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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case Number: S/4108841/2018**

**Held in Glasgow on 29 January 2019**

**Employment Judge: Laura Doherty**

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**Mr S Oseruwoja**

**Claimant  
Not Present and  
Not Represented**

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**Delta Electronics Europe Ltd**

**Respondent  
Represented by:-  
Mr Hay –  
Counsel**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that the claimant's claim is struck out under Rule 37 (1) (b) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the Rules) on the grounds that the manner in which the proceedings have been conducted by the claimant has been scandalous and unreasonable.

**E.T. Z4 (WR)**

## REASONS

1. The claimant presented a claim of discrimination on the grounds of race in June 2018. The claim is opposed.
2. This Preliminary Hearing (PH) was fixed to consider the respondents application for strikeout of the claim under Rule 37(1) (b) of the Rules, and to consider the claimant's application for strikeout of the response.
3. The issue for the Tribunal therefore is whether the claim should be struck out on the grounds that the manner in which the claimant has conducted the proceedings has been scandalous or unreasonable; and to consider whether the response should be struck out on the basis of this claimant's application dated 25th October 2018.
4. There was no attendance by behalf of the claimant at this PH. The claimant had written on a number of occasions to the Tribunal in advance of this hearing indicating it was not his intention to attend the hearing, and therefore the Tribunal proceeded in his absence. The Tribunal had confirmed to the claimant in a letter dated 22 January 2019 that the PH would proceed in his absence if he failed to attend, given his stated intention.
5. The respondents were represented by Mr Hay, counsel.

## Findings in Fact

6. The respondents produced a bundle of documents which comprised the ET1, ET3, Tribunal PH Notes, and correspondence sent by the parties and the Tribunal.
7. From information and documents before it, it made the following findings in fact.

8. A Preliminary Hearing (PH) took place on 31 August 2018 for the purposes of considering case management issues arising from the claim.
9. The Tribunal considered a number of matters at that PH.

### **Application for Anonymity Order**

- 5 10. The first was the claimant's application for an Anonymity Order under Rule 50 (3) (b) of the Rules. This application was refused, the Tribunal having heard submissions from both parties. Reasons for the refusal were provided in a Note (the August PH Note).
- 10 11. The claimant appealed the Tribunal's refusal of the Order under Rule 50. His appeal was refused. The claimant applied for a hearing under Rule 3 (10) of the EAT's refusal of his appeal.
- 15 12. The claimant emailed the EAT on 16 January 2019 stating that due to the EAT's refusal to grant an interim Anonymity Order pending the Rule 3(10) hearing, he felt there would be more harm than good to his mental health. His email stated *'Put simply, I have to accept the racial abuse stop. Please consider this email a direct request to destroy my EAT complaint.'*
13. On 29 January 2019 the EAT ordered that leave be granted for the Appeal to be withdrawn and the Appeal was thereby dismissed.

### **Respondents application for strikeout- August 2018**

- 20 14. From July 2018, in advance of the PH in August the claimant sent a number of emails making serious allegations about the conduct of Mr Strang of BTO solicitors, the solicitor instructed by the respondents in the defence of the claim.
- 25 15. The respondents intimated an application for strikeout of the claim in advance of the PH in August, however did not insist upon this application in August, in

recognition of the fact that proceedings were at an early stage, and it was likely that an opportunity would be given to a claimant facing such an application to reflect on how the proceedings were conducted by him. The respondents asked the Tribunal at the August PH to record their position, which the Tribunal did in the August PH note.

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16. That Note identified nine emails sent by the claimant in his conduct of the proceedings from 1 July to 22 August in the following terms;

(1) Email of 1 July- that Mr Strang was a co-conspirator who appeared to have been involved in the cover-up through deceptions and to intentionally cause the claimant's loss;

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(2) Email 4 July -that the claimant had the right to sue BTO for being a 3<sup>rd</sup> party that counselled the criminal conspiracy in his employment;

(3) Email 25 July- that the respondent's solicitors are former hate crime prosecutors in the region; that the respondent's solicitors use their status to influence local police and procurator fiscal services; Mr Strang had shown corrupt intent by secretly interfering during the claimant's employment; Mr Strang is a dangerous lawyer, his firm may be guilty of legal malpractice and fines from his clients, which is why he is seeking to have the claim struck out to avoid ramifications; Mr Strang's tactics, if allowed by the Tribunal would mean that it is quite easy to break the law by bribing its employees worldwide to lie the Police; Mr Strang cannot be trusted, he should be treated with caution and not under the respect umbrella of BTO.

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(4) Email of 27 July- Mr Strang's interference during the employment process show corrupt intent; he acted for private gain using BTO as a cover.

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- (5) Email 30 July- Mr Strang supported the aggravation of a hate comment by his interference; BTO influences local police officers and PF; Mr Strang is a corrupt lawyer.
- (6) Email 1 April -the respondents lawyer intimidated the claimant because of their links with BTO who influence the local justice system.
- (7) Email 17 August – there were corrupt intents by the lawyer.
- (8) Email 21 August- the lawyer was bribed and will be investigated by law enforcements.
- (9) Email 22 August- the lawyer is corrupt and a master 'legal advisor' of emotional abuse and conflict.

17. The August PH Note also recorded the respondent's position that the allegations reflected not only on Mr Strang but also the police and the procurator fiscal office, and that if allegations were to be made, they should be made with a proper basis fact and should not be advanced in the way and manner in which they had been advanced by the claimant.

18. The Note recorded the respondent's submission that the content of the emails readily met the test of scandalous, and could not continue, and that and it was hoped that by making the respondents position clear at this stage rather than insisting on an application for strikeout of the claim, the claimant would use the opportunity to reflect on his future conduct of the proceedings.

**Specification of the claim**

19. Specification of the claim was also discussed at the August PH, and it was recorded that the claimant required to provide specification of this claim. He was directed in terms of the August PH Note to the statutory provisions in

Section 19, section 26, section 27 of the Equality Act, and the specification which the claimant would have to provide in order to advance claim under these Sections.

- 5 20. The Note provided direction as to when the claimant should provide this specification of his claim, and when and how it should be responded to by the respondents.

**Addition of the 2<sup>nd</sup> respondent**

- 10 21. There was also discussion at the August PH about the claimant's application to add a 2<sup>nd</sup> respondent and it was agreed that this would be considered at a further PH which was necessary to deal with case management issues.
22. A PH to consider further case management purposes was subsequently fixed for 2<sup>nd</sup> November.

**Further Procedure/ Correspondence from August 2018**

- 15 23. Following on the issue of the August PH Note the claimant continued to send email correspondence in the conduct of his claim which made unsubstantiated and prejudicial allegations.
- 20 24. On 17 September the claimant emailed the Tribunal and Mr Strang stating that; *'Another evidence of Bribery is why the respondents lawyer is asking the Tribunal not to add the 2<sup>nd</sup> respondent to protect their infringement... The lawyer secretly helped the abuser.*
- 25 25. On 18 September the claimant wrote to the Tribunal advising that he was informed by the Tribunal's telephonist that there were communications between the Tribunal and the respondent's representative which he was not copied into. He asked the Tribunal to forward this private communication, so that he could check if there was further evidence of corruption.

26. The Tribunal asked the claimant what he was referring to as there is was no such correspondence. Nothing was identified by the claimant.
27. On 19 September the claimant emailed the Tribunal stating that this was his final request for the respondents to disclose the private communications it had with the Tribunal, and that the respondent was attempting to bribe the Tribunal by using 'organisational covers'.
28. The claimant sent a further email of 19 September stating that in order for the bribery, involving the secret interfering lawyer to be fully covered, then certain grievances should be considered.
29. On 19 September the respondent's solicitor wrote to the claimant and the Tribunal regarding their position on the addition of a 2<sup>nd</sup> respondent. They also drew to the Tribunal's attention to statements made by the claimant in his email correspondence regarding allegations of corruption. They advised that they simply brought this to the attention of the Tribunal at that stage, but that should there be any further allegations they would have no option to ask for strikeout of the claim on the grounds of scandalous behaviour, which continued despite the claimant having been given a chance following last PH to consider and modify his actions (page 205/6).
30. On 14 October the claimant emailed the Tribunal, and the EAT stating ; *I was stalked immediately after 31 August comments of Judge L Doherty in the absence of the respondent. The lawyer been party to this.*
31. The email goes on-:
- ' Also knowing that the conspiracy documentary evidence was sent to the Glasgow ET showing the corrupt lawyer secretly part of the attack all along. These people are a danger to vulnerable groups in the community and country.*

*'Again, just because you have a false majority fabricating or falsifying the facts doesn't mean they have the edge. Organisational crime requires more than one person and usually these persons work together in this case, it is self-evident.*

5 *It is an element of guilt that they are asking the Tribunal for favours for striking out and now playing 'soft approach' when you keep lying and put yourself in a tight corner.*

*Just because BTO instructs the police does not justify that the crime has been committed.'*

10 32. On 16 October the claimant emailed the Tribunal stating that his life may be in danger in the hands of the Employment Judge; that she had asked for an update from the EAT, showing bias, and that her conduct may be encouraging further hate crimes by giving improper advantage forbidden by the Bribery Act of Parliament.

15 33. The Tribunal emailed the claimant on 22 October at 16.23 stating that the PH of 2 November would go ahead and that until the claimant lodged a valid appeal which got past the sift (i.e. considered arguable) then the proceedings would not be delayed at Employment Tribunal level.

20 34. On 22 October the claimant emailed the Tribunal 22.21 stating that should the respondent bring strike out up again then .. *'I will no longer be discreet and will provide further crimes they have committed using the police Scotland towards me since 31<sup>st</sup> August PH they seem to think they have obtained an improper protection that I'm yet to understand me to suffer the traumatic experience. It's in their best interest to consider the damage they have caused*  
25 *thus far.*

*It was a pretty clever idea to use 'others' to cover up hate crimes 'name-calling' to make prosecution difficult but credibility and truth always stays.*



*There was no legal advice and next PH is the last time I will entertain treating me like a fool. The public law is all I will discuss at that hearing in my allocated time as relevant-it's all online and the public isn't stupid to understand the online legislation as written'.*

5 35. On 23 October the claimant emailed the respondents solicitor stating that they must refrain from contacting or breaching his personal life without consent, and that; ..*'the police officer they had sent to 'charge' him with a 'crime' appeared to be off sick just after the August threat letter'*. The claimant stated';  
10 *'Your influence will not last long. The public isn't foolish to know the truth as I stated. Credibility always wins Stay out of my life and relationships. Final warning'*.

36. On 25 October the claimant emailed the Tribunal with an application to strike out at the defence. The application was made on the basis of *'inappropriate and unlawful conduct (Bribery, Inchoate offenses, racketeering, potential*  
15 *perjury, stalking and obstruction of justice).'*

37. On 26 October Miss Carr of BTO wrote to the Tribunal and the claimant advising that she was taking over the conduct of the case from her associate, Mr Strang as she could not continue to have Mr Strang exposed to what she described as a campaign of abuse from the claimant and she reiterated that  
20 the respondents would be seeking strikeout of the claim.

38. On 26 October the claimant emailed Ms Carr stating that BTO's conduct was criminal and unethical and they cannot be immune from the law because of the secret influence of one of their lawyers, who should *'have stayed out of the matter'*. The claimant stated that BTO were influencing the police and their  
25 *'integrity was not right'*.

39. The claimant emailed Ms Carr on 27 October stating ;' *I take it you have the experience of being abused or assaulted making a 'funny 'joke of the abuse I received and the police officer you use to perpetrate crime and all actions to*

*intimidate me, you have no experience of being assaulted and you are a disgrace!*

40. On 29 October the claimant emailed the Tribunal stating;

5 *'Further evidence why the conduct of the respondent should be considered and the defence struck out and trying to charge me with 'a crime' using a police officer without my knowledge and block access to criminal justice (will discuss these in relation to my 03 September claim specifications).*

10 41. On 1 November the claimant emailed the Tribunal with a summary of his statement for the PH which had been fixed for 2 November. This statement contained the claimant's allegations against the respondents. Under the heading 'new concerns' he stated that a criminal enquiry was recently reopened according to BTO, but apparently only because the matter was referred to the EAT, which showed evidence of influence and bribery.

15 42. A PH took place on 2 November for the purposes of considering case management issues. The claimant, and the respondent's solicitor Ms Carr, appeared at that PH.

20 43. The PH note recorded the fact that the claimant indicated that he wished to give evidence at the PH to talk about the discrimination which he alleges he had been subjected to, but that it was explained that the Tribunal would not hear evidence at that PH about the merits of the case, and that the purpose of the PH was to consider procedural issues ( page 68 to71).

25 44. In the course of that PH the Tribunal determined the application to add 2<sup>nd</sup> respondent, which was refused. Reasons were given for that decision in the PH Note.

45. A PH was fixed for the purposes of considering the claimant and respondent's applications for strikeout.

46. On 2 November the claimant made an application to the Employment Tribunal to suspend the proceedings pending an update from the EAT. In that email he stated that the Employment Judge has taken a 'personal' interest in the claim and has made a decision to harass him by asking him to go a to a hearing to pay the abuser- a matter which he said was under review by the police.
47. The claimant stated that although he was the claimant, the Employment Judge was only listening to the respondent's lawyer to protect them from Bribery and obstruction of justice, and that she stated that unless he could get another judge to remove her, she will continue the bias. He stated this conduct by the Employment Judge was a violation of his human rights; that she refused to look at his PDF statement and criminal evidence of bribery and that she had used her position to allow a public official to threaten him with a crime. He stated that the Employment Judge stated she would force him to commit suicide if he did not give up.
48. On 4 November the claimant wrote to the EAT , copied to the Tribunal and the respondent's solicitor, stating among other things that the ET3 was harassment and was aimed to encourage and assist the perpetration of racial abuse; and that the Employment Judge was interested in external and verbal arguments to deliberately win the situation for the respondent, and that the EAT was to intervene, as matters put him under undue stress and anxiety.
49. The claimant would go on to state that the Employment Judge, who knew he was unable to afford legal aid, had taken advantage, to frustrate the ET process knowing justice would not be served. He stated that the Employment Judge refused to see evidence of further threats by the bribed lawyer Douglas Strang, and BTO using their influence on local police to threaten him with a crime. He stated that the police officer attended in the same week as B T O wrote to intimidate him after the PH of 31 August and that the officer has since 'run away', off sick.

50. The claimant stated that the Employment Judge appeared to show a deliberate intent to undermine him by making decisions against *Human Rights Abuse protection, Bribery and Incoherent legislations*. He stated that she had told him she could make him 'pay *the abuser*' for falsification of the ET3 and does not care if he suffered mental health issues by her unlawful treatments.
51. The claimant asked the EAT to provide anonymity protection based on this, to add the 2<sup>nd</sup> respondent, and to direct that case management decisions by the Employment Judge should have no influence on the actual matter of racial hate crimes
52. The claimant emailed the Tribunal again on 7 November under the heading *strikeout hearing response*, stating he would not allow the ET to inflict pain. He stated he would not attend the ET further until he heard from the EAT, and that the ET was deliberately attempting to murder him by not protecting him.
53. The claimant emailed the Tribunal on 8 November stating that the Employment Judge has said no evidence was to be considered, yet she said she sided with the bribed lawyer. He stated that TUPE was not used for legitimate reasons and that the Employment Judge knew this.
54. On 8 November the Tribunal emailed the claimant (267) advising that the Employment Judge was not satisfied there were any grounds upon which she should recuse from the case; the serious allegations in his correspondence in relation to prejudicial conduct and bias on the part of the Employment Judge were entirely without foundation. The claimant's attention was drawn to the terms of the PH note issued following the PH on the 2<sup>nd</sup> November, which recorded what had been considered at that hearing, and the directions made at it.
55. The Employment Judge also drew the claimant's attention to the terms of rule 37 (1) (b) of the Rules. The Employment Judge provided the claimant with the definition of 'scandalous' in the context of that Rule, which includes giving

gratuitous insult to the Tribunal in the course of the proceedings. The claimant was advised that the event he persisted with conduct which was properly regardless scandalous then the Tribunal may exercise its power under rule 37 (1) (b).

5 56. The claimant responded to that email on 8 November stating among other things that he maintained the process abused his heritage as a black person and the court was there to protect not threaten and that asking the court for protection, and the claim was not scandalous or an insult to the court.

10 57. The claimant emailed the Tribunal again on 9 November stating that he had no intention of 'gratuitously insulting' the Tribunal, and if he intended to do so he would not come to for help. He stated he felt he was losing assurance e of fairness.

15 58. On 6 December the claimant emailed the Tribunal stating he did not wish to withdraw his claim. He stated he would not attend the PH on strikeout as the 'set up' favours the respondents. He stated that he was '*on hold*' and could not communicate with respondents or the Glasgow ET to protect himself. He stated without the anonymity and not adding the 2<sup>nd</sup> respondent, his safety was compromised, and he was '*locked in*'.

20 59. The claimant emailed the Tribunal on 8 December stating; '*Organised crime is NOT the solution to justice and a narcissistic racist-remove my name from your public listing and leave me alone.*'

60. The claimant further emailed BTO and Tribunal shortly thereafter on the same day stating;

25 '*If you do not leave me alone and continue to perpetrate organised crime (through proven lawyer bribery and legal abuse) you will have my blood on your hands. Leave me alone.*'

61. The claimant emailed the Tribunal on 9 December stating that he was awaiting an update from the EAT. He stated the Employment Judge was asking him to accept a racial insult by the respondent's employee. He asked again that the Tribunal to remove his name and leave him alone.
- 5 62. On 10 December the claimant wrote to the respondent's solicitors asking them to stop fuelling racism and stop the harassment and deal with matters objectively otherwise to abstain from him until he obtained an update from the EAT.
- 10 63. On 18 December the claimant emailed the Tribunal and BTO stating that he had further evidence of bribery and stalking, and that he attached the photograph of an unstamped letter which he had received from the bribed policeman. What accompanied this letter a photocopy of an envelope, but not a letter.
- 15 64. On 9 January, the claimant sent an email to BTO headed '*Stop Stalking Me!*' He stated that bribery of witnesses and public officials was an offence and that no one was above the law and that they must abstain, otherwise they would have blood on their hands. He stated that they did not have his consent for the '*meeting*' with the Employment Judge 29 January.
- 20 65. The Tribunal emailed the claimant on 9 January at 10.36 am advising that the Employment Judge had nothing to add to the reasons for refusal of the Anonymity Order and the case remain listed for a Preliminary Hearing on 29 January.
- 25 66. The claimant responded to that email at 11.22am stating that the Tribunal has threatened to strike out my claim if he did not accept the racial insults and harassments. He asked '*finally*' to remove his name from the public list as it was clear my life with other networks was operating well and the '*issues rests only with this organised act*'. He stated that if his name was not removed then

the Employment Judge was asking him to incapacitate himself and the only way to abuse him racially to that extent was to kill him.

67. The claimant stated he had been asking gently for weeks and months, and it is fair to say that the Tribunal was deliberately upsetting him.

5 68. The claimant asked to be left alone by the Tribunal and for it to address the matter fairly.

69. At 11. 58am again on the 9 January, the claimant emailed the Tribunal further stating;

10 *'Since you are making a direct threat to me by undermining Inchoate legislation I think I need to any to stop the inflicted anxiety. If you do not revoke/ remove my name from this name-calling scheme by end of today, I guess you will know that only people like me are martyrs and will not stand up to a narcissistic racist and emotional abuser/ Craig O'Neill-the one you and favour because of his more powerful status.*

15 .....

*I will wait till end today because I have gently asked you to respect my God-given rights'.*

The claimant emailed the Tribunal again on 9 January at 12.27pm stating;

20 *'You can have a preliminary hearing without using my name-please respect my wishes'.*

70. The claimant also emailed the respondents, and the Tribunal, at 14.37 telling them they should stop stalking and *'harassments'*, as he had been gently asking them to since he reported racism.

71. The claimant went on to state that as the hearing on 29 January was a public hearing he would be unable to attend. He gave the reason for this that name-

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calling is easily '*indictable*'. He also stated that his other business networks were thriving without the respondents who should stay away from him.

5 72. The claimant sent a further email to the respondents' agents on 9 January at 15.27 stating that they bribed police officers threatened to charge him with a crime.

10 73. On 10 January at 9.42 am the claimant emailed the Tribunal indicating that because of concerns about his health he felt it was in his best interests to forfeit the Equality Act claim. The claimant's indicated he preferred not to speak the respondents ever again and he wished the Tribunal to ask them to repair the relationships they have damaged which did not involve their business. He stated his claim could not proceed because he would risk further psychological injury by the intimidation.

15 74. At 16.03 on the same day, respondents queried if the claimant was withdrawing his claim. The claimant responded at 16.34 stating that he was not withdrawing his claim, was only stating safety concerns. He stated he would not be attending a public hearing and the contents of his email of 4 December and that PDF should be considered if matters proceed in his forced absence.

20 75. The claimant emailed the Tribunal again 10 January at 17.37 with an email headed apology to Judge Doherty and stating that his emails had not said that the judge had accepted a bribe; that was Mr Strang.

76. The claimant further emailed the Tribunal on 20 January confirming it was not his intention to attend the PH and 29 January.

25 77. The email goes on '*is Going forward, I would appreciate if the BTO Organisation, Delta, and their corrupt Police officer to stay out of my life*. The claimant stated that the procurator Fiscal was unable to do anything because he felt that the Employment Judge had favoured the respondents. The



claimant indicated he had apologised to the Employment Judge '*ONLY for being upset however I remain saddened that it is easier option to prosecute the bullied than the ones who bully*' and that the corrupt BTO and police have immunity.

5 78. The claimant asked the Tribunal again to consider the contents of his PDF document of 4 December.

79. The claimant did not submit a PDF Document on 4<sup>th</sup> December. He emailed the Tribunal on that date, stating he would not attend the hearing. He stated the Tribunal should remove his name from its public listing and he said he  
10 wished to be left alone if the Tribunal would not add the 2<sup>nd</sup> respondent which showed evidence of the lawyer's bribery. He stated he would not write to the tribunal again unless the '*setup is done fairly.*' He stated the P DF sent on 23<sup>rd</sup> October contained pictorial evidence showing the respondents were dishonest.

15 80. The claimant did submit at P DF a document to the tribunal on 23<sup>rd</sup> October which contained his allegations of race discrimination, together with allegations against Mr Strang, and included some photographs of documents, with the claimant's interpretation of these marked thereon.

81. The Employment Tribunal wrote to the claimant on 22 January noting that the  
20 claimant was not withdrawing his claim; he was advised that in the event he was not in attendance at the PH on 29<sup>th</sup> January it would proceed in his absence.

### **Submissions**

25 82. Mr Hay took the Tribunal through the claimant's email correspondence, drawing attention to derogatory statements made by the claimant about the respondents' solicitors, the Police, and the Employment Tribunal. Mr Hay submitted the claimant consistently made serious and prejudicial allegations

which were entirely unsubstantiated. This, Mr Hay submitted was against the background of the claimant being advised of the potential consequences of this behaviour at the PH in August 2018. He submitted that while it had been hoped that the claimant would reflect on what was said at that PH, and indeed he appeared in the course of the PH to do so, it was apparent from the statements made in correspondence sent as early as September that what had been said at that PH had not been taken on board by the claimant.

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83. The claimant had continued to give gratuitous insult to the respondent's solicitors, the Police, and the Tribunal, in what Mr Hay described as a deluge of correspondence. By Mr Hay's count there were at least 32 derogatory and unsubstantiated statements made in the claimant's correspondence.

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84. The claimant had engaged in this correspondence despite warning letters being sent to him by the respondent's solicitor, and warning having been given by the Tribunal about the potential consequences of his engaging in this behaviour.

85. Mr Hay submitted that the claimant's conduct readily meets the test of scandalous and unreasonable in terms of Rule 37 (1) (b).

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86. Mr Hay submitted that strikeout was a proportionate response to this behaviour in what he described as the extraordinary circumstances of this case. The volume and extent of the correspondence which the claimant generated was time-consuming significantly distracted from the progress of the case. There had in fact been no real progress as a result of the claimant's conduct to date. There was significant cost to the respondents in dealing with this correspondence.

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87. Significantly, there was nothing to suggest that the claimant was going to desist from the course upon which he had embarked. He had ignored the warnings issued to him, there was nothing to suggest that further case

management would achieve a better result. There had been a firm case management to date, but to no end.

5 88. Matters were compounded in the claimant stated he did not wish to correspond with the respondents or their agents, and he refused to attend at a hearing. Taking these factors into account a fair trial was no longer possible, and it was proportionate to strike out the claim.

10 89. In support of his arguments, Mr Hay referred the Tribunal to the case of *Bennett v London Borough of Southwark (2002) EWCA Civ 223*, and the definition of scandalous in that case at paragraph 32. He also referred to paragraphs 33 and 34 of the judgement of Lord Justice Sedley, and the comments made about proportionality.

15 90. Mr Hay also referred to the case of *Jhuiti v Royal Mail Group Limited (Secretary of State for Business, Energy and Industrial Strategy and another intervening) 2018 ICR*, and to paragraph 38 of the judgement of Similar J, in which she made reference to there being '*ample power*' in the Rules to strike out a claim in circumstances where a party behaves unreasonably or is vexatious without resorting to an investigation into capacity.

### Consideration

91. *Rule 37 (1) (b) of the Rules provides;*

20 (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, vexatious what has no reasonable prospect of success;*

25 (b) *that the manner in which the proceedings have been conducted by behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious.*

**Respondents application for strikeout**

92. The respondent's application is made under Rule 37 (1) (b) of the Rules on the ground that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous and unreasonable.

5 93. The meaning of 'scandalous' in the context of this Rule was dealt with in the case of Bennett referred to above.

94. At paragraph 32 of the decision in that case, Lord Justice Sedley stated;

10 *'.. Without seeking to be perceptive, the word 'scandalous' in its present context seems to me to embrace a somewhat narrower meanings: one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process.'*

95. In considering the respondents application the Tribunal has firstly to consider if the manner in which the proceedings have been conducted by the claimant has been scandalous or unreasonable.

15 96. It is apparent from the findings in fact that the claimant has on numerous occasions in the conduct of these proceedings, sent correspondence to the Employment Tribunal, and the Respondents solicitors making unsubstantiated and prejudicial allegations about corruption and other matters on the part of the respondent's solicitor; unsubstantiated and prejudicial allegations of corruption on the part of the Police; and  
20 unsubstantiated and prejudicial statements about the Employment Tribunal. All of this email correspondence has been sent by the claimant in the conduct of his claim.

25 97. The Tribunal was satisfied that the manner in which the claimant has conducted the proceedings meets the test set out in *Bennett* and is properly categorised as scandalous for the purposes of Rule 37 (1) (b), in that the

claimant has repeatedly sent correspondence in the conduct of these proceedings in which he has misused legal privilege to vilify the respondents solicitor; the Police; and has given gratuitous insult to the tribunal.

5 98. The Tribunal was also satisfied that the manner in which the claimant has conducted the proceedings has been unreasonable. The claimant has persisted in making unsubstantiated and prejudicial allegations against others involved in the Tribunal process and has done so against a background of having the consequences of his engaging in such conduct explained to him in August 2018, and the Tribunal outlining the potential consequences of his  
10 conduct should he persist, on 8 November 2018.

99. In addition to the unsubstantiated prejudicial statements which he has repeatedly made, the claimant has indicated on numerous occasions that he is unwilling to engage with the process to the extent it requires him to attend a public hearing.

15 100. The claimant indicated his intention not to attend a public hearing in emails to the Tribunal of 4<sup>th</sup> and 6 December; three emails on the 9 January; two emails 10 January; and on 20 January.

101. The claimant did not attend the hearing on 29 January.

20 102. The Tribunal was satisfied that the claimant's conduct in persisting with correspondence which contained unwarranted and prejudicial statements in the conduct of the proceedings against the background of having been warned about the potential consequences of doing so; stating his intention (on eight occasions) not to attend a public Tribunal Hearing for objectively no good reason; and subsequently failing to attend the Hearing which had been  
25 fixed, amounted to conduct which was unreasonable.

103. The Tribunal considered the significance of the scandalous and unreasonable conduct. It was satisfied that it was likely that a good deal of time and expense

had been taken up on the part of the Respondents and their agents in dealing with this, and that the conduct had impeded the progress of the claim. As a result of the Tribunal dealing with the issues raised as a result of the claimant's conduct of the case, there has been no substantive progress of the claim. The Tribunal also considered it significant that the conduct had persisted despite the claimant having been put on notice as the potential consequences of his conducting the proceedings in this manner.

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104. The Tribunal having categorised the conduct as scandalous and unreasonable, has to go on to consider whether striking out is a proportionate response to that conduct.

105. In considering whether the claim should be struck out on the grounds of scandalous, or unreasonable conduct, the Tribunal must take into account whether a fair trial is still possible.

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106. The Tribunal takes into account that's other than in exceptional circumstances a striking at order is not to be regarded simply as punishment, and if a fair trial is still possible, the case should be permitted to proceed. Even if a fair trial is unachievable, the Tribunal should consider the appropriate remedy in the circumstances, and it may be appropriate to impose a lesser penalty, for example by means of case management, rather striking out the claim.

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107. The Tribunal firstly considered whether a fair trial remained possible.

108. The claimant had persisted in making unwarranted prejudicial statements about others involved in the process. This has taken up a considerable amount of time and, the effect of the claimant's behaviour has been that the substantive case had not been progressed.

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109. The claimant had been made aware of the potential consequences of persisting with this conduct as early as August 2018, and the Tribunal outlined the position for the claimant again in November 2018.

110. The claimant had however continued to conduct the proceedings in a scandalous and unreasonable manner, despite being told that his claim was at risk of being struck out if he did so. There is nothing to suggest that the claimant will take heed of any further direction issued by the Tribunal and will  
5 desist from proceeding in this manner in light of any further warning or direction issued by the Tribunal about his conduct. This is likely to result in difficulty in making progress with the case, which may impact on the ability to conduct a fair trial.

111. In addition to that however, the claimant has stated that it is intention not to  
10 attend a public hearing. This will impact on whether a fair trial is achievable. The claimant has the burden of proof, and his intention not to attend a public Hearing, means that he will not give evidence or be cross-examined. This was a factor which the Tribunal considered does impact on the ability to hold a fair trial, to the extent that it means a fair trial is no longer possible.

15 112. The Tribunal went on to consider whether even if a fair trial is unachievable, what was strike out the appropriate remedy? It considered whether it was appropriate to impose a sanction lesser than strikeout, for example by making a costs order, or issuing case management directions as to the claimant's further conduct of this case.

20 113. The Tribunal was not satisfied that either of these case management orders were an appropriate and proportionate response to the claimant's conduct. In reaching this conclusion the Tribunal takes into account that the claimant has to date been made aware of the consequences of conducting the proceedings in the manner which he has, but this has not prevented him from continuing  
25 to conduct the proceedings in a manner which is both scandalous and unreasonable. It did not appear likely to the Tribunal in light of the claimant's conduct to date that further case management directions would be effective to prevent the claimant continuing to conduct the proceedings in this manner.

114. The Tribunal concluded that the manner in which the claimant had conducted the proceedings to date was scandalous and unreasonable, and that the effect of that conduct was that a fair trial was no longer possible, and that it was a proportionate response to that conduct to strike out the claim under  
5 Rule 37 (1) (b) of the Rules.

**Claimant's application to strike out the Response**

115. This application was made in an email dated 25 October in the following terms;

10 *'This is a formal application to strike out the defence of the respondent for an inappropriate and unlawful conduct (Bribery, Inchoate offences, racketeering, potential perjury, stocking and obstruction of justice) in this matter at next week's 02 Nov PH'.*

116. There was nothing whatsoever before the Tribunal to support this application. Indeed, this application contains prejudicial statements which constitute  
15 scandalous and unreasonable conduct of the proceedings on the part of the claimant, and therefore the application is refused

Employment Judge: Laura Doherty

Date of Judgement: 01 February 2019

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Entered in Register,

Copied to Parties: 04 February 2019



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