



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr A Tayel

Respondent

1. Public Health England
2. Cambridge University Hospitals
NHS Foundation Trust

and

Held at Bury St Edmund's on 6 September 2019

Representation

Claimant:

In Person

Respondent:

- 1 Ms G Hirsch, Counsel
- 2 Ms R Tuck, Counsel

Employment Judge Kurrein

RESERVED JUDGMENT FOLLOWING AN OPEN PRELIMINARY HEARING

The Claimant claims are totally without merit and are dismissed.

REASONS

Outline

- 1 The Claimant completed early conciliation between 13 June and 18 June 2018 and presented a claim alleging victimisation against the above-named Respondents by an ET1 presented on the 13 September 2018.
- 2 The Respondents presented fully pleaded responses on the 24th of October and 8 November 2018. Both Respondents made concurrent applications that the claims should be struck out, alternatively should be the subject of a deposit order.
- 3 On 4 July 2018 Employment Judge Finlay conducted a preliminary hearing and, having clarified the claim, refused the Claimants application to amend and set out the issues in the case, gave comprehensive directions for its further conduct.

Applications

- 4 The Claimants case has come before me today for an open preliminary hearing to consider the Respondents' applications that the Claimants claim should be struck out because:-
 - 4.1 It has no reasonable prospect of success.
 - 4.2 It is vexatious or otherwise an abuse of the process
 - 4.3 It offends against the principle of *res judicata*: i.e. the issues have already been considered and decided.
 - 4.4 It is barred by issue estoppel.
 - 4.5 It is contrary to the rule in Henderson and Henderson.

History

- 5 The case I am concerned with, and the previous cases brought by the Claimant, largely arise from his failure to be appointed to a position as a medical laboratory assistant by the First Respondent at Ipswich Hospital in mid-2016.
- 6 My Judgement and Reasons for it must therefore be read in light of the correspondence, pleadings and judgements in the following cases, in which, for the avoidance of confusion, I refer to the Respondents in this case as, respectively, PHE and CUH: –
 - 6.1 Case number 3325693.2017, in which the Claimant alleged race discrimination against both Respondents in this case and against Ipswich and other hospitals. The following is an outline of that case and its conclusion:-
 - 6.1.1 It was presented on 1 August 2017.
 - 6.1.2 It related that the Claimant's placement as a student scientist at Ipswich Hospital in 2009-2010 ending without success.
 - 6.1.3 He brought ET proceedings, including allegations of race discrimination, which were compromised in February 2012.
 - 6.1.4 It alleged that the compromise has been procured by fraud and dishonesty by Ipswich Hospital in the disclosure process. It was the Hospital's case that full disclosure of all documents had been given to the Claimant's then solicitors in the compromised cases.
 - 6.1.5 It alleged that PHE and CUH were members of the Pathology Partnership and thus responsible for the alleged misdeeds of staff at Ipswich, Colchester and West Suffolk Hospitals. That was wrong: PHE are not a member.
 - 6.1.6 On 4 July 2018 EJ Finlay dismissed the claim against PHE, because it was out of time and it would not be just and equitable to extend time.
 - 6.1.7 In a lengthy, detailed Reserved Judgment following a two day hearing on 27 and 28 November 2018, which was sent to the

parties on 8 March 2019, EJ Laidler struck out all the claims against all the remaining Respondents, including CUH, because:-

- 6.1.7.1 Some matters pre-dated the compromise in February 2012 and re-litigating them was an abuse of the process.
- 6.1.7.2 Some claims were out of time and no credible evidence had been given why it would be just and equitable to extend time.
- 6.1.7.3 Those claims that were in time had no reasonable prospect of success.

7 Case number 3305873.2018 in which the Claimant made allegations of race discrimination against PHE and Ipswich Hospital. The following is an outline of that case and its history:-

- 7.1 It was presented on 11 April 2018.
- 7.2 It referred to the above claim 3325693.2018, and recited the fact of the Claimant's interview for the post with PHE at Ipswich Hospital in June 2016.
- 7.3 Alleged misconduct and a failure to declare an interest by those that interviewed him on that occasion and that he had:-
 - 7.3.1 sought an investigation of those allegations; and
 - 7.3.2 made a data subject access request; to PHE.
- 7.4 Alleged the failure of PHE to investigate and comply with the request were acts of discrimination.
- 7.5 Alleged that PHE's Counsel, who had, at a hearing on 21 February 2018, submitted that the Claimant's representation of his case had been "dishonest" was PHE's agent.
- 7.6 Alleged that a letter from PHE dated 3 April 2018 was humiliating, degrading and hostile.
- 7.7 The latter two allegations were withdrawn by the Claimant and dismissed at the hearing before EJ Laidler on 26 November 2018 when she heard the applications by both Respondents to strike out the claims.
- 7.8 By her further lengthy and detailed Reserved Judgment sent to the parties on 1 March 2019 EJ Laidler struck out the Claimant's remaining claims against PHE:-
 - 7.8.1 As an abuse of the process, as they had been determined by being struck out in Case 3352693.2017.
 - 7.8.2 Because they were out of time and it would not be just and equitable to extend time.

7.8.3 As the Claimant was not an employee or applicant in respect of his requests for information of 5 May 2017, 25 February and 9 March 2018 there was no jurisdiction under Equality Act 2010.

7.8.4 Because the ET had no jurisdiction in respect of a data subject access request.

8 Case number 3330703. 2018 In which the Claimant made allegations of race, religion or belief and disability discrimination against Ipswich Hospital, Colchester hospital and three named individuals, Mrs Stalley, Mrs Wiltshire and Mr Wallis, who worked at Ipswich Hospital, but were employees of PHE. The facts and history of this case are of particular importance when considering the Claimant's knowledge at the time it was presented on 14 June 2018. I refer to the following:-

8.1 The claim form referred to the five Respondents I have identified.

8.2 However, the Grounds of Claim also referred to "Cabridge University Hospital" (I deal with that spelling later) and PHE, but they were never served with, or parties to, that litigation.

8.3 It referred to employment dates of 1 October 2009 to 30 September 2010, and to the two earlier cases, for which consolidation was sought.

8.4 It alleged Mrs Stalley:-

8.4.1 victimised the Claimant by destroying short-listing notes

8.4.2 sent an email in May 2018 (in fact 23 April 2018) in which she commented adversely on his suitability to work in the laboratory.

8.5 Raised issues concerning disclosure of that email.

8.6 Alleged destruction of interview notes by Mr Wallis on 31 January 2017.

8.7 Alleged CUH failed to investigate complaints made by him regarding destruction of documents.

8.8 Alleged Mr M Smith, a partner of Bevan Brittan, CUH's solicitors, had harassed and bullied him by threatening costs and making unjustified threats in Case No 3305873.2018.

8.9 Alleged PHE had:-

8.9.1 victimised him by destroying conflict of interest forms relating to the Claimant's two job applications;

8.9.2 failed to investigate the complaint he made concerning that in June 2018.

8.10 By her yet further lengthy and detailed Reserved Judgment sent to the parties on 18 March 2019 EJ Laidler:-

8.10.1 Dismissed the Claimant's application for summary judgment against PHE and CUH, because they had never been served with the proceedings.

- 8.10.2 Refused the Claimant's application to amend to add PHE and CUH as Respondents to the claim.
- 8.10.3 Struck out the claims as being vexatious and/or having no reasonable prospect of success.
- 8.10.4 Ordered the Claimant to pay costs of £6,064
- 8.11 The Claimant made multiple applications for reconsideration of that Judgment on 28 March 2019. EJ Laidler refused that application in a Judgment sent to the parties on 25 April 2019 because it had no reasonable prospect of success.

The Present Claims

9 In considering the applications before me I deal with each of the Respondents in turn.

PHE

10 These claims are set out in paragraphs 10 and 1.30 of the Grounds of Claim. So far as material they are as follows,

“10. Public Health England destroyed material documents regarding the recruitments of two posts which the Claimant applied for and was interviewed:

Public Health England destroyed the conflict of interest forms for both interviews (June 2016 – February 2017).”

“1.30. As soon as Public Health England made the Claimant aware that the documents do not exist, the Claimant issued a formal complaint. The Claimant complained to the real employer (Ipswich Hospital- Claimant former employer) and also complained to Public Health England. No investigation was carried out and no response was received. The Claimant firmly believes that Public Health England is assisting Ipswich Hospital to discriminate and victimise against the Claimant”

11 I thought it apparent that there was a conflict between these two allegations:-

11.1 In the first, the accusation is one of destruction of documents, which presupposes they existed.

11.2 In the second, the Claimant is admitting, as PHE allege, that no such documents existed.

12 It was PHE's case that he was told in the original litigation, case 3325693.2017, that the only person that he alleged had discriminated against him in the 2016 interview, Mr Parker, had given him the highest marks of the panel, and was later told that no conflict of interest forms were completed because no members of the interview panel thought there to be any recordable conflict.

13 It is also clear that the Claimant was aware of these issues at the time he issued case numbers 3305873.2018, on 11 April 2018, and 3330703.2018, on 9 July 2018. It is equally clear that he intended to and could have joined PHE as a Respondent to case 3330703.2018 at that time.

- 14 I have concluded that all the matters on which the Claimant now relies have been raised in previous claims. I accept that in some cases they have been raised against different individuals, but there has been no explanation at all why they could not have been raised against all relevant parties or individuals at the same time. In particular, the individual respondents in case number 3330703.2018 were all employees of PHE.
- 15 In reality, the Claimant is seeking to re-litigate matters that have already been decided against him, in some cases more than once.
- 16 The claims are also substantially out of time. The latest any event could be to be in time would be on or after 14 March 2018. The events alleged against PHE took place many months before that. No evidence has been given to show that it would be in the interests of justice to extend time in the Claimant's favour.
- 17 It appears to me that the Claimant is quite unable to accept that his alleged claims against these and other Respondents have been decided against him. He seeks to resurrect his claims with slight modifications, or by alleging lack of knowledge of certain facts, in the hope that he can find some route by which to give them life. In my view, those attempts are futile, and his claims incapable of resuscitation.
- 18 I therefore find:-
- 18.1 His claims are barred by the doctrine of *res judicata*. The substance of them has been decided against him and they cannot be reopened. The principle of *issue estoppel* also applies.
- 18.2 The claims also offend against the rule in *Henderson v. Henderson* (1843) 3 Hare 100: it is clear that the claims before me could and should have been brought in one or other of the earlier sets of proceedings.
- 18.3 The ET has no jurisdiction to hear the complaints arising from an alleged failure to comply with a data subject access request.
- 18.4 The claims are out of time and it would not be in the interests of justice to extend time.
- 18.5 The claims have no reasonable prospect of success: there is no the suggestion of one iota of evidence that might shift the burden of proof to the Respondent.
- 18.6 The history of these claims, in particular their frequency and repetitive nature, has led me to conclude that this claim is vexatious and an abuse of the process.

CUH

- 19 This claim is set out at paragraphs 7 and 8 of the Grounds of Claim.
- "7. The Respondent's Agent is mocking the Claimant because the Claimant's first language is not English.
- Mr Smith stated the following:
- ET3-Claim number 3330703/2018
- Paragraph 1

"This response is provided on behalf of all Respondents. For the avoidance of doubt, the Respondents named in the ET 1, and for which there is an ACAS EC certificate, are the only ones, which we consider to be the Respondents in this claim. The other Respondents named on the first page of the particulars of claim (namely West Suffolk Hospital, **Cabridge [sic] university Hospital**, Jackie Powell of Colchester Hospital and public Health England) are not considered to be Respondents and no response is filed on their behalf." 8. For the avoidance of doubt, Mr Smith previously threatened The threat was:

If the Claimant would not abandon his claim against the Respondents, Mr Smith to apply for costs Orders and makes the Claimant face hardship."

- 20 In quoting that passage I have deliberately avoided using "[sic]", and the passage is verbatim.
- 21 I deal with the allegations chronologically.
- 22 The complaint that Mr Smith threatened costs applications is on the face of claim number 3330703.18.
- 23 Such threats are a commonplace in litigation and it is only when they are in wholly unreasonable terms, and then probably only when made to a litigant in person, that they might be viewed as unreasonable.
- 24 The Claimant does not appear to rely on the precise terms of the letter, merely the making of the threat.
- 25 The complaint regarding the content of the ET3 in case number 3330703.2018 has not been made previously, and the date of the ET3 means these claims would be potentially in time.
- 26 The use of the abbreviation "[sic]" is common. It is used after a copied or quoted word or phrase that appears odd or erroneous, perhaps a typo or misspelling, to show that the word is quoted exactly as it stands in the original, and is not the work of the author using the quote. The context in which Mr Smith used it is wholly unremarkable.
- 27 There is no evidence from which any inferences can be drawn that might be favourable to the Claimant in proving either of these claims, not even to the extent of possibly establishing a difference in treatment, let alone shifting the burden of proof.
- 28 It appears to me that the Claimant is clutching at any straw, however insignificant, to try and continue his litigation against CUH. His real complaint, concerning his failure to secure employment with PHE, was the subject of his original case number 3325693.2017, which was struck out. The Claimant is now seeking to build claims on the basis of what has happened in the previous, now struck out litigation, rather than on any substantive basis.
- 29 On the basis of all the matter before me I have concluded that this claim is vexatious, an abuse of the process and has no reasonable prospect of success.

Declaration

- 30 Both Respondents have requested I make an Order such as that available under CPR 23.12.

- 31 I am satisfied that my general case management powers entitle me to do so in appropriate circumstances.
- 32 In light of all my above findings I am so satisfied and declare that the Claimant's claims are totally without merit.

Employment Judge Kurrein

18 September 2019

Sent to the parties and
entered in the Register on

24 October 2019

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For the Tribunal