



EMPLOYMENT TRIBUNALS

Claimant: Mr I Laing

Respondent: Bury and Bolton Citizens Advice Bureau

Heard at: Manchester

On: 20 February 2020
(also sat on 17th,
18th and 19th)

Before: Employment Judge Grundy
Mr D Wilson
Ms E Cadbury

REPRESENTATION:

Claimant: In person

Respondent: Mr J Searle, Counsel

JUDGMENT

The application for recusal of the full Tribunal, Employment Judge and both members is refused and is dismissed. The reasons are as follows.

REASONS

1. This is the second recusal application made by the claimant at this hearing, this time it is an application for recusal of the whole of the Tribunal, that is the Employment Judge and both of the members to recuse themselves.
2. The Tribunal has considered both individually and on a tripartite basis the claimant's application. The application is a serious one. The Tribunal is in the process of conducting a part heard hearing of the claimants victimisation claim against the respondent. This is the third judgment and reasons given on an ex tempore basis in the last 4 days in the matter and should be read alongside the previous judgments given on 17th and 18th February 2020.

3. The first ground upon which the claimant says that the Tribunal could give the appearance of bias is that the Tribunal, that is all three of the Tribunal have seen the letter, which the claimant sent on 17 February 2020 for the urgent attention of the Regional Employment Judge. In that letter he set out a complaint against Employment Judge Grundy, he set out requests for reviews of decisions and the third matter was an application that the hearing is heard by a male Employment Judge, although when dealing with that matter the Tribunal asked whether that was the application and Mr Laing clarified that the application was for the case to be heard by a different Employment Judge. He argues that that in itself taints this Tribunal.
4. The legal tests so far as the consideration of whether the Tribunal should recuse itself and whether or not there is apparent or actual bias were set out in the previous judgment and are read into this one, they are not repeated for the sake of time, this is an on-going hearing and time is of the essence as this is the 4th and final day of the listing of this final hearing.
5. The first ground, was the receipt of that letter. What the Tribunal would say about that is, it is often the case that the Tribunal sees information, which it then does not deal with as part of the case going forward. It is the case that the Tribunal as a whole is the arbiter of fact and law, which differentiates it from other types of court proceedings, certainly obviously in a criminal trial the Judge would deal with the law, the facts would be for the jury but the Tribunal is well able to put aside complaints and criticisms and deal with the matter with an open mind, the Tribunal is between the three individuals a very experienced panel and have dealt with cases where information has been before them on other occasions which they have put out of their individual minds so that they can continue the case. That is the case here. There is no need to step down necessarily because a complaint has been raised. The members do not feel they cannot continue and neither does the Judge.
6. The second point that the claimant raises relates to the consideration he says that the Tribunal Judge in listening to the submissions of the respondent previously in which he criticised the attitude of the claimant and he articulated that the claimant may have issues relating to women which could be jaundiced. The Tribunal in its previous judgment had indicated that "one could reach that view." The Tribunal makes clear as it did in that judgment, that is not a finding it is a view. It is the view that the respondent takes, it is something that the Tribunal has got to consider but at this stage all that the Tribunal was doing was commenting that one could reach that view. The Tribunal hasn't reached a conclusion on the merits of the claimant's victimisation case yet. The respondent's submission is one view of the merits the Tribunal has not adjudicated yet.
7. Those were the points that were originally put in the claimant's application when the Tribunal was about to retire to consider the application, the claimant sought to put forward further matters. Those matters were as follows. The claimant complains that the Employment Judge had accused him of pointing his pen at Gail Lyles during cross examination, the claimant was observed by not just the Employment Judge but by other people in the room to be pointing his pen at Gail Lyles, the Judge asked him to stop because he was in close proximity to Gail Lyles about two metres away, about five to six feet, it was close to the end

of her evidence but was inappropriate in itself. The claimant denies pointing his pen at the witness in such a way. It may be the case that the claimant, does not recognise that that is what he was doing and it may have been unconscious but it was happening before our eyes and it was necessary in the Tribunal's view to give the witness the opportunity to feel calm and collected in the giving of her evidence and for the claimant, to desist from that conduct. He did do, he put his pen down but then he denied that that was what he had been doing.

8. The claimant also says that the Judge has repeatedly badgered him. The Tribunal has asked him to answer questions directly and the Tribunal has indicated through the Judge that it would record if he wasn't going to answer what the Tribunal views as a reasonable question regarding whether or not he knew that he would need two years continuing service to bring unfair dismissal claims.
9. On another occasion when the claimant had become difficult in terms of refusing to answer questions that were reasonably put, the Tribunal invited the parties to take a comfort break so that the composure could be maintained and questions continued thereafter.
10. The Tribunal accepts that it may be difficult when somebody is giving evidence to appreciate somebody else's point of view, but the Tribunal has been able to continue with the evidence being given and composure being maintained.
11. The claimant also complained that the line of questioning that Mr Searle put about Rebecca Potts Jacobs dress size and stature was a "sexual matter,". In the Tribunal's view this was not a sexual matter, in our view dress size is a matter of common satorial sense, it is not a sexual matter, but because of the claimant's sensitivity to this matter, the Employment Judge asked Mr Searle to put the question and pursue the matter in a different way saying it would be better to be comparative if we are dealing with heightened/ smaller stature, so the claimant was able to answer those questions to deal with those points without it dealing in fact with dress size but the beginning of the line of questioning was not wholly inappropriate in itself. It seems that the claimant has developed a heightened sensitivity to that aspect. In the end the questions were changed and when the entirely reasonable question "is she taller than you" was put the claimant replied "I don't know".
12. The Tribunal has been firm, and patient towards the claimant. The Tribunal had allocated four days to this hearing, that was when there were three claims to hear, there is now only the victimisation claim to hear, the Tribunal has attempted to case manage appropriately to avoid repetition although that has been extremely difficult.
13. The claimant also raised the issue of the Judge telling him that he was not to ask Counsel his personal views. This goes back to whether respondent Counsel believed the claimant had a poor attitude towards women and a warped mentality. The Employment Judge did tell the claimant that it would be inappropriate for him to ask Counsel his views. That is because it is entirely inappropriate for the Tribunal to consider Counsel's views, they are wholly irrelevant and that is not what the Tribunal is at the end of the day going to adjudicate on.

14. At the end of the day the claimant has submitted that because of the matters outlined and because the Tribunal had allowed a line of questioning where the claimant would be asked questions of a sexual nature, the Tribunal has undermined the proceedings brought by the claimant and has exhibited bias against the claimant, prejudicing the proceedings in favour of the respondent.
15. The members of the Tribunal and the Judge have considered all of those matters, engaged with them, considered each of their own conduct during the course of the proceedings and reached the conclusion that the test set out in the previous authorities is not met by the facts that the claimant has alleged and it is the Tribunal's intention to continue to hear this matter and to invite the witness back into the witness box and to attempt to conclude evidence today.

Employment Judge Grundy

6 APRIL 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
17 April 2020

FOR THE TRIBUNAL OFFICE

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.