



EMPLOYMENT TRIBUNALS

Claimant

Mr. M. French

v

Respondent

S. Sacker (Claydon) Ltd

PRELIMINARY HEARING BY CVP

Heard at: Watford

On: 3 August 2020

Before: Employment Judge Heal

Appearances

For the Claimant: in person

For the Respondent: Mr. R. Fitzpatrick, counsel

JUDGMENT

The complaints of sex and disability discrimination are struck out.

REASONS

Full written reasons are given at the request of the claimant.

The claims

1. By a claim form presented on 15 April 2019 the claimant made complaints of sex and disability discrimination.
2. In essence, he alleged that in reply to a query by the claimant, the respondent told the claimant that 'only girls and directors' were allowed to park in the respondent's company car park. The claimant says that this is sex discrimination.
3. Next the claimant says that on 22 March 2019 the respondent told him that an allegation had been made against him of 'inappropriate conversation' by a female Occupational Health employee. The claimant says that he was dismissed on 22 March 2019. The claimant says that he was dismissed without investigation or procedure one week after he had told the respondent that he was a person with a disability.

History of the proceedings

4. At a preliminary hearing held on 15 August 2019 EJ Laidler identified the issues and gave directions for the disclosure of medical records. She also ordered the respondent to tell the tribunal and the claimant by 18 October 2019 whether it conceded disability.

5. This hearing was listed to be heard on 5 March 2020 to determine the issue of disability. Notice was sent to the parties on 20 December 2019.

6. The hearing on 5 March 2019 was postponed by the tribunal and re-listed to be heard at Bury St Edmunds today.

7. By letter dated 29 June 2020 the respondents made applications to strike out the claims on the grounds that they have no reasonable prospects of success, alternatively for a deposit to be ordered as a condition of continuing with the proceedings on the ground that they have little prospect of success.

8. By email dated 25 July 2020 the claimant wrote to the respondents and the tribunal saying that he would attend the hearing on 3 August and *'should the judge in the claimant's view choose to indict himself. I am fully prepared to perform a citizen's arrest and call and wait for the police to arrive'*.

9. On 29 July 2020 the claimant wrote by email to the tribunal and the respondents that he had submitted an application to commence criminal proceedings against the 'defendant' and Bury St Edmunds Employment Tribunal *'regarding allegations linking this case to alleged corruption'*. He said that, *'should there be any continuation of the alleged behaviour outlined by the claimant in his request to commence criminal proceedings, the claimant will have no choice but to disregard anything the court finds due to an alleged indictment...'*

10. By email dated 29 July 2020 the respondent asked the tribunal to consider additional security measures for the hearing given the claimant's suggestion that he would carry out a citizen's arrest of the judge.

11. By notice dated 30 July 2020 the tribunal converted the hearing to a video hearing.

12. The respondent has now conceded that the claimant has a disability: namely depression.

13. I have had the benefit of a bundle provided by the respondent running to 158 pages and also of Mr. Fitzpatrick's written submissions.

This hearing.

14. At the outset of this hearing, after the formalities appropriate to a CVP hearing, the respondent told me that it had conceded disability on the ground of depression. The claimant agreed that this was the disability he was claiming.

15. I then asked the claimant whether he had notice of the respondent's applications to strike out or for a deposit.

16. The claimant said that he was in possession of the respondent's letter of 29 June 2020. The claimant satisfied me that he was ready to make submissions about the issues relevant to that application.

17. He then said that he wanted to check with me that this case had strong links with other ET cases that he 'was subjected to' and allegations revolving around indictable offences in employment tribunals.

18. I told the claimant that I had seen this case and this file only. I had no knowledge of the claimant and knew nothing about any other tribunal claims.

19. The claimant asked me where I was sitting, and I told him that I was in Watford.

20. I told the claimant that in general parties did not ask questions of the judge and that I was going to proceed with the hearing.

21. The claimant said that I was committing an offence and began to make a telephone call, apparently to the police. As I attempted to speak to him, he spoke over me and continued to call the police.

22. I told the claimant that I proposed to continue with the hearing and invited Mr. Fitzpatrick to make his application.

23. It was difficult to hear Mr. Fitzpatrick's submissions because of the sound of the claimant making a telephone call and I therefore asked the tribunal clerk to mute the claimant's microphone so that I could hear Mr. Fitzpatrick.

24. When Mr. Fitzpatrick had made his submissions, I asked the clerk to unmute the claimant's microphone so that he could reply. I gave the claimant a summary of the respondent's submissions in case he had not been listening.

25. The claimant made a cogent reply at the end of which I told the parties that I would not strike out the claims or make a deposit: it appeared to me that the claim for both kinds of discrimination, being fact sensitive, had some grounds of success which were more than 'little'. I declined also to strike out the claims because of the claimant's conduct. It appeared to me that the threat made by the claimant to place the respondent's witnesses under citizen's arrest could be dealt with by holding the hearing by video. There was then no risk of 'assault' by wrongful arrest. I had noted that the claimant was able to make cogent submissions and it seemed to me that if I advised the claimant how to behave in the tribunal so as to give him a full opportunity to behave appropriately on a later occasion, then there was a still a chance of a fair hearing.

26. Mr. Fitzpatrick did not ask for written reasons for this decision.

27. I then explained to the claimant that although I had not struck out his claims, it was not appropriate to attempt to arrest a judge conducting a hearing and that he would need to co-operate with the tribunal in the future hearing.

28. I then turned to listing the hearing and giving case management directions.
29. Mr. Fitzpatrick told me that he wished to call 5 witnesses and expected the full hearing to last for 3 days. I agreed, if this was limited to liability only.
30. The issues had already been identified by EJ Laidler.
31. I told the parties that Bury St Edmunds Employment Tribunal could hear the matter on 24-26 November 2021. The respondent was available for these dates. I asked the claimant if he would be available on those dates.
32. In reply the claimant said that I would spend my shitty life in jail.
33. I asked the claimant again if he could agree to the proposed hearing dates.
34. The claimant did not acknowledge the query and spent some time telling me that I was under arrest, that I was not in a position to tell him how to behave because I had not been subject to what he had experienced, and that I would be prosecuted. It was not possible to persuade him to stop and so I asked the tribunal clerk to mute his microphone so that I could speak.
35. I told the claimant that I had found in his favour on the respondent's applications and that I was trying to list his claims for hearing. I told him that the tribunal wanted to hear his claims, however he would not listen and continued to speak on the same subjects as before, for some minutes.
36. I asked the claimant if he would like his case to be heard.
37. He replied,
'I couldn't care less. This is a criminal matter. You will be prosecuted my friend.'
38. He then continued to speak about prosecution, indictment and jail.
39. Amongst other things, he said,
'Who do you think you are' (repeatedly); and
'You are disgusting.'
40. Mr. Fitzpatrick then made an application that I re-consider my earlier decision that it was possible to have a fair trial.
41. He did so on the basis of rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, schedule 1:
(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-

(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'

42. Mr Fitzpatrick took me to paragraph 5 of the judgment of Sedley LJ in *Blockbuster Entertainment Ltd v James* [2006] IRLR 630 (dealing with the predecessor to rule 37) :

'This power, as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.'

43. Mr. Fitzpatrick said that not only was an effective trial impossible; a trial would not be able to go ahead at all. He said that the claimant's conduct was more than 'unconventional' (this was my earlier description of it) but that it actively prevented a case from being heard.

44. He said that the case should be heard in a manner that is fair and also cost effective. It was not fair to put the respondent to the cost of attending and preparing for a 3-day hearing which could not go ahead. The tribunal had already decided that it was not possible to have an in-person hearing. However, he said that the claimant now showed that it was not possible for even a CVP hearing to go ahead. Therefore, he said the claim should be struck out in its entirety.

45. I then turned to the claimant (who was now unmuted for the purpose) and asked him if he wanted me to strikeout the claims. He replied,

'I don't care because you haven't even listened to me'. The claimant said that I had to take into account the context of the conduct: until I had been subject as he had to a criminal campaign, I could not tell him how to behave.

46. The claimant said,

'I don't care if you strike it out. You are fully aware that it has links to other cases.' He said if I chose to 'indict myself' it was up to me.

47. He said that he was prosecuting all the authorities involved, *'you can strike it out, I don't care; it's up to you.'*

48. I told the claimant that I had thus far found in his favour and was trying to list the case for hearing.

49. However, the claimant still would not co-operate in listing the case for hearing.

Analysis

50. I have decided to strike out the claim under rule 37. In doing so I am governed by the principles set out by Sedley LJ in *Blockbuster Entertainment Ltd v James*. I have reminded myself that to strike out is indeed a draconic power (which I understand to mean strict, severe or extreme.) I have done my best *not* to exercise it and to give the claimant every opportunity to respond to the application and to show that he can modify his behaviour so as to pursue this claim to full hearing.

51. However, the claimant has obstructed the simplest of procedural steps: listing the case for hearing; and repeatedly would not respond to my request that he comment on the suggested dates. This took place not just once but each time I told him that I was trying to list the case for hearing. The claimant knew what I was trying to do but deliberately and repeatedly ignored my attempt to agree the dates.

52. Moreover, the claimant has made it clear by his conduct that a fair trial will not be possible. I have attempted to find a method of hearing that will protect the respondent's witnesses from the threat of wrongful arrest. However even that method (CVP) has proved impossible today: although he has shown himself capable of making cogent submissions in his own favour, the claimant has also spoken across the judge, not just once, but repeatedly and so persistently that it was necessary to mute his microphone so as to make any progress. He has refused to co-operate with listing the hearing. I was ultimately forced by his behaviour to the conclusion that a fair final hearing was impossible. The claimant did not engage sufficiently to try to persuade me not to strike out his claims and indeed he said repeatedly that he did not care if I struck them out.

53. In those circumstances I consider that strike out is a proportionate response. The claimant says that he does not care if his claims are struck out. His conduct has confirmed that. It would be disproportionate too to put the respondent to the cost and trouble of defending the claims if the claimant does not care whether they are struck out and by his conduct has made it clear that a fair hearing will not be possible.

54. For the avoidance of doubt, I have set aside any consideration of the claimant's mode of address. The tribunal is well able to cope with insults and difficult behaviour.

55. For all the reasons I have given however the claims are struck out.

Employment Judge Heal

Date: 3 August 20

Sent to the parties on:

...11 September 20....

For the Tribunal: