



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

Mr D Williams
and
Commissioner of Police of the Metropolis

Claimant
Respondent

ON: 20 September 2019

Appearances:

**For the Claimant: In Person (but refused to participate)
For the Respondent: Ms L Chudley, Counsel**

RESERVED JUDGMENT ON PRELIMINARY ISSUE

1. The whistleblowing detriment allegations at paragraphs 97-100 of the first ET1 are struck out for want of jurisdiction as immunity from suit applies.
2. The allegation at paragraph 102.2 of the first claim, presented on 19.7.16, is dismissed upon withdrawal.
3. The allegations at paragraphs 25 and 26 of the second claim, presented on 4.4.18, are dismissed upon withdrawal.

REASONS

1. The purpose of this hearing was to consider whether the protected disclosure detriment allegations at paragraphs 14(2) & (3) of the agreed list of issues should be struck out for want of jurisdiction on grounds that immunity from suit applied to these matters.
2. This matter was carried over from the 5-day preliminary hearing that took place in November 2018. It was not determined on that occasion because there was insufficient information before me about the extent to which these matters formed part of the evidence to be produced or prepared in relation to the criminal proceedings against the Claimant. Since then there has been further disclosure, including disclosure of the defence's statement of case and the skeleton arguments of both parties in the criminal proceedings.
3. The current hearing in the employment tribunal was due to take place on 25 January 2019 but the Claimant sought an adjournment on the day in order to arrange legal representation. An adjournment was agreed and the matter re-listed for 20 September 2019, on the basis that the Claimant would have arranged alternative representation by then. However, shortly before this hearing, the Claimant sought a further adjournment, again for the purpose of arranging legal representation. This was refused. As a result, the Claimant informed the tribunal that he would attend the hearing but would not speak, listen or otherwise participate and would be wearing earphones throughout to block out sound. The Claimant was true to his word; he refused to respond when I addressed him and spent the whole of the hearing with headphones on. The hearing therefore proceeded on that basis.
4. The Claimant had presented written submissions on the issues for the adjourned 25 January 2019 hearing. Nevertheless, and notwithstanding his refusal to engage in the current hearing, I reserved judgment in the matter in order to give him an opportunity to make further submissions within 14 days. He did not do so.
5. The Respondent presented written submissions which were spoken to. These were originally sent to the Claimant on 18 January 2019 and re-sent on 17 September 2019 along with the 2 authorities referred to in those submissions.
6. At paragraphs 96-105 of the Claimant's original ET1, are various allegations about a police operation known as "Operation Griffin". Operation Griffin was an anti-corruption operation investigating alleged criminal conduct by the Claimant which concluded on 9 October 2014 with his arrest. The Claimant alleges that he was targeted by a former police officer, Christain Plowman (CP), who he alleges was an agent provocateur who made inappropriate attempts to engage him in criminal activity. CP was a Tasked Witness i.e. he was tasked with assisting in the investigation of criminal activity.
7. A number of the allegations in the ET1 were struck out at the November 2018 hearing and others withdrawn. The focus of this hearing is the allegations set out at paragraphs

14(2) & (3) of the Respondent's draft list of issues produced at the hearing in November 2018. As the numbering has since changed, it is probably more convenient to refer to the corresponding references in the first ET1, which are at paragraphs 97-100. The alleged detriments are described as follows:

- a. *Did the Respondent fail to carry out the usual checks and balances and employ the usual safeguards for participating informants whilst using CP because the Claimant had made protected disclosures*
 - b. *Was the Claimant investigated and viewed as having committed acts whilst CP was never investigated because the Claimant had made protected disclosures.*
8. It was submitted by the Respondent that the Tribunal has no jurisdiction to deal with these complaints because the officers who are accused of subjecting the Claimant to the above detriments, in particular DCI Whorwood and DS Cranford, are immune from suit.
9. One of the reasons for this matter being held over from the hearing in November 2018 was because it was unclear to me at that stage to what extent, if any, the alleged detriments were issues in the criminal prosecution. To that end, the Claimant was ordered to confirm in writing whether these matters formed part of his defence in the criminal proceedings. In addition, he was ordered to disclose the Defence Case for those proceedings, served on the prosecution on 29.5.15, and a copy of the skeleton argument relied on in relation to the criminal hearing in April 2017, to consider the Claimant's application to stay the criminal proceedings as an abuse of process. These documents have been disclosed.
10. In an email to the tribunal dated 8 January 2019, the Claimant indicated that the detriments in question were not part of his defence in the criminal charges. However, the Respondent denies that this is the case and contends that contrary is indicated in the following documents:
11. In his letter to the tribunal dated 3 December 2018, the Claimant says:

"This issue that Mr Plowman was not appropriately vetted, risk assessed nor subject to proper scrutiny in relation to his motivation and potential offences he had committed will be an issue in the criminal trial and relevant to a future application to stay those proceedings as an abuse of process IF the crown continues to pursue a case based on his evidence."
12. Page 2, section II para i) of the Defence Statement states:

"It is the defendant's case that he was the target of a "sting" operation undertaken by Christian Plowman (CP) who threatened, pressured and entrapped the defendant by acting as "agent provocateur". CP's actions also caused the defendant to engage in this course of conduct under duress."

13. At page 4, para viii it is said: “*To the extent that the prosecution relied upon CP’s account of the early contact between CP and the defendant, it is inaccurate. For the avoidance of doubt, the defendant will say that CP’s account is untrue in material respects and CP’s credibility as a witness of truth is an issue in this case.*” There are similar references in the Claimant’s application to stay, where at para 50, he refers to the case resting primarily on the credibility of CP.
14. At paragraph xvi of the Defence Statement, CP is referred to as “ *...the principal prosecution witness in the proceedings against DC Williams...*”. That is confirmed in the Crown’s submissions on the stay application, where it is clear from paragraphs 62, 66 and 68 onwards that CP is the plank of their case.
15. At page 8, paragraph 12 of the Defence Statement is set out a request for disclosure of material, a significant part of which relates to CP’s involvement and conduct in relation to Operation Griffin.
16. From the above documents, it is apparent to me that, contrary to what the Claimant says in his letter of 8 January 2019, the conduct of the criminal investigation against him including the alleged detriments the subject of this application, are central matters in the criminal proceedings.
17. In any event, it is clear from the following authorities that immunity from suit is not limited to matters raised by what the Claimant in his defence. It is much wider. Paragraphs 214E-215D of Taylor & Another v Director of the Serious Fraud Office & Others [1999] 2 AC 177 HL makes clear that immunity from suit applies not only to witnesses in criminal proceedings but also to those who give statements in respect of potential criminal proceedings, whether called to give evidence or not. It also covers those involved in the investigation of a potential crime.
18. The same point is made in: Westcote v Westcote [2008] EWCA Civ 818, which held that immunity from suit applied to all those who participated in a criminal investigation, whether they were informants, investigators or prosecutors and that immunity was given from the earliest moment when the criminal justice system became involved. It also held that there was no distinction between a step taken to investigate an investigation and the investigation itself.
19. Taking all of these matters into account, I conclude that immunity from suit applies to the alleged detriments at paragraph 7 above and they are accordingly struck out.
20. The allegations at paragraph 102.2 of the first ET1 and at paragraphs 25 and 26 of the second ET1 were withdrawn. Those are dismissed by this judgment.

Employment Judge Balogun
Date: 2 December 2019