



EMPLOYMENT TRIBUNALS

Claimant: Mr J Evans

Respondent: Severn Trent Water Limited

Heard at: Leicester **On:** Tuesday 21 January 2020

Before: Employment Judge P Britton (sitting alone)

Representatives

Claimant: In person

Respondent: Ms Francis O'Neil, Solicitor

JUDGMENT

The Employment Tribunal Judge gave judgment as follows:-

1. The claim is struck out in its entirety it having no reasonable prospect of success.

REASONS

Introduction

1. As per the direction of Employment Judge Hutchinson sitting at a telephone case management discussion on 11 November 2019, my task today is to determine the Respondent's applications that the claims as per the ET1 or any of them should be struck out as having no reasonable prospect of success, or in the alternative deposits ordered of up to £1,000 per claim, the claims or any of them only having little reasonable prospect of success.

2. The claims that are before me encapsulated remain that the Claimant has been restricted or prevented from undertaking trade union activities under section 146 of TULCRA 1992 and thus in that sense also of course treated to his detriment.

3. The following is not in dispute:-

3.1 The Claimant is a long term employee of Severn Trent Water having been employed since 1 January 2003. He has had long standing recognition as a trade union official for the GMB. At the time of material events he held the prominent position within the GMB as Chairman of its national water forum and in that respect advocated the nationalisation of the water industry. That however for reasons that I shall come to is not engaged as a head of claim and he is not in that sense going to pursue any amendment to include that aspect of his claim.

3.2 There were claims relating to time off under section 168 of TULCRA and one of detrimental treatment under the Safety Representative and Safety Committees Regulation 1977. He agrees that the first of those is no longer engaged and the second is subsumed in the overarching claim under section 146.

3.3 As to how it engages at the time of material events the Claimant was a member of the CFTU which is the Company Forum Trade Union. It consists of representatives appointed by the recognised trade unions, the principle ones being in terms of the then numbers of membership the GMB and Unison. The purpose of the CFTU is to comprise therefore an appointed committee of trade union representatives which under the recognition agreement with Severn Trent, which is longstanding and is referred to as the partnership agreement, means that inter alia they take part in the company forum which takes place at least twice a year at the highest level between the trade unions and the senior management of Severn Trent, including its Chief Executive, Liv Garfield and its Chairman, Andrew Duff.

3.4 Today I have considered the bundle before me to which there have been supplementaries during the course of the day. Have heard the Claimant's and thence those of Ms O'Neil. I start from the premise that the protection of trade union officials legitimately going about their duties is of course at the heart of the trade union employer relationship and enshrined in TULCRA. Thus I make plain that in terms of strike out I see this as analogous to discrimination and whistleblowing claims, as per the line of authority starting with **Anyanwu and anor v South Bank Students Union 2001 ICR 391, HL**, such cases should only be dismissed as having no merit in the exceptional case. That does not of course preclude this Judge, if he considers it to be an exceptional circumstance, from exercising his judicial discretion to dismiss.

3.5 Finally as this is a preliminary hearing my task having considered the documentation and submissions, is to assess the claim taken at its highest. It is not my function to hear evidence and making findings of fact.

Analysis

4. The following are the fundamentals in this case. The time line is as follows. In the run up to 26 February 2019, and to deal with issues such as a proposed additional payment for tanker drivers as being one example, the Claimant had strongly disagreed with the approach that had been taken by Paul Gibbons and Chris Hill. The status of those two is that they are the joint Secretaries of the CFTU. The Claimant argues as to whether they legitimately have that status. Sufficed to say that I do not consider it matters at all as is self-evident from the grievance investigations which were to take place in due course in this matter consequent upon the Claimant raising a formal grievance on 11 March 2019.

5. All four key players from the trade unions were interviewed as part of the grievance process by the Respondent. Thus first of all Mr Hill; thence Mr Gibbons; thence Dominic Hinks, who is a full time GMB official; finally Ray

Salmon his counterpart in Unison. Now those latter two are formally the actual joint Secretaries of the CFTU, but because they are full time trade union officials and have many other things to do, by convention the actual day to day work of the joint Secretary is undertaken by Messrs Hill and Gibbons. All that needs to be said is that I have read the ensuing e-mails is that the Claimant had a firm view as to what they should not be doing on inter alia the tanker driver issue and that they were most bridled at what he was saying. Suffice it to say that as a consequence there was a coup. That is to say the Claimant, who was clearly a most prominent trade union official and in many ways nationally recognised as such by the GMB but nevertheless not a full time official, was manoeuvred off the CFTU by inter alia Hill and Gibbons at a meeting at which he was absent on 27 February. The day before Mr Gibbons had informed Nicole Westcott (NW), who is a senior member of the HR team of Severn Trent and has a lot to do with the CFTU and the company forum and for that matter the subsidiary forums known as the business forums and therefore a close working relationship with the senior trade union official. I have no doubt from reading her interviews as part of the grievance investigation undertaken by Sarah Stimpson (SS) that she was really given forewarning by Gibbons that they intended to put to the Claimant the following day their loss of trust and confidence in him. She was well aware of the underlying issue. She in turn told Mr Morrison who is the Head of HR. They had both been told this after the joint Secretaries meeting of 26 February. They made plain that this was a matter for the trade unions. I would observe that of course they would. In a highly structured scenario of trade union recognition as is the case with Severn Trent, and from my extensive experience as an Employment Judge, the management side does not usually stray into trade union territory for obvious reasons.

6. The next day as it is Mr Evans did not attend the CFTU meeting as he was scheduled to work the evening shift that day. The meeting went ahead and although there may have been an abstention, it is quite clear that Messrs Gibson and Hill carried the day and the Claimant was voted off the CFTU. This would have a knock on effect on his therefore not being recognised as per the Partnership Agreement for the purposes of subsidiary committees and such as the business forums.

8. After the meeting Mr Hill e-mailed the Claimant and all CFTU members and full time officials to inform them of the outcome. He bcc'd NW. She at that stage was waiting to see what further developments there might be but in the meantime attempted to contact the Claimant on the 28th. And it is quite clear that he had also by now made plain to Mr Hill amongst others that he did not agree with the decision. He considered it to be unconstitutional and he would challenge it. But of course the question is to whom? It is self-evident to me that this is not something he could challenge with Severn Trent. It is a matter for the trade unions to deal with.

9. In the meantime NW was unsuccessfully trying to get in touch with the Claimant. But she obviously knew what his position was vis the trade unions and because inter alia she was informed by Mr Gibbons later that day that the senior union players to whom I have referred ie Salmon, Hinks, himself and Gibbons would be meeting early the following week to decide the next step.

10. As it is on 4 March, Dominic Hinks e-mailed NW, copying the other trade union officials to whom I have referred, making plain that “as he had challenged the decision they had agreed that the status quo would remain and Jason Evans should remain a member of the CFTU and company forum”. So prima facie the two full time trade union officials were over ruling the decision of the CFTU.

11. But Nicole Westcott was concerned at what might happen at the planned meeting of the company forum on 12 March as the Chairman would be there. The Claimant had already made plain, as to which see his December e-mail, a lot of health and safety issues that he would want to raise and prima facie they appear to be legitimate. I can see no evidence that the Chairman bridled at the thought that these would be further discussed on 12 March. I have no evidence at all to that effect. So she wanted to discuss with the Claimant, given that she was aware of the break down in relationships between him and most of the CFTU and in particular Messrs Gibbons and Hill, that she needed reassurances that this would not spill over into the meeting on 12 March and get in the way of the agenda and a meaningful working meeting. As it is the Claimant did not respond. Now the Claimant says that he could not because at the time when she was trying to contact him he was in his motor car driving to Sutton Coldfield from Leicester for a meeting of Severn Trent. When he got there he did not have enough time to have a look at his mobile, which he is not allowed to use in the motor car because of company policy, and it was only at about 9:15 that he happened look at his mobile and learn that JW via a subordinate had cancelled his invitation to the company forum. It is particularly important to stress that it was never said that he was therefore banned in future from any involvement with the CFTU or thus being able to be present at such as business forum meetings.

12. Does it make any difference? Was the Claimant in that sense adversely treated? Well the answer is the Claimant had clearly already formed a view that NW was part of a conspiracy to get rid of him because in effect Severn Trent was supporting the decision and may have been in fact been partly involved in encouraging the same. This is a contention made absolutely clear by the Claimant in the grievance and its investigation. But there is no evidence before me at all to that effect. Turn it round another way. All the senior trade union officials engaged in this case, all of whom were able to have their say in the internal investigation and at a second stage because of the issues the Claimant had raised, made absolutely plain that NW had no involvement whatsoever in the decision that was made by the CFTU on 27 February. Thus it comes down to a suspicion by the Claimant that she must have been. But the Claimant will have the burden of proof in establishing that. I have the comprehensive documentation put before me. There is no evidence to support his inference.

13. As to why she decided to cancel his invite for 12 March is clear from what she had to say to the investigation backed by the e-mails at the time; and encapsulated must be the point that the Claimant would not have spoken to her anyway as is made clear in the subsequent e-mail exchange, primarily because he believed that she was a conspirator, ie he had no trust and confidence in her.

14. So what does it mean? It means that what has happened here on the evidence is quite overwhelming. There has been a fallout in the trade unions which cannot be laid at the door of the employer. As it is the treatment of the Claimant was of short duration because subsequent to 12 March it seems that the Claimant was reinstated, with no loss of any responsibilities, as a TU official onto the CFTU and obviously he has attended meetings since.

15. He has put no evidence before me that apart from the 12 March he has been prevented from carrying out his activities as a TU representative under any aspect of the Partnership Agreement.

Conclusion

16. Thus it is clear that he not precluded from attending the meeting on 12 March because he was a trade union official. He was precluded from attending because given the fallout within the trade unions on the CFTU and the tenor of the Claimant's e-mails to which I have referred, combative as they are in tone, JW could not be satisfied that there would be a conducive meeting in terms of a constructive approach to the agenda on 12 March and that on the face of it, it was highly likely that this bad feeling would spill out and because the Claimant by not communicating with her had not provided reassurance that it would not.

17. In those circumstances I have taken the exceptional course of deciding that the claim does not have any prospect of success, and therefore I dismiss it.

Employment Judge Britton

Date: 31 January 2020

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.