



EMPLOYMENT TRIBUNALS

Claimant

Mr L Hassan

AND

Respondents

Dr Christine Hoffmann
University College London
Adam Salisbury
Ms Li-Yun Liao

Heard at: London Central

On: 5 March 2020

Before: Employment Judge Walker (sitting alone)

Representation

The Claimant: In person, assisted by Ms MacKay of ELIPS

For the Respondent: Miss M Tutin, of Counsel

JUDGEMENT

The following allegations were struck out.

1 In claim 4, the allegations of detriment on the grounds of having made a protected disclosure which are in the new list of issues under the numbering below;

1.1 the allegation numbered 8.6, that between November 2018 and February 2019 the Second and Third Respondents forced the Claimant to teach two medical students who were unfit to be taught in a Level 2 class;

1.2 the allegation numbered 8.7, that between November 2018 and April 2019, the Second and Third Respondents forced the Claimant to teach a student who was unfit to be taught in a Level 2 class,

1.3 the allegation numbered 8.4, which is the Second and Third Respondents refused to send the Arabic exam paper to the Claimant before it was sent to external examiner.

2 In the fifth claim, the following allegations:

2.1 the allegation at 8.12 in the list of issues that in October 2018 the fourth Respondent threatened the Claimant that if he had a problem with teaching Level A Workshop on Thursday's it would be offered to someone else and his hours would be reduced".

2.2 the allegation 8.14 is an allegation that in November 2018 the fourth Respondent bullied the Claimant to allow his students to sit an error written exam.

REASONS

1 The Respondent has applied for a Strike Out in relation to various allegations raised by the Claimant in what we refer to as claims 3, 4 and 5. Their application in relation to claims 1 and 2 were heard some time ago.

2 The relevant rules are set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

3 Rule 37(1a) provides that the Tribunal can strike out where it considers the claim is scandalous or vexatious or has no reasonable prospect of success.

4 Rule 37(1b) provides that it can do so where it concludes that the manner in which the proceedings have been conducted by or on behalf of a Claimant has been scandalous, unreasonable or vexatious.

5 I heard the Respondent's application and took the Claimant through their arguments one by one in order to obtain his comments. At that time, the Claimant was assisted by the representative from ELIPS. We worked through the application using the new list of issues, which was prepared by the Respondent under my order and which includes the amendments raised by the Claimant. We had resolved two minor disputed issues and agreed that list at the outset of this hearing. That is the document we use today as a basis for

identifying the separate allegations. Having heard the arguments on both sides I have reached the following conclusions.

6 The first argument which the Respondent said that I should consider was based on a proposition set out in the case of Virgin Atlantic Airways v Premium Aircraft Interiors UK Limited 2013 3WLR 299. Effectively the Respondent referred me to paragraph 17 of that Judgment which explained various types of abusive procedure, including one which arose when a party endeavoured to bring a claim which they could already have done in earlier proceedings, but choose not to. Effectively the Respondent said that in this case there had been issue estoppel and certain claims or allegations should be struck out as a result. It is clear from that Judgment that, in the High Court at least, a party may not raise in subsequent proceedings matters which were not, but could, and should, have been raised in earlier ones. I also had a reference to the case of Henderson v Henderson 1843 3 hare 100.

7 The Respondent took me through the dates of various claims and started off by referring to the possibility that the Claimant could at an earlier stage have raised allegations that he subsequently raised in later claims.

8 While I accept the relevance of the case law, I bear in mind the overriding objective and the fact that the Claimant was an unrepresented litigant at the time and also his first language was not English. I am also satisfied from listening to the Claimant that when he commenced the first two sets of proceedings, he was confused over certain legal obligations. In particular, he was confused because there is a requirement for an ACAS certificate for each individual Respondent, and he did not understand that it was unnecessary to have a separate claim form for each individual Respondent. It took him a little time before he was fully aware that there is a distinction and that he could include in one claim form multiple Respondents.

9 Thereafter, having brought claims 1 and 2 separately, albeit that claim 2 repeated claim 1 and then expanded on it, he brought claim 3 against the Second Respondent, Dr Hoffman. The Claimant says he thought that he could not do that differently. He also referred, as I understand it, to the possibility that he could not put in a claim form things that he had not talked about when he was applying for the ACAS certificate, which is not strictly correct, but again I accept there was some confusion on his part.

10 In the light of that confusion I reject the Respondent's argument in relation to claim 3. However, by the time the Claimant brought claim 4 and 5, he was clearly aware, those claims having been brought in August 2019, that the situation was not as he had first thought. Claim 4 was brought against a new third Respondent who was Adam Salisbury and against Dr Hoffman who had been in the first claim. It is clear that in claim 4, the Claimant has knowingly repeated allegations that were in the earlier list of issues, which had been prepared by then.

11 There are two allegations raised by the Claimant, which are virtually identical to allegations he had previously withdrawn. The first is identified at 8.6 of that list is that between November 2018 and February 2019 the Second and Third Respondents forced the Claimant to teach two medical students who were unfit to be taught in a Level 2 class. The second is the allegation numbered 8.7, which is that between November 2018 and April 2019, the Second and Third Respondents forced the Claimant to teach a student who was unfit to be taught in a Level 2 class was already withdrawn.

12 Effectively, the Claimant's argument is he says he believed he could put them forward in a different way, and whereas before they were put as harassment claims, he now puts them forward protected disclosure detriments. I reject that as an ostensible abuse of the process. Changing allegations from one type of claim to another simply to bring them before the Tribunal when they had been withdrawn, as the Claimant did not want to continue them in the past, is precisely what an abuse of the process is about. It is not open to a Claimant to withdraw claims and then to reframe them slightly differently. He does not suggest that he realised they were wrongly framed before, or that he has good reason to revise them in this manner. He admits he reframed them and thought it was possible to do so to get around previous Tribunal orders and his own decision to withdraw them. For that reason I strike them out.

13 In the 4th claim there is also an issue in relation to what is itemised as allegation 8.4. The Respondent argues that the Claimant was refused leave to amend in relation to certain applications and those too should be treated as an abusive of process. I reject that. The reason for refusing requested amendments can vary and my primary reason for refusing amendments was that they were too vague to be capable of being understood. I am not satisfied that the refusal to amend on that occasion, was anything which would prevent the Claimant from bringing the claims, if properly framed and if they are still in time. However, I am satisfied that the allegation at 8.4, which is the Second and Third Respondents refused to send the Arabic exam paper to the Claimant before it was sent to external examiner has, on its face, no reasonable prospect of success. The reason for that is that the emails cited in the claim itself by the Claimant specifically set out his suggestion that the exams papers could be sent to him beforehand and he quotes an email which says, "I am happy to have the final checking before it is sent to the external examiner". That is simply a suggestion that he would be willing to do it. The fact the Respondents did not take him up on that suggestion is not a refusal, and thus, on its face, the allegation cannot succeed. It has no reasonable prospects of success.

14 The next matter I considered was the fifth claim and allegation 8.12 in the list of issues. The allegation is that "in October 2018 the fourth Respondent threatened the Claimant that if he had a problem with teaching Level A

Workshop on Thursday's it would be offered to someone else and his hours would be reduced". That is a repetition of a previous allegation, which appears at item 2 of the first and second claims and is also in this case framed against a different individual. On its face, there is no basis for that being raised another time and it is inexplicable that the Claimant should raise it against a different party, having previously, and indeed much closer to the event, argued it in relation to the Second Respondent. He could have perfectly well have raised that allegation before, but chose not to. I regard that as abuse to raise it in a different form again and I strike it out.

15 Allegation 8.14 is an allegation that in November 2018 the fourth Respondent bullied the Claimant to allow his students to sit an error written exam. The Claimant has withdrawn that allegation in the past. He now puts it in largely the same way, but raises it as an allegation against the fourth Respondent in relation to a matter which he had withdrawn previously and for the reasons as I have explained before, having chosen to withdraw it, it is an abuse of the process to raise it in a different format in the hope of bringing it back before the Tribunal again.

EMPLOYMENT JUDGE WALKER

**Date and Place of Order
11/06/2020**

**Date Sent to the Parties
11/06/2020**

For the Tribunal Office