



# EMPLOYMENT TRIBUNALS

**Claimant**

**Mr Rizwan Patel**

**v**

**Respondent**

**Chris Fieldhouse (1)**

**Martin Burgess (2)**

**Brooknight Security Limited (3)**

**Heard at:** Watford

**On:** 8 November 2019

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

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Ms J Barnett – of Counsel

## **RESERVED JUDGMENT**

The claims are struck out. 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 struck out in its entirety in accordance with Rule 37(1)(b) of Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 .

## **REASONS**

1. By claims presented to the Employment Tribunal on 6 August 2018 the claimant brought claims of unfair dismissal, detriment for having made a public interest disclosure, direct discrimination relying on the protected characteristic of disability and direct discrimination relying on the protected characteristic of religion or belief.
2. The claimant made an application for interim relief when the claim was presented to the Tribunal. At a hearing before Employment Judge Smail at the Watford Employment Tribunal on the 5 September 2018 the claimant's application for interim relief was dismissed.
3. At a preliminary hearing before me on 21 February 2019 the claims and issues were identified and case management orders made.
4. At a further case management hearing before Employment Judge Tuck on the 2 July 2019 further applications were considered including who were the

correct respondents to the claim and whether any of the existing respondents should be discharged. Two of the respondents were discharged from the proceedings namely John Wood and Shayne O'Brien. Applications were made for witness orders, which applications were rejected and appropriate case management orders were made.

5. I reviewed the file in September 2019 when it was referred to me by the administration. In particular I considered the contents of an email from the claimant to the Tribunal and other parties dated 21 May 2019 in which he referred to reporting a hate crime incident against Employment Judge Smail. I also considered email correspondence from the respondent in relation to the claimants alleged refusal to accept a core bundle from the respondent as was referred to in the email from the respondent to the Tribunal of the 5 August 2019. On my own initiative I considered it appropriate to list a hearing to consider whether to strike out the claims for unreasonable conduct of the proceedings given the contents of the claimant's email of 21 May 2019 and the claimant's alleged later refusal to accept the core bundle from the respondent.
6. Mr Patel attended in person to represent himself and the respondents had instructed Julie Barnett of counsel who attended today.

#### **Documents for the hearing**

7. The respondent had prepared a bundle of documents for the hearing containing copies of documentation passed between the claimant and the Tribunal and between the parties. In addition, written submissions and copies of authorities referred to in those submissions were provided. There was also a copy of a reserved judgment of the Nottingham Employment Tribunal in case number 2600488/2019. That reserved judgment was made by Regional Employment Judge Swann on 9 July 2019 and struck out the claims brought by the claimant in that case, (also the claimant in these proceedings), against Hart Security Services Limited on the basis that the manner in which the claimant had conducted the proceedings had been scandalous and unreasonable and that his conduct was such it was no longer possible to have a fair hearing.
8. The claimant provided a number of documents to the Tribunal at the start of the hearing, including copies of emails passing between the claimant and the Tribunal and between the claimant and Ms Kerry Head, the finance director of the third respondent Brooknight Security Limited. In addition, I had prepared for the parties' copies of emails from the claimant to the Watford Employment Tribunal, copied to Kerry Head, dated 21 May 2019 timed at 15:56 and 21 May 2019 timed at 22:37 and the respondent's email to the Employment Tribunal of 5 August 2019 copied to Mr Patel timed at 09:59.

#### **The Law**

9. The relevant parts of Rule 37(1) of the Employment Tribunal Rules of Procedure 2013 provide as follows;

**“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) provides that 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 accepted, as set out in Rule 21 above.”**

10. I have also taken into account the case law referred to by the respondent in the application to strike out namely;

***Bennett v London Borough of Southwark [2002] ICR 881 Court of Appeal***

***James v Wallop Industries Limited ET/17182/81***

***Blockbuster Entertainment v James [2006] Court of Appeal 630***

***Bolch v Chipman [2004] IRLR 140 EAT***

***Force One Utilities Limited v Hatfield [2009] IRLR 45 EAT***

***Mechkarov v City Bank NA [2016] ICR 11211***

***Abegaze v Shrewsbury College of Art and Technology [2009] EWCA Civ 96***

11. At the beginning of the hearing I explained to the parties that my focus would be on the matters identified in the Notice of Hearing sent to the parties on 16 September 2019 namely;

***“On the Tribunal’s own initiative whether to strike out the claims for unreasonable conduct of the proceedings, given the contents of the claimant’s email of 21 May 2019 to the Tribunal in which he refers to reporting a hate crime incident against Employment Judge Smail and the claimants later refusal to accept the core bundle from the respondent as referred to in the respondent’s email to the Tribunal of the 5 August 2019.”***

12. I explained to the claimant that I was not considering the merits of his claim overall but focusing on the relatively narrow points identified in the Notice of Hearing. I asked him whether he wanted to give evidence about the circumstances in which he came to send his emails of 21 May 2019, and his alleged refusal to accept delivery of the bundle prepared for the hearing by the respondent. He confirmed that he did wish to give evidence.

13. I explained that I would have some questions to ask him as would Ms Barnett for the respondents, that I would then give her an opportunity to

make closing submissions and he would have the final say in responding to what she had said. Mr Patel has a condition of ulcerative colitis and requested at the beginning of the hearing that he be allowed to take a break at any point in the proceedings if he needed to use the toilet facilities. I confirmed that he simply needed to ask and we would have a short break. He was sworn on the Koran and gave evidence to the Tribunal.

### Findings of fact

14. The claimant accepted that he was the author of an email sent by him on 21 May 2019 at 15:56 to the Hertfordshire Police Force, to the Watford Employment Tribunal, to the respondent's finance director Kerry Head and various other addressees including The Right Honourable David Gauke MP, the Department for Work and Pensions, Len McCluskey and a number of lawyers at Thompsons Solicitors.
15. The email reads as follows

***“Dear Sir/Madam,  
This is the reference regarding to Hate Crime Incident has been officially taken place against me personally as a disabled person due to having severity ulcerative colitis but also regarding to my Religious Beliefs as a Muslim by Employment Judge Smail for Watford Employment Tribunal Services on Thursday 5<sup>th</sup> September 2018, Judge Smail can't be bias or be prejudice against me personally during my original Interim Relief Application Hearing and strike out my whole Interim Relief Application Case against Respondent (Brooknight Security Ltd & Others) during my original Interim Relief Application Hearing at Watford Employment Tribunal Services on Thursday 5<sup>th</sup> September 2018.***

***Thames Valley has recorded this as officially Hate Crime Ref: 431901512699/2019 – Against Brooknight Security Ltd.***

***I am personally reporting a Official Hate Crime Incident against Employment Tribunal Judge Smail for Watford Employment Tribunal Services today (21/5/19) as a matter of urgency today.***

***Please see attached article regarding to Hate Crime Incident and what is exactly is a Hate Crime Incident.”***

The attached article was a media report in relation to a Mr Aaron Parsons who appeared before the Warwickshire Magistrates' Court in May 2019 and pleaded guilty to racially aggravated common assault and a racially aggravated public order offence. Also attached were details of the condition ulcerative colitis.

16. A further email in virtually identical terms was sent by Mr Patel on 21 May 2019 at 22:37 to various addressees.
17. I asked him about each of his emails. He accepted that he was the author of each email. I asked him to explain what was meant by the second

paragraph of the email *“Thames Valley has recorded this as officially hate crime.....”*. I said that that appeared to indicate that he had already reported a hate crime to Thames Valley Police in which case I queried why he was making a further report to the Hertfordshire Police. I gave him a number of opportunities to answer and put the question in a number of different ways but he was unable to give me a cogent or coherent answer to explain what he meant by the reference to Thames Valley. He kept stating that a Judge **“Cannot be prejudiced or biased – there are the same guidelines under hate offences – Judge Smail was well aware of my ulcerative colitis I am registered disabled.”**

18. I asked him to explain what exactly the hate crime was that he alleged that Judge Smail had committed and again he replied **“He knew I had a disability, he knew I had health problems it was the way he treated me in the hearing when I made a complaint on 5 September emailed to Linda Williams at the Employment Tribunal. Judge Smail shouted at me and insulted me”**. I asked Mr Patel why he considered this allegation amount to a hate crime and he replied with reference, as I understood it, to the September interim relief hearing **“I couldn’t speak or say anything”**.
19. I asked him why he had sent a further email on 21 May at 22:37 in virtually identical terms to the earlier email. He said that was sent because he hadn’t received a response from the Tribunal to his earlier email communication.
20. I asked Mr Patel to explain why he had not accepted the bundle that was delivered to him by the respondents on 18 July 2019. It was extremely difficult to obtain any cogent or understandable response from Mr Patel to that question. He kept referring back to the overall substance of his claim. What he appeared to rely on as his justification for not accepting the bundle, which Royal Mail attempted to deliver to him in person by special delivery to his home, is that the previous week he had been the unfortunate victim of a scam. He told me that he had been in touch with a potential new employer which he understood would have resulted in him carrying out work in security at Birmingham Airport, for SC Midlands Security Application Limited or a similar named organisation. He told me that he had been required to pay them £300 which he done but that no work had materialised. His evidence was that they were a company based in Kent. I asked whether he knew their address and he was able eventually to provide me with an address taken from an email on his smartphone, the name of the company being SC Midlands Security Application Limited 124 High Street, Sevenoaks, Kent TM13 1LP. The respondent in these proceedings Brooknight Security Limited has an address of Southon House, Station Approach, Edenbridge, Kent TN8 5LP.
21. Mr Patel’s explanation why he did not accept the bundle appeared to be that when he inspected the parcel handed to him by “someone from Royal Mail” there was no detail of the sender. He did not want to accept a package when there were no sender details on it. I asked why he had not made enquiries whilst the Royal Mail delivery person was with him and he simply repeated there were no details on the package and that he thought the

package might have been something to do with the company who had, he said, perpetrated the scam on him a few days earlier.

22. At this point I concluded my questioning and invited Ms Barnett for the respondent to put questions to Mr Patel. Her first question was about the Employment Tribunal proceedings in Nottingham which had resulted in the striking out of Mr Patel's claim because of the way in which he had conducted the proceedings being scandalous and unreasonable. In reply he challenged her that his conduct had been scandalous and unreasonable. I pointed out that the question that he was being asked was whether he was aware that an allegation of scandalous or unreasonable conduct was under consideration in this hearing. He seemed unwilling or unable to answer the question and kept coming back to arguing that the earlier proceedings had been unfair. He said there had been Islamophobia in those Employment Tribunal proceedings.
23. There was then a prolonged exchange between me and Mr Patel which arose because he appeared unable to focus on answering in a straightforward way questions put to him by counsel for the respondent. He kept departing into other aspects of the case which were not relevant to his responses. It was necessary for me to repeatedly ask him to answer the questions and not to make statements. He then said that I should remove myself from the proceedings. I treated that as an application that I should recuse myself that is stand down from the proceedings. I invited the respondent to address me on the application. I then gave orally the reasons that follow in paragraphs 24 to 28, recorded at the time, and determined the application.
24. ***I had explained to the parties at the start of the hearing that I was concerned with was the strike out application that had been listed by the Tribunal to consider specifically whether the contents of the claimant's email of the 21 May 2019 to the Tribunal in which he referred to reporting a hate crime incident against Employment Judge Smail and his alleged refusal to accept a core bundle from the respondent as referred to in the respondent's email to the Tribunal of the 5 August 2019 amounted to unreasonable conduct to the proceedings such that the claim should be dismissed.***
25. ***I explained to Mr Patel that it was open to him to give evidence about these matters if he wished and confirmed that he did. I said that on that basis it would be appropriate for him to give his evidence first, for the respondents to then make their submissions and for Mr Patel to have the last word in terms of his comments to the Tribunal.***
26. ***He considered that he was not being allowed to answer the questions that were being put to him. He said that he did not want me to hear the case and that I was not being fair to him and that I had to be fair to both parties. He said there was Islamophobia in the hearing.***
27. ***Counsel for the respondents opposed the application. Her position on behalf of the respondents was that Mr Patel's behaviour continued to be***

*wholly unreasonable and that it was difficult to see how any Employment Tribunal could conduct a fair hearing if he persisted in the behaviour he was exhibiting to the Tribunal.*

28. *The question I have to consider taking into account the case of Porter v McGill is whether an objective observer sitting in the Tribunal would consider I was exhibiting any bias against Mr Patel. I am entirely satisfied that test is not met. I have sought repeatedly to explain to Mr Patel and to give him every opportunity to address matters we are dealing with today but unfortunately, he keeps straying into other areas that are not directly relevant and that is not in any way assisting this hearing. Accordingly, I reject the application that I should recuse myself and I will continue with the hearing.*
29. Following determining that application Mr Patel said that he wanted me to arrange for a witness to be present in the hearing to observe that I was not being biased. I responded to his request. I explained I had no power to summon any individual to act as a witness for Mr Patel in the circumstances he wanted. In any event to do so would be to assist a party. That was not part of my role. I had to consider the case on the evidence and the submissions made and I rejected his application.
30. Having given that ruling Mr Patel then requested a comfort break. I said he could have a comfort break. He then said before, he left the hearing room, that he wanted an adjournment. I said that I was prepared to give him a comfort break but that he needed to be back in 5 minutes time. Mr Patel and the respondents then left the Tribunal at 11:50am. At 11:55am I asked the member of the Tribunal administration clerking the hearing, to bring the parties back in. She reported to me that Mr Patel informed her he was not returning to the hearing and would call the police if necessary. I spoke to the clerk within the hearing room after the respondents had left. I asked her to relay the following to Mr Patel ***“Please inform Mr Patel that the Judge is proposing to continue with the hearing and invites him to return.”***
31. The clerk returned to inform me that she had communicated that to Mr Patel, that he had informed her that he was not continuing and wanted another a Judge and that he would call the police if necessary.
32. I asked the clerk to speak again to Mr Patel and tell him that I had said that if he wished to apply for an adjournment, he could do so at the start of the resumed hearing but needed to return to the Tribunal to make that application.
33. The clerk spoke to Mr Patel and his response as reported to me by the clerk was that he had already requested an adjournment, and that I had breached his human rights Article 9 and 14 of the Equality Act and Sections 10 and 14 of the Equality Act 2010.
34. I directed the clerk to respond to Mr Patel making it clear that I would hear an application for adjournment if he wished to make one. The clerk spoke to Mr Patel again and returned at 12:14pm and communicated Mr Patel’s response

to me which was that he would telephone the Police and tell them that the Regional Employment Judge has committed a hate crime. I was told that he had said, "He will only come back in with another Judge". I asked the clerk to inform Mr Patel that I was continuing with the hearing. Mr Patel's response to that, as communicated to me by the clerk on her return to the hearing room, was "OK I will call the Police". The respondents were ushered back into the hearing room at 12:20 pm. Mr Patel did not return to the hearing room.

35. I relayed to the respondents' counsel the exchanges that had taken place between the Employment Tribunal staff and Mr Patel as recorded above and said that in all the circumstances I was going to conclude the hearing and would reserve my judgment and reasons. I invited Ms Barnett whether there was anything further she wished to raise in addition to what she had set out in her written submissions which supported striking out the proceedings. She did not.

### Conclusions

36. The first matter I have to consider is whether the claimant's conduct in reporting Judge Smail to the Hertfordshire Police for a hate crime amounted to unreasonable conduct to the proceedings. I am satisfied that it did. Mr Patel in his evidence before me today has not advanced any evidence that would justify his allegation of a hate crime. What appears to have motivated his actions in reporting Employment Judge Smail is that he disagreed with Judge Smail's objection of his application for interim relief. If a party wishes to challenge a decision of an Employment Tribunal it is open to them to apply for reconsideration of that decision and it is open to them to appeal. That is an appropriate and proportionate way to proceed. It is not appropriate and proportionate or in accordance with the overriding objective to allege a hate crime against a Judge who has made a decision that a party is unhappy with. Inevitably I come to the conclusion that in reporting Judge Smail for an alleged hate crime the claimant was conducting the proceedings scandalously and unreasonably.
37. I have considered the circumstances surrounding Mr Patel's rejection of the Royal Mail special delivery of the respondent's bundle on the 18 July 2019. I accept that Mr Patel was unaware until the delivery was made that the bundle was being sent to him by the respondent that way. His explanation is that he rejected the bundle because of concerns it might in some way be linked to the scam he tells me he had been the victim of a few days earlier. I find that fanciful. The respondent's documentary evidence is before me today in the bundle. After Mr Patel had refused to accept the bundle he telephoned the respondents to inform them that he had refused to accept the bundle. In their view, he had taken a deliberate obstructive approach in rejecting the bundle and then claim non-compliance on the respondent's part. The respondent produced a printout of a "track and trace your item" provided by Royal Mail which records under the heading "**Return to Sender**"  
**Tracking number JS018845728GB**



**We were unable to deliver this item at 18-07-2019 as the recipient refused to accept.** I find that Mr Patel's refusal to accept the bundle was unreasonable.

38. The key authorities I must consider before coming to a decision as to whether to strike out the claims are **Blockbuster Entertainment v James [2006] Court of Appeal** which confirms that the Tribunal having found the case was conducted in an unreasonable manner must then consider whether or not a fair trial is still possible and strike out must be a proportionate response to the unreasonable conduct.
39. **Bolch v Chipman [2004] IRLR 140 EAT** sets out the steps which the Tribunal must consider when determining a strike out application. Before a strike out order can be made the Employment Judge must find that a party or representative has behaved scandalous, unreasonably or vexatiously when conducting the proceedings. I find that Mr Patel's conduct was unreasonable both in relation to making the hate crime allegation against Judge Smail and in failing to accept the respondent's hearing bundle. Having made that finding I must then consider whether a fair trial is still possible. If a fair trial is not possible then I need to consider the appropriate remedy in all circumstances which might include making a costs or preparation order against the party concerned rather than striking out the claim or response. The key question is a fair trial still possible.
40. Having observed how Mr Patel has conducted himself in the course of today's hearing I am not satisfied that a fair trial remains possible. I come to that conclusion for a number of reasons. Mr Patel simply failed to accept that there needed to be a structure and process in the hearing today in him answering questions put to him. He continually insisted on speaking over the person asking the question whether that was myself or counsel for the respondent and continually insisted in making lengthy comments about other parts of the case which were completely irrelevant to the question that he had been asked.
41. I am also concerned about his response of a threat if the Tribunal fails to act in accordance with his wishes. He made an application that I recuse myself from the hearing because I was seeking to exercise firm and appropriate case management control in the way in which he was answering questions from the respondent's counsel. When I rejected the application that I recuse myself and after he had left the hearing room he then persisted in exchanges with the hearing clerk that another Judge be provided failing which he would contact the police. That can only be interpreted as a threat. Notwithstanding that I gave him the opportunity to return to the hearing and make an application for an adjournment he declined to do that. He was informed that I would then be proceeding with the hearing. His response through the clerk was that he would be contacting the police. In all those circumstances given his continuing unreasonable conduct I am satisfied that there is simply no possibility of a fair trial taking place in this case.
42. The claim is therefore struck out in accordance with Rule 37(1)(b) of Schedule 1 to the Employment Tribunal (Constitution and Rules of

Procedure) Regulations 2013 and the hearing listed for 16, 17 and 18 December 2019 is vacated.

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Regional Employment Judge Byrne

Date: .....6 December 2019.....

Sent to the parties on: .....

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For the Tribunal Office