

**Case Numbers: 2201127/2019
2202159/2019
2202770/2019
2203220/2019
2203545/2019**

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EMPLOYMENT TRIBUNALS

Claimant

Mr L Hasan

AND

Respondents

Dr Christine Hoffman
and others

Heard at: London Central

On: 5 December 2019

Before: Employment Judge Walker

Representation

For the Claimant: Miss A Mackay, ELIPS

For the Respondent: Mr M Tutin, of Counsel

RECONSIDERATION JUDGMENT

1. On 11 September 2019 this Tribunal struck out all the Claimant's claims for victimisation in claim numbers 2201127/2019 and 2202159/2019. The reason for this was that in relation to the those claims, the Claimant had not identified any protected acts which took place prior to the detriments he complained about.

2. The Claimant immediately indicated that he felt he had misunderstood the Tribunal's questions put to him about his victimisation claim and English was not his first language. He would like the Tribunal to reconsider its Judgment and he reiterated that request in an email 30 September 2019.

3. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 at Rule 70 provides for a Tribunal to be able to reconsider its Judgments which may do on the application of a party. In this case Mr Hasan had made an application both in person and by email within the time limit provided. The requirement in the Rule 70 is to reconsider where it is necessary

in the interest of justice to do so. Accordingly, I heard the Claimant's application today.

4. The judgment set out the following.

In the course of submissions, I read the sections in the Equality Act 2010 to the Claimant carefully and explained to him the nature of a protected act. There was no question that the Claimant was suggesting that he had done any more than complain about the Respondent. I asked the Claimant whether in those complaints, he had ever made any allegation of discrimination or taken any act which fell within the definition of a protected act. I explained to him that he need not have used the words in the legislation, but I wanted to know if he was saying he had indicated such a complaint. He confirmed that the first time that occurred was at the beginning of 2019. Prior to that he accepted that he had made no mention of discrimination nor indicated anything that would fall within that ambit. Indeed, he was of the view that any grievance amounted to a protected act. In the circumstances it appears that when the Claimant refers to protected act and relies upon certain complaints he does not mean anything in the nature of a protected act for the purposes of a claim for victimisation.

The three items that were identified were firstly in March 2010 which I understand the Claimant only included by way of background and which I have therefore struck out. The second one took place in November 2015 which again appears to pre-date the point when the Claimant refers to any course of conduct but also is limited to complaining about Arabic courses and some extra payments. The third matter he relies upon took place on 24 and 29 of May 2018, when he emailed the Vice-Provost Education and Student Affairs regarding the improvement of marks of certain students. Nothing in that reference suggests any complaint about discrimination. In all the circumstances those matters cannot be protected acts for the purposes of a victimisation claim and thus the entire claim for victimisation is struck out.

5. In applying for reconsideration, the explanation that the Claimant gave to the Tribunal immediately and that he reiterated in his email dated 30 September 2019 was that he said "I misunderstood the Judge's question when she asked me about the date I submitted my claim (not grievance) which let [sic] to an inaccurate answer Jan/2019, while my grievance was in Oct/Nov 2017 and then in May/June 2018. In essence, he was saying that when he had been asked when he first complained about anything which should have been understood as

a complaint of discrimination, he thought he was being asked about when he first issued proceedings and so he had identified the first ET1. He had misunderstood the question.

6. The Claimant also explained that he was under pressure after a whole day at the Tribunal and had been suffering from a sleep disorder problem. It was noted at the time that the Claimant's first language is not English.

7. Prior to this hearing today, the Claimant was ordered to supply any documents on which he relied which he said were protected acts for the purpose of the victimisation claim. Prior to getting that request the Claimant sent in an email with a list of ten documents and then he sent a further email with additional references and copy documents.

8. The background to the strike out is that the Claimant submitted an ET1 which was written in layman's terms against Dr Hoffman and then another claim, covering similar grounds against UCL. Judge Palca hearing the Preliminary Hearing for Case Management purposes on 30 July 2019, set out to identify all the claims in her draft list of issues which were those in the current claims as well as those she thought the Claimant was aiming to add. At paragraph 4.6 of the list of issues, she set out the following:

4.6 Has the claimant carried out a protected act? The claimant relies upon the following:

4.6.1 In March 2010 C insisted on complaining to a member of HR about college MS L Aldin, despite R refusing to endorse this.

4.6.2 In Nov 2015 C complained to MS L Malvo of HR about R relating to the Arabic courses and some extra payments.

4.6.3 On 24 and 29 May 2018, C emailed the Vice Provost Education and Student Affairs regarding R illegally improving the marks of 10 students in the June 2017 exams.

9. At the hearing before me on 11 September 2019, the Respondent pointed out that a few matters in that list were not in the Claimant's ET1's at all and those were disregarded. In relation to the remaining matters, they applied to strike out a number of claims including the claims for victimisation. In considering their application, I worked from the Order of Judge Palca, as the Claimant had not indicated that he disputed that list in any way whatsoever. It appeared to be the only way to be able to understand the Claimant's claims.

10. The Claimant submitted written submissions in response to the Respondent's application to strike out, in which he made submissions on their application and on his claim. In his written submissions, he specifically addressed the list of protected acts which Judge Palca had identified at 4.6 of her Order, in respect of his claim for victimisation.

11. The Claimant said regarding point 4.6 in the ET Order on 31 July 2019 I would like to be more specific in this point. He then referred to the three items listed by Judge Palca, but expanded on them.

12. The first two items listed as protected acts were struck out for reasons relating to the Claimant's submission about time. The Claimant does not suggest that his request for reconsideration applies to either to those items. Rather he refers to the general statement made in the striking out Judgment about the nature of the protected acts generally which led to the protected acts identified at 4.6.3 being struck out.

13. In essence the reason for the strike out was that on the face of it, none of the events that are listed in November 2015 and May appeared to refer to a matter which could potentially fall within the definition of a protected act for the purposes of a victimisation claim.

14. As noted in the judgment, I had read out the relevant section of the Equality Act 2010 to the Claimant and explained that he had to have carried out a protected act before he could bring a claim of victimisation. I had asked him if he was arguing that he had in fact complained in terms which should have been understood as a complaint about some sort of discrimination. That led to a question put to the Claimant as to when he had first complained about discrimination, even if he had not used that expression. He referred to the first ET1 claim.

15. Prior to this hearing I ordered the Claimant to produce copies of the relevant documents if he was saying that he had in fact written in terms which amounted to a protected act. He did produce two sets of documents, one prior to my order and one after my order. Most of those documents were entirely new and not the items listed in the list of issues.

13 The Respondent argued that the judgment should not be reconsidered. The Respondent produced a copy of the case of Lindsay v Ironsides Ray & Vials [1994] ICR 384 which addressed the scope of a Tribunals jurisdiction in relation

to reconsideration. It made clear that in essence the review procedure enables errors occurring in the course of the proceeding to be corrected but would not normally be appropriate when the proceedings had given both parties a fair opportunity to present their case and the decision had been reached in the light of all relevant arguments. The Respondent argued that was the case. The Respondent also argued that the Claimant was in effect now seeking to introduce new matters as potential protected acts for which he would require permission to amend and as yet no permission to amend had been given.

16. Having considered the Claimant's application carefully I reached the following conclusion. I rejected the Respondent's submission that the case of Lindsay meant that the strike out decision was not appropriate for reconsideration as the Claimant had had a proper opportunity to present his case. I accepted that the Claimant was arguing that he had not had a proper opportunity to present his argument on the basis of his lack of understanding of the language used and in the light of his concern I concluded that it would be in the interest of justice to reconsider the Judgment.

17. I noted that the Claimant did not have permission to amend. I could not reconsider on the basis of new documents which were not previously mentioned in the Claimant's claims.

18. I noted the comments made by the Claimant in his written submissions prepared to support his argument that the Respondent's strike out application should be rejected. At that stage the Claimant still relied on the same documents.

19. In relation to 4.6.2 he said

"In November 2015, C complained to the HR staff Ms L Malvo about extra payment for extra work which R totally refused to pay and he had already submitted earlier a complaint to R's line manager Prof Malcom that his work at this department was not appreciated by hi line manager (R). R has lost some of her seniority position may be because of this and her relation with her line manager was affected."

20. In relation to 4.6.3, he said:

"On 24 and 29 May 2018 C emailed the Vice Provost Education and Student Affairs that R illegally improving the student marks of about ten

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students in the exams in June 2017 and the external examiner was surprised in his report how two markers agreed on a mark and then this mark jumped to a higher figure later! The investigator's report was initially issued in February 2019 and the HR at UCL are in the process of dealing with this issue as part of Cs grievance hearing."

21. The Claimant's subsequent correspondence, which he sent with various attachments to the Tribunal, amounts to various documents which he now seeks to argue constituted protected acts. To the extent that these are new documents not mentioned ad protected acts previously I cannot take them into account without considering the question of amendment.

22. There is one item which appears to be within the list in the list of issues. That is an email dated 24 May to Professor Anthony Smith, who the Tribunal understands is the Vice Provost Education and Student Affairs. That email is very much as described by the Claimant in his written submissions in that it specifically refers to the exam papers, the process of marking and the complaint that he believes the exam paper was written badly and he thought it was not fair that the student marks were changed just because they had submitted complaints and he thought it was wrong.

23. There is nothing in that email that could constitute a protected act under the Equality Act 2010. There is no other document supplied by the Claimant which falls within the documents relied on by the Claimant in his pleadings as a protected act. In those circumstances there is no basis on which to reconsider the decision and the original decision must stand. Accordingly, the reconsideration application is rejected.

Employment Judge Walker

Dated: 10 Dec 2019

Judgment and Reasons sent to the parties on:

13/12/2019

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For the Tribunal Office