



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ibeziako

Respondent: Staff Call UK Ltd

Heard at: Hull

On: 7 and 8 December 2020

Before: Employment Judge Shepherd

Members: Ms J Lancaster

Mr S Carter

Appearances:

For the Claimant: In person

For the Respondent: Ms Owusu-Agyei

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's application that the respondent's reference to the judgment of another Employment Tribunal in a previous case against another respondent should be struck out or the respondent ordered to pay a deposit as a condition of continuing to rely on its contents is refused.
2. The claimant's application that the Tribunal panel should stand down and a different Tribunal be constituted is refused.
3. The claimant's application that the documents within the hearing bundle or file of documents prepared by the respondent for the hearing should not be admitted is refused.
4. The claims brought by the claimant are struck out pursuant to rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the manner in which the proceedings have been conducted by the

claimant has been unreasonable and the Tribunal considers that it is no longer possible to have a fair hearing.

5. The claimant is ordered to pay the sum of £2,000 costs to the respondent pursuant to rule 76 as the Tribunal considers that the claimant has acted abusively, disruptively and unreasonably in the way that the proceedings have been conducted by him.

6. The claimant's application for a costs or preparation time order against the respondent is refused.

REASONS

1. The claimant represented himself and the respondent was represented by Ms Owusu-Agyei.

2. The Tribunal heard no evidence and the hearing of this case did not start. Before the commencement of the hearing and upon consideration of the witness statements an issue arose. In a witness statements from Kerri Milner on behalf of the respondent it was indicated that she had looked at the government website with regard to Tribunal decisions and found that the claimant had brought claims against other former employers. She said that, within the judgment in another case there were "clear indications of the claimant exaggerating claims and embellishing the claims with untruths". She also referred to another case in which the judgment detailed "similar attempts to obtain unnecessary and unreasonable disclosure by the claimant as has occurred in the claim against Staff Call". Kerri Milner said that it also suggests that the claimant is a "serial litigant".

3. The Tribunal did not hear this evidence in the course of a hearing but, in preparatory reading, it became apparent that one member of the Tribunal panel before whom this case was listed to be heard, Ms Scott, had also been a member of the Tribunal panel in the earlier case in which it is alleged that, within the judgment, there are clear indications of the claimant exaggerating and embellishing claims with untruths. The Tribunal did not read this earlier judgment but, as, the respondent's witness was referring to it with regard to the claimant's credibility, this raised an issue of apparent bias. There was no question of actual bias and this was discussed with the parties. The guidance in the case of *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 4511 was discussed. The claimant did not appear to engage with the issue and made repeated allegations about the way the respondent had dealt with disclosure. He was disruptive and aggressive and refused to answer straight forward yes or no questions. It was not clear whether he objected to the Tribunal member sitting in this case even after he was given time to consider the position.

4. Ms Scott decided to recuse herself from hearing this case. After some difficulty another panel member was located to sit on this case commencing on 8 December 2020.

5. During discussions with regard to how the hearing would progress, the claimant produced a number of documents in a large envelope. When asked, a number of times,

whether he was seeking permission to adduce these documents in evidence the claimant would not provide an answer. When he was asked if he had requested that the documents be placed in the bundle he once again referred to the respondent's handling of disclosure. He refused to show the documents to the respondent's counsel on a number of occasions. Once the Tribunal had made an order that he must show documents to the respondent's counsel he eventually did so by throwing them on the desk in front of the respondent's representative and Ms Owusu-Agyei said that she would go through them and see if the documents were within the bundle. She would create another section to include extra documents. She said that she would not object to any document being included unless it was without prejudice documentation.

6. The claimant referred to other documents which he wished to include. He was asked to provide five copies of these for the commencement of the hearing the following day, 8 December 2020.

7. The claimant also provided a supplementary witness statement dated that day, 7 December 2020. This appeared to be providing reactions to the respondent's witness statements and criticising them. It included an application for a deposit order against the respondent in respect of the references to the earlier judgments.

8. Ms Owusu-Agyei said that she would agree not to carry out cross examination with regard to the previous judgments but that she may make reference to them in her submissions. The Tribunal had not read or considered the contents of the earlier judgments.

9. The claimant was informed that the Tribunal would consider this case on the basis of the evidence before it, the Tribunal had not heard any evidence at this stage and no findings of fact had been made and no judgment reached. Any reference the respondent made to an earlier judgments, documents in the public domain, would be considered and the Tribunal would attach whatever weight it felt appropriate to any reference to a previous judgment. The claimant could make whatever submissions he wished the Tribunal to hear with regard to these of the judgments.

10. The claimant provided a letter to the Tribunal on 8 December 2020. In the letter he asked for the case to be transferred to another Tribunal. The claimant arrived with five copies of extra documents to be admitted. The respondent's representative, considered those documents and agreed for them to be admitted.

11. The claimant refused to continue with the case unless another Tribunal was appointed. He specifically said that he was not making an accusation of bias. His case was that he was not happy with the approach of the Tribunal. This appeared to be because the respondent's witness had referred to a judgment in a previous case the claimant had brought against another respondent.

12. The claimant said that he was a litigant in person and the Tribunal had allowed the respondent an advantage. When he was asked what the advantage was he was unable to say. He was informed that all the Tribunal had done was allow him to produce extra documents at the start of the hearing and no decision had been made in favour of the respondent.

13. After considering the position the Tribunal informed the claimant that the hearing would go ahead with or without his involvement. The Tribunal allowed some time for the new panel member to carry out some reading and for the claimant to reconsider his position. He said that he would not cooperate in the hearing before this Tribunal and he would not change his mind.

14. Ms Owusu-Agyei said that, if the claimant refused to give evidence, he was, in effect, withdrawing his claim. She agreed to the Tribunal providing a further opportunity for the claimant to consider his position again. She said that she would not cross-examine on earlier decisions but, they were on the public record and she may ask the Tribunal to draw inferences. The claimant said that he was not changing his position. He was not accusing the Tribunal of bias but the approach concerned him in respect of the previous case and the respondent's reference to him as a serial litigant. The respondent had taken advantage of him and the fact that he was depressed.

15. The extra documents produced by the claimant were raised. The claimant said that the respondents had faked a lot of documents and he was informed that he would have the opportunity to cross-examine witnesses in this regard.

16. A further break was arranged. The claimant indicated that he was not starting without a new Employment Tribunal and after the adjournment the respondent's representative confirmed that she had no objection to the documents being admitted. The claimant was asked whether he was willing to proceed but said that the Tribunal would not be able to judge this case. He, once again, said that this was not an accusation of bias but the approach was disadvantageous to him.

17. The claimant repeated that he wanted another Employment Tribunal to hear the case.

18. After a further break the claimant was informed that the Tribunal could see no grounds for it to stand down and the hearing would go ahead with or without the claimant. The claimant said that he was not going to take part, there was no point. The claimant was given a substantial amount of time to reconsider his position. At approximately 12:50pm he was informed that the hearing would commence at 2:30 pm on 8 December 2020. The claimant was informed that it was in his interests to participate but the Tribunal Hearing would go ahead in any event.

19. At 2:30 pm the claimant was informed that the hearing was to go ahead. The claimant then said that he wished to make an application with regard to the bundle of documents as they contained highlights. The claimant was informed that any issue with the documents could be dealt with during the evidence. The claimant referred to the bundle as being marked and gave examples which the Tribunal looked at. These appear to be innocuous highlights just showing the claimant's name within a list of employees and responses to equal opportunity questions.

20. The claimant referred to the respondent's behaviour which he said had been unreasonable throughout the proceedings. There was a further adjournment in order for the Tribunal to consider the way forward.

21. At 3:45 pm the claimant was informed that the Tribunal had considered three applications it had identified as being made by the claimant.

22. The first application was that it was unreasonable for the respondent to refer to the judgment in a previous case brought by the claimant. The claimant had indicated that this was not within the respondent's grounds of resistance and the respondent should apply to amend these. He said that the respondent's grounds of resistance should be struck out or that the respondent should be ordered to pay a deposit as a condition of continuing to rely on the contents of the earlier judgment. The claimant said that the approach adopted by this Tribunal was to use the earlier case to decide this case. It was explained to the claimant that the Tribunal would decide this case on the evidence before it. Counsel for the respondent indicated that she would not cross-examine the claimant in respect of the earlier case and judgment but she reserved the right to refer to it in her closing submissions. The claimant would also be able to make submissions in this regard.

23. That judgment is in the public domain. Ms Owusu-Agyei had indicated that she would not cross-examine the claimant on this point in an attempt to move this matter forward. The claimant was told that the Tribunal would consider all the evidence before it and apply what it considered to be the appropriate weight to any reference to an earlier judgment by the respondent. The application was refused.

24. The second application by the claimant was that the Tribunal should stand down and a different Tribunal be constituted. The Claimant explicitly stated that he had made no allegation of bias. It appeared that he objected to the Tribunal continuing to hear this claim on the basis that it would be influenced by the previous judgment and the bundle or file of papers which included false documents, forged documents and documents improperly marked by the respondent. These were all matters that could be dealt with by way of evidence and the claimant would have the opportunity to challenge the respondent's witnesses in this regard. There was no ground for the Tribunal to stand down. It was explained to the claimant that this Tribunal had been listed for a six day hearing for some time. The members of the Tribunal had travelled a considerable distance at considerable cost to the public purse. It was not a question of just bringing a further panel to the hearing. There was no ground for the Tribunal panel to stand down and this application was refused.

25. The third application was with regard to the documents in the hearing bundle. The claimant had taken the Tribunal to some pages on which there were innocuous highlights that would assist the parties and the Tribunal in dealing with the evidence. The claimant's application that the bundle of documents should not be admitted was refused.

26. The Tribunal had indicated that the hearing would go ahead with or without the claimant's participation. When that hearing was about to commence the claimant indicated that he wished to make further applications. He would not participate in the hearing but remained in the Tribunal hearing room. In those circumstances, the Tribunal concluded that the claim should be struck out pursuant to rule 37 on the ground that the manner in which the proceedings had been conducted by the claimant had been unreasonable and it was no longer possible to have a fair hearing.

27. The first day that the case was listed to be heard had been largely taken up with the claimant wishing to refer to a substantial amount of extra documents. He refused on numerous occasions to answer questions as to whether he had requested that those documents be included in the bundle prepared by the respondent. He also refused to answer the question as to whether they were new documents. He was told to provide the documents he wished to include to the respondent's representative and he refused to do this until he was given a direct order to do so at which time he threw them on the desk in front of Ms Owusu-Agyei.

28. The claimant also indicated that there were further documents on which he wished to rely and he had brought those on the second day listed for the hearing. These were provided to the Tribunal. The claimant initially refused to provide them to Ms Owusu-Agyei. The Tribunal provided them to Ms Owusu-Agyei and she indicated that she would not object to any of the documents and they could be admitted. The claimant said that the Tribunal was favouring the respondent. This was not understood by the Tribunal as all that happened on the first day was that a member recused herself in view of an issue of apparent bias. A further member was located. The claimant had been allowed to adduce a substantial amount of new documents. He had provided a supplemental witness statement dated 7 December 2020, the first morning listed for the hearing to take place. No decision had been made with regard to whether he would be allowed to rely on the evidence within that supplementary statement but no objection had been made.

29. The claimant alleged that decisions had been made in favour of the respondent. He was informed that the hearing had not commenced and a lot of time had been spent dealing with issues in respect of disclosure of documents he wished to introduce. The only matters of admission of evidence had been made entirely in his favour.

30. The respondent applied for costs against the claimant on the basis that the claimant had acted disruptively and unreasonably in the conduct of the hearing. The costs sought were in excess of £63,000. The Tribunal considered this issue and was satisfied that the claimant's conduct had been disruptive and unreasonable in the two days in which the Tribunal attempted to move towards hearing the case. The Tribunal had not considered the merits of the case or heard any evidence. The claimant was a litigant in person and, no doubt, was of the view that he had a legitimate claim. However, he had refused to answer questions or cooperate in moving the hearing forward over the previous two days and in those circumstances the Tribunal ordered the claimant to pay the sum of £2,000 towards the respondent's costs in respect of his abusive and disruptive conduct during those two days.

31. The claimant applied for a costs order against the respondent. He had applied for a preparation time order previously in respect of issues he had raised with regard to disclosure. That application had been refused as recently as 9 November 2020 when Employment Judge Cox said that the Tribunal was not satisfied that the respondent's failure to disclose a limited number of documents amounted to unreasonable conduct justifying the making of a preparation time order and, if it had been satisfied that the grounds existed, it would have considered the amount claimed to be wholly disproportionate and unreasonable. The claimant had also referred to issues in respect of a witness order. The Tribunal was not satisfied that the respondent had acted unreasonably in the conduct of the proceedings and the claimant's application for costs

was refused. A request for a reconsideration of that decision was refused on 26 November 2020. It was indicated by Employment Judge Cox that it was, once again, suggested that the parties should concentrate on completing their preparation for the hearing rather than making lengthy applications without merit.

32. All three of the claimant's applications had been refused. The claimant was then asked whether he would participate in the hearing and give evidence on oath. The claimant would not answer that point and wished to revisit the applications that had already been dealt with. This meant that it was not possible to continue with the hearing.

33. The Tribunal struck the claims out pursuant to rule 37 on the grounds that the manner in which the proceedings had been conducted by the claimant had been unreasonable and it was no longer possible to have a fair hearing. The claimant had been aggressive, disruptive and refused to answer straightforward questions which were to deal with issues to move the case to the hearing. He shouted at the Tribunal on a number of occasions. When he was asked not to do this he removed his facemask and said that he had an unspecified medical issue. The claimant did not, at any time, make an application for postponement on grounds of his medical condition.

34. The Tribunal had intended to proceed with the hearing but the claimant continued to be obstructive. He was warned that if he refused to participate in the hearing his claim would be struck out. The claimant would not provide evidence and remained in the hearing room continuing to attempt to resurrect unmeritorious applications and, in the circumstances, the claims were struck out.

Employment Judge Shepherd

14 December 2020