Case Nos. 2410939/2018
2411864/2018
2413250/2018
2413251/2018
2414824/2018
2416471/2018
1810636/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr S Josic

Respondents:
1. Great Bear Distribution Limited
2. Capital Recruitment Group
3. Unilever UK Limited
4. East Float Logistics Limited
5. Keedwell RT Group Limited
6. Drivers Direct Recruitment Agency Limited
7. B & M Retail Limited
8. Challenge Group
9. The Green Group
10. Prowell Limited

Heard at: Liverpool (QEII Law Courts) **On:** 4 December 2019

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: Not in attendance

1st Respondent: Mr S Derek, HR Representative
2nd Respondent: Mr S Jones, HR Consultant
3rd Respondent: Written representations received
4th Respondent: Mr J Gilbert, Consultant
5th Respondent: Mr D Flood, Counsel
6th Respondent: Mr D Simmons, Solicitor
7th Respondent: Mr I Steele, Solicitor
8th Respondent: Mr J Davies, HR Director
10th Respondent: Ms A Niaz-Dickinson, Counsel
(Also in attendance, Mr A Ali, Solicitor, for Capital Reinforcing Limited and Ms Niaz-Dickinson for Brakes Bros and Eddie Stobart)

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The claimant's application for a further extension of time to comply with Case Management Orders is refused and his documents presented on 30 September 2019 are not accepted by the Tribunal as complying with the earlier orders.

2. All live claims against all respondents are dismissed by reason of the claimant's unreasonable conduct of the proceedings, non-compliance with Case Management Orders and failure actively to pursue his claims.

3. No further hearings are listed in any of these proceedings and no further reconsideration hearing is listed in Case No 2413251/2018.

4. The claimant is ordered to pay costs to the seventh respondent in the sum of £1,928.13, pursuant to Rule 76(1)(a) of the Employment Tribunals Rules of Procedure 2013.

REASONS

The Preliminary Hearing

1. These various claims had been combined together for a public Preliminary Hearing to consider the various applications by the respondents to strike out the claimant's claims for his failure actively to pursue them and/or unreasonable and vexatious conduct of the proceedings and/or non-compliance with multiple Case Management Orders made.

2. The venue of the hearing was changed at late notice the afternoon before the hearing in order to accommodate the multiple parties, since there was no larger courtroom available at the Liverpool Civil & Family Court Centre. All parties were notified but the hearing commenced late to enable those parties who had attended at the Civil & Family Court Centre to make their way to the QEII Courts. There was no attendance by the claimant at either court venue.

3. Out of an abundance of caution, the respondents in new 2019 proceedings brought by the claimant were also notified of the change of venue on the afternoon before the hearing with the result that some respondents very courteously attended or instructed legal representatives to do so.

4. The Tribunal satisfied itself that the claimant knew of the hearing and in particular took into account the explanation of Mr Steele, for the seventh respondent, that he had spoken with the claimant twice within the week before the hearing about

it. Specific instructions were given at the Employment Tribunal venue at Liverpool Civil & Family Court Centre for redirection of any parties who attended there. The claimant did not do so and there was no contact from him on the date of hearing.

The Case Management Hearing on 27 March 2019

5. These Reasons need to be read alongside the Case Management Order made by Employment Judge T V Ryan at the Preliminary Hearing on 27 March 2019. The numbering of the respondents in the various claims follows the numbering given in that Order. The multiple race, religion and belief, marriage/civil partnership, sexual orientation, sex and age discrimination claims against the different respondents are well summarised there, as are the various respondents' jurisdictional challenges, denials of any prospect of success in the claims and requests for further particulars. The suffix 18 or 2018 to the case numbers demonstrates the age of the proceedings, presented between 18 May and 24 October 2018.

The subsequent case management and progress of the proceedings

6. The Regional Judge took over the case management of the proceedings at a later stage but unfortunately Judge Ryan's Order was not sent out to the parties until 17 April 2019, by which time some of the deadlines for orders to be complied with had already passed.

7. Accordingly, by letter dated 17 May 2019, the Regional Judge extended the deadlines as follows:

> 27.1.1 to 27.1.5, (in particular further particulars of the claimant's whereabouts and claims) all to 24 May 2019. The extension against Great Bear, the first respondent, was expressly made under Rule 38 (that is it was an Unless Order);
>
> 27.2 (parties' non-available dates) to 31 May 2019; and
>
> 27.3.1-27.3.5 (further particulars of claimant's claims and schedules of loss) and 27.4 (disclosure of documents on status issues) all to 7 July 2019.

8. No compliance with the Orders for further particulars or schedules of loss was made by the claimant by the extended dates. By letter dated 16 July 2019, he was required to notify the Tribunal whether he had complied with all the orders by 23 July 2019, the Tribunal reminding him he needed to pursue his claims actively and comply with case management orders. He did not comply with this but sent a strongly worded letter contending the time frames were unreasonable and he had only received the Order from the 27 March 2019 hearing on 2 July 2019.

9. Further Unless Orders were made in favour of the seventh respondent B&M Retail Ltd and the ninth respondent The Green Group and sent on 17 July 2019, for compliance by 26 July 2019. Those Unless Orders were not complied with and the claimant instead wrote on 25 July 2019 (R17, 45-46) describing the orders as not legal and saying he would not comply unless the Tribunal changed the dates and deadlines on them. Subsequent letters from the Tribunal dated 21 October 2019 later confirmed that the claims against the first respondent Great Bear and the ninth respondent had been dismissed for non-compliance with the Unless Orders.

10. Exceptionally, since the claimant had maintained he was away on annual leave from 1 August to 1 September 2019, the Regional Judge extended the deadlines for all other orders to be complied with until 15 September 2019. This was confirmed by the Tribunal's letter dated 2 August 2019.

11. On the final compliance date, the claimant sent an apologetic letter dated 15 September 2019, not seeking an extension of time but saying he would comply by 30 September 2019. No extension was granted by the Tribunal and various respondents wrote urging that no further extension be granted or that the claims be now struck out.

12. On 30 September 2019, the claimant sent to the Tribunal extensive narrative content and documents which he maintained were the grounds or particulars of claims against the various respondents, together with a "letter of explanation to the schedule of loss" setting out that he had planned to have his own transport company and was claiming £855,000.00 loss of opportunity. The Schedule of Loss itself claimed over £12 million in total. In a general covering letter to the Tribunal, he made extensive criticisms of Employment Judge Ryan's Order including suggestions that there were deliberate misunderstandings by the Judge lodged as "demolition devices" to discredit him, to totally corrupt and distort the truth. Within that letter he spelt out that he was one of very few individuals subject to a Civil Restraint Order, which he contended supported his claim that there was a transport cartel working against him and subjecting him to active surveillance; he identified the total number of companies acting against him as 28, all of which should be present at the main hearing of his claims (R10, 166-168).

13. The content of some of the documents the claimant included when he provided them on 30 September 2019 was extreme. He concluded details about the ninth, tenth and second respondents: "15. All mentioned parties acted together against me to destroy my life and my carrier (career) because of my belief." (R10, p.173). In further details about the second and fourth respondents, he complained about "weird deaths" in his family and wider circle, computer hacking, intimidation on his brother in Slovenia, "weird cars in front of the kindergarten glowing threatening energy", assaults against another brother, involvement of the UK army, uncles dying young all as a result of the cartel of transport companies involved in the proceedings, threats to kill his father and other death threats (R10, p.181-185).

14. Thus, in each case, the claimant had not complied with the very specific Orders made in successive Case Management Orders by the time limit set. In view of the progress or lack of it within the various proceedings, the Regional Judge did not direct that the "status" Preliminary Hearing anticipated by Judge Ryan be listed. Instead, this Preliminary Hearing was listed by Notice of Hearing dated 2 November 2019.

15. By letter dated 27 November 2019, the Tribunal acknowledged that the second and third respondents, Capital Recruitment and Unilever had not been served formally with notice of the claim in case number 2410939/18, and the Regional Judge directed that their respective ET3 responses in 2413250/18 (Unilever) and 2411864/18 (Capital) treated as their response because of the overlap of claims.

The parties' representations/submissions

16. Each respondent made detailed representations about the claimant's claims and conduct of the proceedings. They relied variously upon Court of Appeal and Employment Appeal Tribunal authorities: Blockbuster v James (CA), Khan v London Borough of Barnet UKEAT/0002/18/DA, Rolls Royce plc v Riddle [2008] IRLR 873, Robinson v Dr Bowskill & others UKEAT/0313/12/JOJ, McTigue v University Hospital Bristol NHS Foundation Trust UKEAT/0354/15/JOJ and a first instance case, Tan v MOJ ET Case No 2207504/2017. Their individual representations are summarised below.

17. First respondent, Great Bear. A haulage company. The Unless Order had not been complied with and a letter of dismissal under the Unless Order was sent out on 21 October 2019.

18. Second respondent, Capital Recruitment. A recruitment company. The respondent provided a Bundle (R2). In addition to the jurisdiction defences raised in the response, there have been complete non-compliance by the claimant within the time limits and he had not properly explained the basis for any further extension of time. He had acted unreasonably and obstructively in conducting the proceedings. He had never particularised any wages claim nor made any discrimination allegations of substance against Capital in any document (even including the 30 September 2019 documents).

19. Third respondent, Unilever. A customer which received deliveries at its Port Sunlight site. Written representations dated 18 November 2019. No discrimination claims of substance were made against Unilever. The allegations were fantastical and the claimant had failed properly to prosecute the claim. It was no longer possible to hold a fair hearing in view of the lack of substantial allegations and identification of any alleged perpetrator in respect of an alleged assault by a Unilever manager.

20. Fourth respondent, East Float. A haulage company. The claim was struck out on 20 August 2018. Despite the claimant's application for reconsideration, it had never been restored at a Reconsideration Hearing to enable him to pursue it.

21. Fifth respondent, Keedwell Transport. A haulage company. The respondent provided a Bundle (R5). It contended that having failed to attend on 5 November 2018 in Case No 2414824/2018, there had been serial non-compliance by the claimant with orders by the time limits or extensions and the unreasonable conduct of the proceedings, especially the claimant's behaviour before Employment Judge Ryan as recounted in the Order. His claims were prima facie out of time with no explanation (such as was found in Robinson v Boskill) for a just and equitable extension to permit them to be heard, yet this was a sophisticated claimant with knowledge of time limits. Even without these factors, the claimant would have had major evidential difficulties with his claims.

22. Sixth respondent, Drivers Direct. As well as its contention that the Tribunal had no jurisdiction under the Equality Act because the claimant was an independent contractor with his own company, the respondent relied on the claimant's failure to comply with orders and that the claim was out of time in any event. His conduct of the proceedings was unreasonable and he had never provided true and full responses to explain his non-attendance at the hearing on 5 November 2018.

23. Seventh respondent, B & M Retail. A customer of the haulage companies. The respondent provided a Bundle (R7) and recognised the inter-linkage with the claim against the eighth respondent. Whilst accepting the claimant had attended its premises on 29 May 2018 as a driver acting for his own company, the phone recordings he had disclosed completely failed to identify any acts of unlawful discrimination such as homophobic abuse and the claimant's response when this was pointed out to him (R7, pp42 and 44) was clearly unreasonable conduct of the proceedings. The claimant had never provided details of comparators for his discrimination claims, nor challenged the representative's assertion that he admitted no one had actually said anything to him and he had merely interpreted body language as being homophobic. Finally, he had failed to comply with the Unless Order dated 17 July 2019 by the deadline of 26 July 2019; his letter dated 25 July 2019 (R7,45-46) showed that he had received it, but did not comply in any way. Therefore, he had failed to comply with the orders, his claims had no reasonable prospect of success and his conduct of the proceedings was unreasonable; these proceedings were vexatious. The seventh respondent actively pursued its application for costs, which the claimant was well aware of, with a costs schedule served upon him.

24. Eighth respondent, Challenge Group. The haulage recruitment agency which supplied the claimant as a driver to the seventh respondent. As its response revealed, it had carried out its own investigation into the allegations but the claimant had been wholly unreasonable in himself providing no substance to his grievance; he

had merely relied upon the Equality Act 2010 without giving any detail. The claim should be struck out on all bases having no reasonable prospect of success, unreasonable conduct of the proceedings, non-compliance with orders and not being actively pursued. Furthermore, the respondent relied on Rule 47, urging that the claim against it be dismissed for the non-attendance of the claimant.

25. Tenth respondent, Prowell Paper. A paper manufacturer/producer with premises at Ellesmere Port and a customer of haulage companies. The respondent provided a Bundle (R10) and a skeleton argument. It explained that it engaged the ninth respondent (Green Group) to provide haulage services for it under a framework agreement. The seventh respondent had in turn had engaged the claimant's personal service company but the tenth respondent had no contractual involvement with him, such as could engage obligations towards him under the Equality Act; he had merely been present at its premises when working for the ninth respondent. It contended that the claimant had not complied with orders within the time limits, failed actively to pursue his claim and had conducted the proceedings unreasonably especially at the earlier case management preliminary hearing and in his subsequent correspondence levelling abuse at Employment Judge Ryan. The respondent was aware of the Civil Restraint Order preventing the claimant commencing proceedings in any County Court without leave of the court. No employee of the tenth respondent had ever been identified by the claimant, notwithstanding allegations of assault against a manager. The respondent relied upon the EAT authority of Khan at paragraphs 32 to 34. This was a very old claim which the claimant had not taken reasonable steps to progress and had continually failed to comply with time limits. It could be struck out for non-attendance under Rule 47, but in any event striking out was a proportionate response with no prospect of a fair trial when the claims had never been particularised properly and there was no reasonable prospect of success.

The relevant Law and principles

27. The main unlawful discrimination protections are in respect of different protected characteristics claims are found in the Equality Act 2010 and in particular at sections 4, 8, 9, 10-13, 26, 39, 41, 55, 109-110, 120 and 123. The Tribunal also applied its overriding objective at Rule 2 and its powers at rule 37 of the Employment Tribunals Rules of Procedure 2013. Rule 37 of the Employment Tribunals Rules of Procedure 2013 states:

> (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—
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;

> (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;
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
>
> (d) that it has not been actively pursued;
>
> (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).
>
> (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 47 permits a Tribunal to dismiss a claim simply for the non-attendance of a claimant.

The Tribunal followed the Court of Appeal guidance in Blockbuster Entertainment Ltd v James [2006] IRLR 630 and the EAT guidance in Bolch v Chipman [2004] IRLR 140. The Tribunal generally seeks to determine claims fully after hearing oral evidence and submissions but Rule 37 gives the tribunal draconian powers which are exercised infrequently and only after careful consideration in the clearest cases, as shown by the Court of Appeal in Blockbuster Entertainment Ltd The Employment Appeal Tribunal identified steps to be followed where there is consideration of striking out a claim or response under Rule 37(1)(b): the Tribunal must first conclude that a party has behaved scandalously unreasonably or vexatiously in conducting the proceedings but even if this threshold is met, must consider whether fair trial is still possible and, even if it concludes a fair trial is unachievable, must still consider whether a lesser penalty such as a costs order may be appropriate.

Conclusions

28. In the circumstances, the Tribunal accepted the arguments put forward by all respondents which were simply not challenged or resisted by the claimant. The Tribunal could not condone or ignore the claimant's unreasonable conduct of the proceedings, for instance his behaviour as recorded by Employment Judge Ryan at the hearing on 27 March 2019, which a number of representatives referred back to, but still more significantly the claimant's attitude towards compliance with the Case Management Orders which were sent out as a result of that hearing, and the subsequent Case Management Orders and extensions of time. Until his final correspondence with the Tribunal on 30 September 2019, the claimant showed a total disregard for complying with orders and even then made very strong allegations about Employment Judge Ryan and his Order. However, he did not then attend on 4

December 2019 to pursue his claims, or his application for reconsideration or his application for an extension of time to provide his Further Particulars.

29. Whilst the protected characteristics he relied upon, in alleging different forms of unlawful discrimination contrary to the Equality Act 2010, gave rise to serious considerations, like all other parties to Employment Tribunal proceedings, the claimant had to pursue them actively and comply with orders. He had commenced all the proceedings and each respondent needed fully to understand his claims against them early in the proceedings as did the Tribunal in order to be able to case manage them effectively.

30. No complete or satisfactory explanation was given by the claimant why he did not comply in any way until 30 September 2019. Even if he was often out of the country and unable to give priority to the Tribunal's Orders, that is not a sufficient explanation or excuse for his failure to comply and to pursue his various claims actively. In the absence of the claimant and without any further explanation of his non-compliance and delay, the Tribunal was not prepared to extend time further beyond the very generous extensions already provided to him. Therefore, his documentation sent on 30 September 2019 was not accepted as complying with the earlier Orders.

31. It appeared to the Tribunal that the claim against the seventh respondent, B & M, had effectively been dismissed for failure to comply with the Unless Order sent to the parties on 17 July 2019, but the Tribunal accepted that the Notice of Hearing for the Preliminary Hearing on 4 December 2019 dated 2 November 2019 did not state so and gave the impression that the claim against that respondent was still proceeding, such that the attendance of the seventh respondent's representative was entirely justified. Moreover, in relation to the seventh respondent, the Tribunal was satisfied that the claimant appreciated its representative was to make a costs application based upon costs wasted by the claimant's unreasonable conduct of the proceedings. The costs schedule dated 29 September 2019 had been validly served upon the claimant.

32. Having failed to pursue his claim actively or satisfactorily explain why he was not doing so and having ignored case management orders made by the Tribunal for long periods of time, he did not attend the hearing on 4 December 2019 which he clearly knew about. Whilst non-attendance in itself would not have caused the Tribunal to dismiss all the claims under Rule 47 without more, his absence fully added to the conclusion that he was not actively pursuing the claims and the Tribunal could have no confidence that he would now actively do so because he genuinely believed in them, as distinct from pursuing them vexatiously to create massive inconvenience and cost for all the companies involved. He has conducted the proceedings unreasonably from an early stage in each set of proceedings and consistently failed to comply with Tribunal orders in time; against that background

the Tribunal concluded that there could ultimately be no fair hearing and that costs orders alone would not be a sufficient sanction to enable the claims to proceed.

33. The Tribunal did not base its conclusions solely upon the lack of reasonable prospects of success but particularly upon the heads of non-compliance with orders and of scandalous, unreasonable and vexatious conduct of the proceedings, which were overwhelmingly established by the respondents. Nonetheless, those conclusions were reinforced by its view that the likelihood of the claimant establishing even a "prima facie" case of a major conspiracy extending across numerous recruitment agencies, haulage companies and their customers to disadvantage him, those first two types of respondents all effectively being in competition with others within that type, was very small. In addition, the significant remoteness of or lack of contractual relationship between several respondents and the claimant, raising major questions about the claimant's status to bring Equality Act 2010 claims under the extended definition of employment, together with compelling arguments from the respondents upon the claims being presented out of time undermined significantly his prospects of success.

34. Accordingly, the robust but proper outcome is that the claimant's ongoing claims in these proceedings are all struck out or dismissed at this stage and will not proceed to final hearing. The ninth respondent, Green Group, was not in attendance and had not made representations but the claim against it was dismissed for non-compliance with an Unless Order, as was confirmed by a letter sent out on 21 October 2019.

The Fourth Respondent – East Float Logistics

35. Whilst not expressly listed within the Notice of Hearing, the Tribunal was prepared to deal with the claimant's application for reconsideration had it been pursued by him at this hearing. However, he did not attend and the Tribunal, on balance, determined that it would be oppressive to the fourth respondent East Float to list a further separate Reconsideration Hearing in this matter, since it appeared the claimant had in fact appealed the strike-out judgment unsuccessfully under reference UKEATPA/0849/18/OO. Accordingly, the original strike-out Judgment sent to the parties on 20 August 2018 stands and that claim is concluded.

Costs

36. Whilst the likelihood of respondents enforcing any costs against the claimant may be remote, that is different from the principle of entitlement to a costs order. The seventh respondent pursued its application for costs very vigorously. Applying Rules 74, 76 to 78 and 84 of the 2013 Rules, the Tribunal was satisfied that the seventh respondent had made a valid application for costs on notice to the claimant including a schedule of costs, with the threshold for making a costs order plainly met and the discretion to make such an order exercised. Even without determining that the claim

against the seventh respondent had no reasonable prospect of success from the outset, the claimant had conducted the proceedings unreasonably. The Tribunal has no evidence of the claimant's means but the schedule is only partly itemised and includes travel hours at the same hourly rate as hearing attendance within the total sum claimed of £3,856.25 ((R7,78-79). On a summary and broad basis, the Tribunal awards the seventh respondent costs representing 50% of the sums claimed in the schedule, in the sum of £1,928.13.

37. Most respondents made no application for costs, some expressly not doing so. However, it is noted that sixth respondent Drivers Direct made an application for costs earlier in the proceedings. The claimant had narrowly avoided having his claims against the fifth and sixth respondents, Keedwell and Drivers Direct, struck out after he had failed to attend the case management hearing in Case No 2414824/18 on 5 November 2018. If that application is pursued, the sixth respondent should provide full details of any renewed application in writing to the Tribunal and the claimant by 28 days from the date this Judgment is sent to the parties.

Regional Employment Judge Parkin

Date: 24 January 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

24 January 2020

FOR THE TRIBUNAL OFFICE