking him to set out in full the basis of his costs application in accordance with the said Employment Tribunals Rules of Procedure.

14. The Claimant replied thereto by an email of the same day. In respect of that application, therefore, it remained a live application for costs and both the Claimant and the Respondent requested that I deal with that application today as part of my overall decision making, which I have accordingly undertaken.

The documents for the hearing

15. The documentation that I have considered in this hearing is the bundle of documents that I ordered to be prepared by the Respondent and served upon the Claimant, together with some additional emails, which are referred to in the body of the judgment below submitted by the Claimant to the tribunal and copied to the parties. Whilst there was an initial issue about the quality of presentation of the bundle, the Claimant confirmed he was happy to accept the same and to proceed relying on that once it had been bound together by the tribunal. No formal evidence on oath was therefore taken from the parties.

16. In addition to the aforesaid bundle and documentation, I have also received from the Claimant a transcript copy of the grievance hearing (prepared by the Respondent), that took place on 9 April 2019 between the Claimant and the Respondent, a copy of which was submitted on the day of the hearing to the Respondent's representative. I have further received a number of emails with voice recordings attached thereto from the Claimant.

17. In regard to the latter, as set out by my direction in correspondence to the Claimant (copied to the Respondent) I have not taken those voice recordings into account because firstly they appear to relate to the issues concerning the question of liability of the claim and, secondly and as I commented to the Claimant, I would not take these matters into account unless and until the Respondent had had the opportunity of considering the various voice recordings and the Claimant had submitted accurate typed transcripts of the same for the Respondent to review and also for the tribunal to be copied into.

The law

18. The relevant law in regard to an application for the striking out of a claim or response is set out within the Employment Tribunals Rules of Procedure 2013.

19. By rule 37(1):

> *"**37**.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*
>
> *…;*
>
> *(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
>
> *…;*
>
> *(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out)."*

Rule 37(2):

> "*A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing."*

Rule 37(3):

> "*Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.*"

20. In addition to the above rules, I have also taken into account the following case law as set out in the application for strike out by the Respondent, namely:

- ***Marler Ltd v Robertson [1974] ICR 72***
- ***Bennett v London Borough of Southwark [2002] ICR 881 Court of Appeal***
- ***Jones v Wallop Industries Ltd ET/17182/81***

21. From the Claimant, I have taken into account the following cases which he submitted to the tribunal either on the day of the hearing or shortly thereafter, namely:

- ***Longbardi v Aviation Fuel Services Ltd***, a decision at first instance before Employment Judge Vowles heard at the Reading Employment tribunal on 28 March 2017.
- ***Miss K Howard v Fisher Brothers Ltd***, a decision at first instance heard before Employment Judge Brain at the Employment tribunal sitting at Hull on 21 June 2019.
- ***Peninsula Business Services Ltd v Laura Haley Donaldson*** [UKEAT/0249/15/DM].

22. Further to the above and as outlined to the parties during the Preliminary hearing itself, I have also taken into account the principles and guidance emerging from the following cases, namely:

- ***Blockbuster Entertainment v James [2006] Court of Appeal 630***
- ***De Keyser Ltd v Wilson [2001] IRLR 324 EAT***
- ***Bolch v Chipman [2004] IRLR 140 EAT***
- ***Force One Utilities Ltd v Hatfield [2009) IRLR 45 EAT***.

The application for costs by the Claimant

23. The relevant law in connection with a costs application made by either a Claimant or a Respondent in the Employment tribunal is again set out within the Employment Tribunals Rules of Procedure 2013. Rules 74 and 75 of the said rules set out the definition of costs and the persons who are entitled to apply, the types of costs orders available and the definition of a preparation time order. The Claimant being a litigant in person would only be entitled to apply for a preparation time order.

24. By rule 76:

"When a costs order or a preparation time order may or shall be made

76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success; or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins."

25. By rule 76(2):

"(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party."

26. Rule 76(3) goes on to set out the basis upon which to apply for costs in respect of an unfair dismissal claim where a final hearing is postponed or adjourned. The remainder of the rule does not relate to the costs application that is being pursued by the Claimant in this case.

27. In reaching my determination on both of the above applications, I have taken into account all of the relevant procedural law and the case law that I have either referred to or has been cited to me by the parties.

The written evidence relied on

28. Having regard to the first limb of the Respondent's application for strike out, there is copied within the bundle, at page 26 onwards, a judgment at first instance in the Employment tribunal under case number 2200016/18 of the determination reached in a claim brought by the Claimant against Securitas Security Services UK Ltd and others. This claim was heard on 4 January 2019 before Employment Judge Snelson. There are full reasons given for the decision that was reached by Judge Snelson for striking out all of the Claimant's claims and dismissing the proceedings accordingly. This hearing took place prior to the interim relief hearing that was heard before Employment Judge Blackwell at which at the start of the hearing, Judge Blackwell asked the Claimant whether he had been involved in tribunal proceedings before. The Claimant was not under oath at this time but readily accepted when I asked him to clarify the position at the hearing today that he did reply with the answer "no" to that question. The reason he gave, as put by the Claimant, was that it was a personal private matter and that consequently it was completely wrong for Mr Ellison of Peninsula to subsequently rely upon this as part of the application to strike out by submitting a copy of the aforesaid judgment as part of the strike out application. The Claimant believed, (as put to me), that this was a breach of GDPR rules and an infringement against him as the reliance on and disclosure of that judgment by Mr Ellison was done so without the Claimant's consent. As I record above, he readily accepted that contrary to the answer he gave to Judge Blackwell, he had been involved previously in tribunal proceedings and was therefore aware of the procedures involved.

29. Following the outcome of the said interim relief hearing, the Claimant then embarked upon a series of email communications with various recipients, as are set out and copied within the bundle itself. Mr Gilbert firstly drew my attention to the email at page 44 of the bundle, which is dated 16 May 2019 and is addressed to a number of and various recipients including, but not limited to, the Respondent's representative Mr Ellison, various members of the Respondent Company, the Justice Minister and the Claimant's Member of Parliament's assistant, Mr Windridge.

30. Additionally, it is copied to "force.control@nottinghamshire.pnn.police.uk". The content of the email refers to the Claimant making an official complaint

against Peninsula Legal Services for direct disability discrimination contrary to the SRA Regulations and also that Peninsula Legal Services had:

> "… *committed also a very serious offence under the UK Law by committing Hate Crime which the Peninsula Legal Services are actually fully aware that i am officially have got Disability due to having Ulcerative Colitis …*"

31. Mr Gilbert then referred me to an email of 26 February 2019 copied at page 36 of the bundle, which again was submitted by the Claimant to a number of recipients, not least of which included clients of the Respondent Company itself, namely Eddie Stobart, SDC Trailers, Mandse.com and Romo.com. The body of the email contains reference to the Respondent committing serious breaches of health and safety regulations in its working practices and also to the averred disability discrimination of the Claimant and a failure to follow the disciplinary hearing regulations under the ACAS rules. The email also contains a request for a reconsideration of the interim relief hearing heard before Judge Blackwell and goes on to record that the Respondent had:

"… *officially admitted to me personally by email that the Respondent has officially breached Health & Safety Regulations which also has officially been accepted by Judge Blackwell …"*.

32. Mr Gilbert confirmed that this email was submitted to a number of the Respondent's substantive clients, some of which were not even aware that they were clients of the same Respondent Company and was written only after the Claimant had been dismissed and not during his employment with the Respondent.

33. The Respondent's ET3 Response was received on 12 April 2019, in which within the particulars of Response the Respondent refers to a preliminary issue requesting that the Claimant's claims for discrimination and arrears of pay are struck out as it was submitted that the Respondent could not adequately respond: "*save as below"* to the said claims.

34. By letter of 15 May 2019 copied to the Claimant and in reply to the said ET3 preliminary issue point, Employment Judge Heap directed that the following letter be despatched. The letter is headed "*Acknowledgment of correspondence*". The text of the letter reads as follows:

"*I refer to your ET3 and particulars of response dated 12 April 2019. Employment Judge Heap has directed that your request for the Claimant's claims for discrimination and arrears of pay to be struck out will be discussed at the Preliminary hearing listed for 24 June 2019.*"

35. It was sent to the Respondent and copied to the Claimant and is signed by one of the tribunal clerks. Subsequent to that and dated 17 May 2019 (at page 46 of the bundle) is a copy of an email that the Claimant submitted to a

number of recipients including, but not limited to, the Justice Secretary, the Claimant's MP's assistant Mr Windridge, the EAT and the President's Office of the Employment Tribunals (England and Wales), which reads as follows:

> "*Dear Sir/Madam,*
>
> *I personally have been provided with my Crime No from Nottinghamshire Police Force today (17th May 2019) and officially has been officially logged as a Hate Crime against Judge Heap for Nottingham Employment Tribunal Services but also against Judge Hammond and also against Respondent (Heart Security Services Ltd) and against Respondent Lawyer Jake Ellison for Peninsula Legal Services.*
>
> *…*"

It is signed by the Claimant.

36. At page 53 of the bundle is a copy of an email sent by the Claimant dated 20 May 2019, again addressed to a number of recipients, including the aforementioned. Within the body of that email and amongst other allegations that the Claimant makes, the Claimant makes a request for me to review his interim relief application as this was due to:

> "*Judge Hammond has been officially prejudice and personally bias against me personally and also has committed against me a Hate Crime against me personally for being Disabled but also regarding to my Religious Beliefs as a Muslim …*"

This concludes by the Claimant making an official complaint against Judge Hammond and goes on to copy in various notes of advice as to the rights an employee has under section 94(1) of the Employment Rights Act 1996.

37. Separately and aside in the bundle by a further email of 20 May 2019, the Claimant again writes to a number of recipients (including those named above) and also on this occasion the Warwickshire Police Force, in which the Claimant sets out a personal apology regarding to incorrect information that he had provided against Mr Hammond by stating that he had committed the hate crime against him. The Claimant records that this was actually incorrect because Mr Hammond was (and is) an administrator (clerk) working for the Nottingham Employment tribunal. The Claimant records that the person he actually wished to name as the offender, was Employment Judge Blackwell who heard his original interim relief application. He concludes with the following paragraph which as I record above was submitted to the Warwickshire Police Force:

> "*Please can you make sure this is Recorded as a Hate Crime Offence also it's a officially Police Matter due to a Criminal Offence has been*

officially reported and taken place as Hate Crime and Incident against Judge Blackwell for Nottingham Employment Tribunal Services instead of Mr Hammond who actually is Administratior (sic) *and a* (sic) *employee for Nottingham Employment Tribunal Services at this present time."*

38. As referred by Mr Gilbert at page 63 of the bundle is a further email from the Claimant dated 21 May 2019. Again, this is addressed to a number of recipients including, but not limited to, Nottinghamshire Police, Mr Windridge, ministers@dwp.dwp.gsi.gov.uk, Mr Ellison, members of the Respondent Company, the Justice Secretary, the President's Office, the EAT and other named recipients. The body of the email incorporates an article regarding a hate crime incident and further sets out as submitted within that email by the Claimant that hate crime was a criminal offence committed against a person or property motivated by an offender's hostility or prejudice towards someone because of their race, religion or perceived religion, sexual orientation, disability or perceived disability.

39. In respect of offences relating to both religion or perceived religion and disability or perceived disability, the Claimant records that this has been: "*commuted by Judge Blackwell and Judge Heap for Nottingham Employment Tribunal Services …"* and others including *Unite the Union, Mr Guye and also Mr Ellison.*

40. At page 71 of the bundle, is a letter dated 31 May 2019 addressed to the Claimant from the Solicitors Regulation Authority following a complaint that the Claimant had submitted about Mr Ellison to them. Whilst there is no detail of the substance of that complaint therein, the Claimant accepted that he had reported Mr Ellison and that the Regulation Authority responded that they were unable to take any action because Mr Ellison was not a solicitor.

41. In addition to the above email correspondence, on 17 May 2019 submitted at 22:44 hours, the Claimant attached a screen shot photograph which he described as his own personal evidence regarding the hate crime incidents that he stated had been officially recorded and were all going to be fully investigated by Nottinghamshire Police Force.

42. Separately and aside from the email correspondence referred to above within the bundle, by an email of 17 May 2019 at 19:23 hours, again addressed to the Employment tribunal copied into (amongst others), the Justice Secretary, the Claimant's MP's assistant, the Solicitors Regulation Authority and the Warwickshire and Nottinghamshire Police Forces is a long email setting out further confirmation that the Claimant's reported hate crime against Judge Heap and Mr Ellison had been recorded by Nottinghamshire Police under incident number 743/16/5/19, which had further been forwarded to Warwickshire Police Force because the Claimant lived in Nuneaton, Warwickshire and that he had received confirmation from that Force that this had also been recorded as a hate crime under reference number 3/20382/19.

43. Two further emails are of note. The first is dated 21 May 2019 sent by the Claimant at 22:37 hours copied to the tribunal. In this case it is addressed to Hertfordshire Police Force, the Watford Employment tribunal, the Justice Secretary, the Claimant's MP's assistant, ministers@dwp.gsi.gov.uk, senior members of Unite the Union and members of Thompsons Solicitors. The subject matter is headed "*Very urgent regarding to a hate crime incident against"*.

44. The narrative in the email records the Claimant complaining about a hate crime incident that had taken place against him as a disabled person and because of his religion or belief by Employment Tribunal Judge Smail of the Watford Employment tribunal on Thursday 5 September 2018. He goes on to record that a hate crime had been logged with the reference number against another Respondent Company and that "*I am personally reporting an official hate crime incident against Employment Tribunal Judge Smail for Watford Employment Tribunal Services today 21st May 2019 as a matter of urgency.*"

45. The other email of note within the bundle itself is an email of 13 June 2019 (copied at page 82) in which the Claimant writes to Nottinghamshire Police complaining that Mr Ellison (the legal representative for the Respondent) was not actually a lawyer because he was not regulated and neither were Peninsula by the Financial Conduct Authority and that therefore Mr Ellison had committed fraud for telling lies to the Nottingham Employment tribunal by describing himself as a litigation executive. The Police responded to that on 13 June by confirming that they had no power to investigate such a matter and that the Claimant should contact the Legal Ombudsman.

46. When questioned by me about the authenticity of all the email correspondence referred to above, the Claimant readily accepted that he had submitted and composed all of the said emails and had logged various hate crime incidents as set out within the aforesaid correspondence.

The costs application

47. In respect of the Claimant's cost application against the Respondent which, as I record above, both parties requested I also considered as part of this overall hearing, the application itself is set out in an email dated 17 June 2019 (again addressed to a number of recipients) in which the Claimant requests as a matter of urgency the email was placed before me requesting that I grant an urgent costs order against the Respondent for:

"… *FAILURE TO INFORM NOTTINGHAM EMPLOYMENT TRIBUNAL REGIONAL JUDGE SWANN DIRECT INSTRUCTIONS ON BEHALF OF NOTTINGHAM EMPLOYMENT TRIBUNAL SERVICES BUT ALSO TELLING LIES TO ME PERSONALLY AS A CLAIMANT FOR ACTING ON BEHALF OF THE RESPONDENT (HEART SECURITY SERVICES LTD) BUT ALSO TO NOTTINGHAM EMPLOYMENT TRIBUNALS SERVICES.*

"Also Jake Ellison breach GDPR Regulations without getting my own personal permission but also did not done any personal requests from me personally Under Subject Access Requests for accessing my own personal data and information regarding to my previous employer which Securitas Security Services UK Ltd regarding to my employment tribunal claim which I will send the copy email dated 4th March 2019.

Order pursuant to Rule 76 of the Employment Tribunals Rules of .. Respondent's conduct" which I take to be an application under Rule 76(1)(a),."

48. I responded to that application on 19 June (copied to the Respondent) outlining the principles upon which any application for costs could be made by a litigant in person (in this case a preparation time order) and stating that such an application should set out clearly the amount of costs claimed against the other party and provide full details of the basis upon which the order was sought and how the amount of costs had been calculated, which should be copied to the other party so that they were able to reply.

49. In addition, I recorded within that letter that the tribunal was only empowered to and "may" make awards of costs in accordance with rule 76 of the Rules of Procedure and highlighting the basis upon which an order could be made. I concluded by informing the Claimant that as the tribunal had then made no determination in regard to any of the issues referred to in Rule 76 and no detail of the basis or amount of costs sought by the Claimant had been outlined, it was not then appropriate to consider making any award of costs against the Respondent.

50. In reply thereto and by an email of 19 June 2019 submitted to the tribunal at 17:39 hours and copied to the Respondent's representative, the Claimant records in the final paragraph that he was requesting as a matter of urgency for the costs order to be made against the Respondent and against the Respondent's representative in the total sum of £4m, which the Claimant described as value from the Company profits for which the Respondent needs to pay £1m of the Company profits "by actually telling lies to the HMRC and not paying UK Government corporation tax since 2012", describing the current Respondent as having been an earlier company under the name of First Security Services Midlands Ltd. This was the only response in regard to the comments I had made in my letter to the Claimant, copied to the Respondent.

51. This concluded the relevant evidence that was either put before me or I considered at the hearing today.

The submissions

52. I heard submissions in respect of the application to strike out the claim and also in respect of the costs application from both parties. I have limited my

summary of the submissions to the matters directly relating to the above substantive points only. I made it clear to the parties at the hearing, that I was not going to make findings on any matters presented to me that could form the subject matter of a potential liability hearing in respect of the claims as lodged. Although the Claimant made lengthy submissions before me, many of his submissions related directly to the liability issues that he was pursuing. I have therefore referred to those matters in general terms only for the above reason.

Submissions by Mr Gilbert

53. Mr Gilbert opened his submissions by making reference to the strike out application itself which is copied within the bundle commencing at page 22. He turned firstly to the issues raised at paragraphs 5 and 6 of the application at page 23 of the bundle concerning the response given by the Claimant to the question posed by Judge Blackwell at the interim relief hearing, submitting that the evidence showed from a previous case the Claimant had been involved in (as referred to in the written evidence) that he was well aware of tribunal procedures and should have confirmed the same to Judge Blackwell. Mr Gilbert echoed the comments at paragraph 7 of the application that in the Respondent's view this amounted to a complete disregard of the tribunal's authority and was in itself scandalous, unreasonable and vexatious behaviour and also an abuse of process.

54. Mr Gilbert referred to the case of ***Marler Ltd v Robertson [1974] ICR 72***, which set out the meaning of vexatious proceedings and submitted that the Claimant's persistent emails amounted to vexatious actions on his behalf, as well as being scandalous and unreasonable.

55. In this regard, Mr Gilbert firstly referred to the email at page 44 in the bundle in which the Claimant makes an official complaint against the Respondent's legal representatives, and also against Mr Ellison in particular, for direct disability discrimination against the Claimant personally and that they had committed hate crime. As Mr Gilbert submitted, this email was sent to a number of recipients, none of whom were directly involved in this case at all and it was argued on behalf of the Respondent that this can only have been to cause distress or financial detriment to the Respondent.

56. Mr Gilbert submitted that the email (copied at page 36 of the bundle) was a further example of this type of action on the part of the Claimant, particularly so, because that was the email that was sent to a number of the Respondent's own clients, which included Eddie Stobart, SDCT Trailers, Mandse.com and Romo.com. Mr Gilbert submitted that whilst the email contained an application for a reconsideration, there was absolutely no need for the Respondent's clients to be copied into this email correspondence and as a result, a lot of questions had been raised by those clients, not least of which because two of those clients were competitors and the Respondent was actually providing security services for both of them. Mr Gilbert submitted that there was no reasonable explanation as to why clients of the Respondent should be copied

into this email and that the only conclusion could be that the Claimant did this to cause maximum detriment to the business and to harass the Respondent.

57. Mr Gilbert then referred to paragraph 11 of the application at page 24 of the bundle and the principles arising from the case of ***Bennett v London Borough of Southwark*** and submitted that the Claimant had not attempted to advance a case to which the Respondent could adequately respond. This was instead a course of action on the part of the Claimant to vilify the Respondent and damage its reputation within the industry, again relying on the emails submitted to a number of recipients.

58. When I queried this submission with Mr Gilbert, he accepted however that in fact the Claimant had presented a case as a litigant in person that could be understood and that a full response had been submitted to that.

59. Mr Gilbert then referred to paragraph 12 of the application (page 24 of the bundle) and the case of ***Jones v Wallop Industries Ltd*** and reiterated the points made in the said application that by copying emails into the Respondent's clients, that this was tantamount to the Claimant causing the Respondent as much distress as possible.

60. Mr Gilbert made reference to the other numerous emails within the bundle. At page 53, the Claimant had reported a person whom he described as "*Judge Hammond*" to the Police, which said email was sent to various people not party to these proceedings. He highlighted page 63 of the bundle, where there is further reference in an email by the Claimant in respect of Judges Blackwell and Heap having committed hate crime, which was copied to numerous people. Mr Gilbert submitted that this was all further evidence, as set out within the bundle, of the Claimant intending to cause as much disruption to the litigation process and also to the Respondent's business as he could, with a significant number of people repeatedly copied into these emails who were not and never will be part of these proceedings.

61. Mr Gilbert concluded by pointing out that the email at page 36 (the example of an email sent to the Respondent's customers) was not sent until only after the Claimant had been dismissed from his employment, which supported the submission that this was deliberately intended to cause as much disruption to the Respondent as possible.

62. Mr Gilbert concluded by requesting that I take all documents that were copied into the bundle into account in reaching my decision.

Submissions of the Claimant

63. As I record at the commencement of this part of my judgment, the submissions made by the Claimant were extensive and detailed but were, in the main, concerned with issues of liability and other experiences that the Claimant

maintained that had been subjected to within his career, not all with the current Respondent.

64. The Claimant readily accepted from the outset that he had denied having any experience of Employment tribunal proceedings when questioned by Judge Blackwell as part of the opening discussion at the interim relief hearing. His submission was that this had been a personal matter and was not the business of anyone else. That it was wholly wrong for the Respondent's legal adviser to then make a submission relying on the judgment that emanated from his previous claim as no permission had been sought of the Claimant for this to be disclosed and that this was in breach of GDPR regulations.

65. The Claimant further readily accepted that all of the emails referred to at the hearing, within the bundle forming part of this application and as sent to the tribunal were composed by him. He maintained that he submitted emails to the clients of the Respondent because he believed that they should be made aware of the averred lack of health and safety and security, as he put it, on the part of the Respondent Company on their sites. He believed that he as a security guard and customers were at risk on their sites. He did this because he maintained he was concerned about health and safety issues.

66. The Claimant maintained and submitted he had raised these concerns in the grievance hearing that was ultimately heard by the Respondent that took place only after the termination of his employment.

67. The Claimant submitted the Respondent initially failed to hold the grievance at a time that was convenient to the Claimant despite numerous requests on his behalf. Further that they failed to allow him to be properly represented at the said grievance hearing.

68. The Claimant then went on to make various submissions about the averred breaches of the Respondent duties both in its own policies and also its representatives in their policies for advising the Respondent in the way that they did.

69. The Claimant made general submissions about matters concerning the Respondent's lawful authority to operate on sites and averred failures in its licensing requirements all of which he maintained he was right to raise concerns about and to publish those concerns.

70. When questioned by me as to why he cascaded the emails that he did, the Claimant stated that he believed that he had the right to report his concerns about all matters concerning the Respondent to his Member of Parliament (amongst others) and indeed he had previously raised concerns about other non-related matters to his MP as and when he felt it was appropriate. He fully accepted that he had reported both the Respondent and its representatives and three Judges to the Police for hate crime incidents. He maintained that he believed that breaches of the Equality Act, in the manner he maintains he was

treated because of his disability and his religion and belief were inextricably linked to hate crime and thus should properly be reported. That he did so in respect of the Respondent because of the way they treated him as an employee and because of the conditions that he had to work under, as he put it, when on their sites. That this had caused him to report his concerns to management. That he did so in regard to the Respondent's representative for the manner in which they were representing their client and responding to his claim, the advice that they had given to their client and the capacity in they were holding themselves out as being.

71. The Claimant readily accepted that he had reported members of the judiciary to the Police for hate crime and had obtained crime reference numbers. In respect of Judge Smail from an earlier hearing in 2018, he accepted he had reported Judge Smail for hate crime in May 2019 because he believed that Judge Smail had been biased and against him and should have found in his favour. He submitted he was prevented from properly putting his case and that this action on the part of the Judge was a crime against him.

72. In regard to Judge Blackwell's decision following the interim relief application, he submitted that Judge Blackwell should have found in his favour because he was well aware that there had been a breach of the health and safety regulations at the sites upon which the Claimant worked that he raised as a concern. Judge Blackwell was therefore biased against him. That this was a criminal act on the part of the Judge because he had failed to take the Claimant's disclosures seriously and he was therefore properly reported to the Police for hate crime

73. In respect of Judge Heap, when I raised with him that Judge Heap had not been involved in this case at all but had simply directed the writing of a letter (which I read out at the hearing) to the parties that the Respondent's further application for strike out on the basis that there was no reasonable case presented by the Claimant, could be considered at the Preliminary hearing today, the Claimant nevertheless maintained that he believed that Judge Heap had already made up her mind to strike out his claims and that this was therefore hate crime on her part and that he had every right to report the same to the Police.

74. As the Claimant submitted, hate crime was in his view inextricably linked to breaches of the Equality Act and he was perfectly entitled to report Judges about matters that he believed should have been found in his favour when they were not.

Submissions regarding the costs application

75. The Claimant submitted that his costs application should be found in his favour; that it was valid and arose because he maintained there was dishonesty on the part of the Respondent and that they should pay for their failings.

76. On behalf of the Respondent, Mr Gilbert made no specific submission in respect of the said costs application but requested that it be dealt with by me as part of the hearing today.

77. This concluded the submissions of the parties.

Conclusions

78. I have reached the following conclusions about the applications before me having considered all of the relevant evidence set out within the bundle of documents submitted to me and as submitted in open correspondence to the tribunal, the relevant procedural law and the principles and case law that I have cited in this my judgment and the submissions made by the parties, for which I am grateful.

79. In turning to the application for the striking out of the claim, in accordance with rule 37(1)(b) the tribunal has power to strike out all or part of a claim or response if it is determined, that the manner in which the proceedings have been conducted by or on behalf of a claimant or respondent has been scandalous, unreasonable or vexatious.

80. I turn first to the issue of vexatious as this is part of the application before me. I have noted from the submissions and the application to strike out itself, that reference has been made by the Respondent's representatives to the case of ***Marler Ltd v Robertson [1974] ICR 72*** in which a vexatious claim or defence was described as one not pursued with the expectation of success but to harass the other side or out of some improper motive. This case was followed by the case of the ***Attorney General v Barker [2000] 1 FLR 759 QBD*** where the then Lord Chief Justice described vexatious proceedings as having a hallmark of little or no basis in law, or at least no discernible basis, and that whatever the intention of the proceeding may be, its effect was to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant. Further, that it involved an abuse of process of the court by using the court process for a purpose significantly different from the ordinary and proper use of the said court process.

81. This was one submission, as recorded above, that was made to me in respect of the issuing of the proceedings themselves. However, and as Mr Gilbert agreed, the Claimant as a litigant in person had set out his claim in principle and genuinely believed that he had a strong case against the Respondent. The Respondent has been able to submit a detailed response to the claim disputing the same. It may well be argued that further particulars would have been required to have narrowed down the issues to be determined at any final hearing but I am not satisfied on the basis of the case as originally pleaded that it was in itself vexatious, as was accepted by Mr Gilbert on the part of the Respondent at the hearing.

82. I turn next to the issues of whether or not in conducting the proceedings, having lodged the ET1 claim, the Claimant has pursued those proceedings in a scandalous and unreasonable manner. In ***Bennett v London Borough of Southwark [2002] ICR 881 Court of Appeal***, the guidance emerging there from was that scandalous means being irrelevant and abusive of the other side and it is not to be given its colloquial meaning of signifying something that is "shocking".

83. ***Jones v Wallop Industries Ltd ET/17182/81*** exemplifies the instance where the claimant therein, in claiming he had been unfairly selected for redundancy, made allegations of fraud, mismanagement, misrepresentation, criminal conspiracy, intimidation and other torts against the respondent employer. The tribunal in that case concluded that the Claimant appeared "hellbent on causing the Respondent Company and a number of individuals as much inconvenience, distress, embarrassment and expense as possible" and amounted to largely scandalous behaviour and the whole of the claim was struck out. In addition, the respondent in the case before me submits that the manner in which the proceedings have been conducted also amounts to being wholly unreasonable on the part of the claimant.

84. ***Blockbuster Entertainment v James [2006] Court of Appeal 630*** confirmed that a tribunal must take into account in regard to the question of conducting the case in an unreasonable manner, as to whether or not a fair trial is impossible and the striking out must be a proportionate response.

85. ***Bolch v Chipman [2004] IRLR 140 EAT*** sets out the steps which a tribunal must ordinarily take into account when determining whether to make a strike out order. The tribunal is of course also bound by rule 37(1)(e) in respect of any application to strike out a claim or response. Those steps are as follows:

    85.1 Before making a striking out order under what is now rule 37(1)(b), an Employment Judge must find that a party (or his or her representative) has behaved scandalously, unreasonably or vexatiously when conducting the proceedings.

    85.2 Once such a finding has been made, he or she must consider in accordance with the principles arising from ***De Keyser Ltd v Wilson [2001] IRLR 324 EAT*** whether a fair trial is still possible as, save in exceptional circumstances, a striking out order is not regarded simply as a punishment. If a fair trial is still possible, the case should be permitted to proceed.

    85.3 Even if a fair trial is unachievable, the tribunal will need to consider the appropriate remedy in the circumstances. It may be appropriate to impose a lesser penalty, for example by making a costs or preparation order against the party concerned rather than striking out his or her claim or response.

85.4 Against that, in the case of ***Force One Utilities Ltd v Hatfield [2009) IRLR 45 EAT***, the EAT determined that an Employment tribunal was justified in striking out an employer's defence to a claim of unfair dismissal in circumstances where a witness had threatened the claimant. The EAT concluded that the conduct of S, who was directing matters on behalf of Force One Utilities Ltd, had made a fair trial of the issues impossible and that striking out the defence in that case was a proportionate response to that conduct. The EAT rejected the idea that tribunals should carry out a "balancing act" in determining whether striking out is a proportionate response. Instead, the critical question is whether a fair trial remains possible.

86. In addition to the guidance emerging from the above case law, I have read and considered the various cases that have been submitted to me by the Claimant as cited in the law section of this my judgment. However, I have determined that those cases do not assist the Claimant in regard to the matters that I have to resolve today in respect of the striking out application.

87. Whilst the claim in itself raises matters of serious concern, which are all denied completely on the part of the Respondent, I am satisfied from the evidence before me that the manner in which these proceedings have since been conducted on the part of the Claimant amounts to both scandalous and unreasonable behaviour on his part. Although the Claimant firmly believes in the allegations that he has raised within his ET1 claim, I can see no reason as to why he needed to copy substantial clients of the Respondent into his application for a reconsideration hearing before this tribunal, which was addressed as at page 36 of the bundle in an email to the President of the Employment Tribunal and the then President of the Employment Appeal Tribunal.

88. I accept Mr Gilbert's submission that this caused significant concern to the clients of the Respondent and indeed was designed to do so by the Claimant. As a consequence, because of the matters raised by the Respondent's clients, I am also satisfied that this has caused significant distress to the Respondent Company and was designed to do so by the Claimant who freely admitted before me that he felt that it was his right to raise his concerns with clients of the Respondent Company. I note that this email was sent after the dismissal had taken place and not beforehand. Therefore, it cannot in itself have been a public interest disclosure that the Claimant may or may not have been entitled to make that resulted in the termination of his employment.

89. However, over and above that, because of his belief that alleged breaches of the Equality Act are inextricably linked to criminal offences (in this case hate crime), the Claimant has gone on to report both the Respondent Company and the Respondent's legal representative to the Police for hate crime and published that fact to numerous people and bodies who are not concerned at all with or parties to these proceedings.

90. In addition, he has reported three separate individual judicial office holders from two different tribunal regions to the Police for hate crime and failed to disclose a matter that he was clearly previously involved in (a judgment that is a matter of public record) when questioned by the Judge, on the basis that because those Judges did not agree with the contentions that he was putting forward, or found in his favour on matters, that they were biased and had therefore committed criminal offences.

91. There is a correct procedure for a party to challenge the determinations and findings of a Judge and that is to lodge an appropriate appeal if an error in law has been made. Indeed, the Claimant in this case has lodged an appeal to the Employment Appeal Tribunal about the determinations of Judge Blackwell at the interim relief hearing and therefore knows full well how such a matter should proceed.

92. However, it is clearly completely inappropriate to attempt to influence in any way the determination of any independent Judicial office holders in the carrying out of their duties, the appointed representatives of a party and the other party in proceedings by reporting them to the police for hate crime, whether or not those matters are subsequently investigated. The fact that the Claimant has done so, and clearly is prepared to do so and copy that in open correspondence to numerous others by email when matters are not found in his favour, must either consciously or subconsciously have an intimidatory effect on any witness potentially involved in this case or, for that matter, any Judge appointed to try this case and significant potential therefore for influencing the outcome of any hearing.

93. Whilst it is a draconian act to strike out any claim, especially one that raises such allegations against a respondent, I have concluded that there is no lesser alternative as there is no possibility of a fair trial taking place in this case because of the scandalous and unreasonable conduct of the proceedings to date on the part of the Claimant for the reasons set out above.

94. The claim therefore is struck out in its entirety in accordance with rule 37(1)(b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and as a consequence stands dismissed.

95 Although as I record above Judge Heap directed that the Respondent's subsequent application for the claim to be struck out as having no reasonable prospect of success at today's hearing, I heard no submissions from either party in respect of the same and consequently have made no findings or determination on that application

The costs application

95. In regard to the application for costs that has been pursued by the Claimant against the Respondent, there is simply no basis in law or fact upon which the Claimant has made this application. Despite a clear direction having been

given to the Claimant to set out fully the detail of his application in accordance with the tribunal's rules of procedure, he has singularly failed to do so.

96. I therefore also conclude that his application for costs against the Respondent should be dismissed.

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Regional Employment Judge Swann

Date 9/7/2019

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