



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Eva Cottrell

v

(1) Templine Employment Agency
Limited;
(2) Europa Worldwide Group Limited

Heard at: Cambridge

On: 8 and 9 October 2020

Before: Employment Judge K J Palmer

Members: Ms Wendy Smith and Mr Ron Eyre

Appearances

For the Claimant: In person

For the First Respondent: Mr T Perry, Counsel

For the Second Respondent: Miss R Thomas, Counsel

JUDGMENT

1. It is the unanimous Judgment of this Tribunal that the Claimant's claims in their entirety are struck out under Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, Schedule 1.

REASONS

1. This matter was listed as a seven day Hearing at the Cambridge Employment Tribunal to commence on Thursday 8 October 2020.
2. Unfortunately, it was not possible for myself or my Members to be available for a full seven day stretch of consecutive days, however, we resolved to get proceedings started and sit on the 8 and 9 October 2020, 14 and 15 October 2020 and 3 further days yet to be listed.
3. The Claimant appeared in person but was assisted by a Mr Paul Bennett, a friend, who was not representing her but attended in a 'hand holding' capacity to provide assistance to her.

4. The Hearing was an in-person Hearing. The Respondents were both represented by Counsel.
5. This case had the benefit of two Preliminary Hearings before Employment Judge Michell and Employment Judge M Warren, which took place respectively on 16 August 2019 and 26 May 2020.
6. For reasons that will become clear during the course of this Judgment, it was necessary for the Full Merits Hearing to commence with a number of Case Management issues still remaining outstanding.
7. From the very outset of proceedings, the Claimant behaved in a way which was not commensurate with conducting a fair hearing and an even handed legal process. She refused to stop talking, repeating over and over again a myriad of conspiracy theories which she said involved a number of Employment Judges having conspired against her during the course of her case and accusing them of fraud and criminal forgery. She continually talked over myself when I was trying to explain the issues that we needed to deal with from a Case Management point of view before we could commence the process. She would not stop talking. She was either talking loudly or shouting and would occasionally become extremely aggressive, banging her fist on the table.
8. As a Tribunal, we tried very hard to manage the process as best we could and gave her many long opportunities to explain why she felt so disadvantaged. It was, however, necessary for me to interrupt her on occasions so that we could move matters forward and deal with, first of all, the Case Management issues that were outstanding and then hopefully proceed with the hearing of her case. We also took many and frequent breaks to give her time to settle and calm down.

The History of this Matter

9. The Claimant presented two claims to the Employment Tribunal which were almost identical in form. The first claim was presented on 30 October 2018 and was given case number: 3335158/2018. The second was presented on 7 December 2018 and was given case number: 3335276/2018.
10. The matter came before Employment Judge Michell sitting alone on 16 August 2019 as a Preliminary Hearing for a Case Management discussion. During the course of that Hearing, at paragraph 4 and 5, Employment Judge Michell dealt with the difficulty of there being two identical claims in substance lodged with the Tribunal under different case numbers. As is evidenced in the Summary of that Preliminary Hearing, the Claimant agreed to withdraw one of those claims **3335158/2018** so that only one, in identical form, could proceed.

11. Employment Judge Michell also set down a further Preliminary Hearing to consider the Respondent's Application for a Strike Out of the Claimant's claims and that was to be determined at a separate Preliminary Hearing on 26 May 2020.
12. Sadly, when the Summary was despatched, it transposed the two claim numbers thus indicating that the claim number that was to proceed had in fact been the one that was withdrawn and vice versa. It is this simple error which appears to have spawned the Claimant's conspiracy theories.
13. I will not go into the history of the very lengthy correspondence which ensued thereafter, save to say that Employment Judge Michell dealt with this discrepancy and within a letter dated 7 January 2020 which he caused to be written, made it clear that the case which was to proceed was in fact **3335276/2018** and the case that was to be withdrawn was **3335158/2018**. He resolved quite properly not to dismiss **3335158/2018** until the outcome of **3335276/2018**, so as not to prejudice **3335276/2018** as of course the contents of both claims were identical. In that letter, therefore, Employment Judge Michell had rectified the error which had appeared in the Case Management Summary pursuant to the Preliminary Hearing of 16 August 2019.
14. Matters were then to proceed to the second Preliminary Hearing listed principally to hear the Respondent's Application for Strike Out. However, by letter of 17 October 2019, the Respondents indicated that they no longer wished to proceed with that Application, and they asked the Tribunal to accept that the Orders made by Employment Judge Michell in order to allow proper preparation for that Application were now no longer required and should be dispensed with. Those Orders were of course contained in Employment Judge Michell's Summary pursuant to 16 August 2019. They related entirely to the Application and having decided to withdraw it, it was only logical that they should suggest to the Tribunal that they should not, therefore, need to then comply with preparation Directions set out for that Application.
15. Employment Judge Michell dealt with this in his letter of 7 January 2020, amongst other things. He revoked the Directions made by him on 16 August 2019. He determined that the Hearing of 26 May 2020, which was listed as an Open Preliminary Hearing in-person, be converted into a Closed Preliminary Case Management Hearing to be conducted by telephone.
16. The notice for that Telephone Preliminary Hearing was then sent to the parties. That notice was sent to the parties on two occasions; one citing the now withdrawn **3335158/2018** and a second citing the live and extant **3335276/2018**.
17. For reasons best known only to herself, the Claimant chose not to attend at that Telephone Hearing because she said part of the conspiracy against her was that the Tribunal continued to use the withdrawn case number.

She also stated before this Tribunal that she only received the Notice of Hearing for 26 May 2020 in respect of that withdrawn case number and not one for the extant number **3335276/2018**. We do not accept that she only received one, as both are clearly before us and were despatched to her at the same address.

18. For whatever reason, she chose not to attend that hearing and the hearing before Employment Judge M Warren proceeded in her absence.
19. Employment Judge M Warren then duly caused a Summary to be produced and it was sent to the parties. There is no doubt that the Claimant received that Summary.
20. During the course of that hearing, Employment Judge M Warren determined that the originally listed seven day hearing, listed originally by Employment Judge Michell on 16 August 2019 should remain and he gave a variety of Directions to be complied with to enable proper preparation of Bundle, documents and exchange of witness statements to have taken place in advance of the first day of the seven day in-person Full Merits Hearing in the usual way.
21. Sadly, when the Summary was sent out it also referred to the two cases, one of which had been withdrawn and which had been dealt with in Employment Judge Michell's Preliminary Hearing and his subsequent correspondent of 7 January 2020. Unfortunately, however, once again the numbers were transposed. Even more unfortunately, the Summary appeared under the case number at the top of the Summary which was the wrong case number, i.e. the one which had been withdrawn. However, the substance of the Summary and the Directions given would have been entirely identical whichever case number had appeared at the top of the document. Once again, it was simply a small administrative error. Sadly, the Claimant does not see this as such. She regards this as some kind of conspiracy to mislead and defraud her. It is not clear what she thinks the effect of this conspiracy is on her case as both cases were, in substance, identical. The fact that the wrong number was placed at the top of Employment Judge Warren's Summary, would have no material bearing on the substance of her case. What is clear, is that it is unfortunate and confusing that this happened.
22. As a result, the Claimant refuses to recognise that document and as a result decided not to comply with any of the Directions given by Employment Judge M Warren and ignored the Respondent's pleas to do so. The Respondents have responsibly continued to comply in so far as they could with their Directions, and even sent their witness statements to the Claimant when she ignored their pleas to exchange witness statements. Interestingly, we have on file a witness statement for the Claimant prepared in preparation for the Preliminary Hearing of 26 May 2020. The one which the Claimant decided ultimately not to attend.

23. We therefore have a rather bizarre situation where the Respondents and the Claimant have attended on the first day of trial in this matter, where the Respondents have complied with all the Directions and produced a voluminous Bundle in two volumes running to some 840 pages, but which has been produced solely by the Respondents without the concurrence of the Claimant.
24. On the face of that Bundle before us, however, it contains all and any documentation which might conceivably be relevant to this case and probably many more that are not. It is a well put together and paginated Bundle and would serve extremely well.

List of Issues

25. At the Preliminary Hearing before Employment Judge M Warren, he dealt with the question of a list of issues. The Respondents had prepared a list of draft issues and had included in it certain issues of fact which they say the Claimant had added to her original claim when purported providing further and better particulars. They say that those claims set out in italics would have to be the subject of an Application to Amend if they were to be included in the list of issues. That was also something we had to deal with at this Hearing.
26. Moreover, pursuant to the Respondent's decision to withdraw their Application to Strike Out the Claimant's claims, thus converting the Preliminary Hearing on 26 May 2020 from a Preliminary Hearing to deal with that Application to a Case Management Discussion, the Claimant sought to pursue an Application to Strike Out the Respondent's responses, in that as a result of their deciding not to pursue that Application they failed to comply with the Directions given in respect of that Application at the Preliminary Hearing before Employment Judge Michell. That was also something we had to deal with today.

Thursday 8 October 2020 – Day 1 of the Full Merits Hearing

27. Matters opened with my explaining the need to split the Hearing into three tranches, two days now, two days next week and a further three days. We attempted to find a convenient three day slot for the matter when it goes part heard and I was able to offer the parties 25, 26 and 27 November 2020, but sadly that was not convenient to any of the parties. We therefore parked that issue and resolved to return to it later. We then set about tackling the Case Management issues before us. I would stress that this was before we had had the opportunity of really reading in to the 800 page Bundle in detail.
28. Matters were, to say the least, hampered by the lack of co-operation by the Claimant. She refused to be quiet and continued to shout throughout proceedings, meaning that it was virtually impossible to progress matters. She kept shouting that there was conspiracy by the Judiciary against her and named a number of Employment Judges as the 'ring leaders' in this

conspiracy, including Judge Michell, Judge M Warren and Regional Employment Judge Foxwell. Mr Bennett tried manfully to quieten the Claimant down, as did I, but this proved futile. It was necessary to take regular breaks to defuse the situation.

29. However, we managed to advance matters, albeit at a glacial pace and were able to deal with the question of the Claimant's Application to Strike Out the Respondent's responses, or their failure to comply with Directions given by Employment Judge Michell in preparation for their Application to be heard at a Preliminary Hearing to Strike Out the Claimant's claims.
30. The Claimant argued that Orders were Orders and that even though the Respondents had written to the Tribunal on 17 October 2019 before any of those Orders were due to be complied with, indicating that they wished to withdraw the Application, the subject matter of those Orders, because the Tribunal failed to respond to that letter in which the Respondents had requested that those Orders be revoked. The fact is that between 17 October 2019 and the response from the Tribunal on 7 January 2020 agreeing to revoke those Orders, the Orders had technically remained live even though the Respondents had indicated they no longer wished to pursue that Application.
31. The Claimant asked that on the basis of their failure to comply with those technically extant Orders, they be struck out under Rule 37 for non-compliance.
32. The Tribunal retired to consider this. We then returned and gave a brief Judgment indicating that having considered all aspects of the Application we understood the Claimant's view that it, in essence, Orders were there to be complied with, but that in the circumstances it would not have been in the interests of justice or pursuant to the overriding objective to force the Respondents to comply with Orders relating to an Application they no longer wish to pursue. Essentially, as of 17 October 2019, those Orders became otiose. It was only because they were delayed between 17 October 2019 and the Tribunal's response in January 2020 that it took so long to formally revoke them. No prejudice was suffered by the Claimant and, in fact, it was to her advantage, essentially, that the Respondents withdrew their Application. We do not, therefore, consider it would be appropriate in those circumstances to deprive the Respondents of pursuing their response and therefore the Application to Strike Out fails.
33. Once we had delivered this Judgment, matters then descended once again into chaos where the Claimant was shouting for many minutes and hammering the table, being particularly exercised about what she saw as the manipulation of the Employment Judges and the Tribunal in undermining her case by insisting that she proceed with the case number she had withdrawn. We tried desperately to calm her down and bring about a situation within the Tribunal whereby matters could proceed. We were not able to do this.

34. I therefore warned the Claimant that her behaviour was such that if matters were to continue in this vein, the Tribunal would have little alternative but to consider striking out her claims in their entirety under Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013; more particularly under Rule 37(1)(b) that the manner in which the proceedings had been conducted by, or on behalf of the Claimant, had been scandalous, unreasonable or vexatious. Her aggressive shouting, her inability to shut up at any stage, rendered the possibility of pursuing the issues to be dealt with as impossible. After this warning the Tribunal decided to adjourn for the day and start to undertake some of the considerable volume of reading that would be required if matters were to proceed.
35. Prior to being able to be heard over the Claimant's shouting, the Claimant launched into a tirade concerning the decision of Employment Judge M Warren not to postpone the Full Merits Hearing pursuant to a letter she had written to the Tribunal of 24 July 2020. She wanted the Full Merits Hearing to be postponed and for the first day 8 October 2020 to take the form of further Case Management Preliminary Hearing to deal with the problems caused by Employment Judge M Warren's transposing of the case numbers in his Summary pursuant to the Telephone Hearing on 26 May 2020. This Application went before Employment Judge M Warren and he determined that it was not in anyone's interest for the matter to be postponed further and that the Full Merits Hearing should proceed as listed. He said that the parties should have been able to comply with the Directions he gave.
36. Whilst it was difficult to discern the nature of what the Claimant was trying to say as she was shouting so loudly, the Tribunal took the view that this essentially constituted a fresh Application to adjourn on the same grounds. We resolved to consider this overnight whilst reading it and to give an answer on the morning of 9 October 2020. We also said we would consider the issue of the additional issues of fact appearing in the document at page 210 of the Bundle and decide whether that constituted an Application to Amend on the part of the Claimant, and if so, deal with that Application.
37. We therefore resolved to retire and deal with these issues overnight with a view to starting in the morning, hopefully, promptly on Friday.
38. The Tribunal reiterated its warning to the Claimant that if she continued to behave in the way in which she had behaved during the course of the first day, there was every possibility that the Tribunal would have no alternative but to consider striking her claim out under Rule 37.
39. I should point out that I was continually asking the Claimant to be quiet so we could conduct the proceedings and she refused to comply.

Friday 9 October 2020 – Day 2 of the Full Merits Hearing

40. We returned having read most of the material parts of the Bundle and considered the still outstanding Case Management issues before us. The Tribunal commenced at approximately 10:45 am.
41. Considering the Claimant's Application to consider an adjournment on the back of her Application made in her letter of 24 July 2020, reiterated with force again during the course of yesterday's proceedings, the Tribunal gave a Judgment to that Application.
42. The Application to adjourn and have further Case Management discussions about compliance with Directions and the putting together of a Bundle was refused. We agreed with Employment Judge Warren and endorse his view that it is in no one's interests to further adjourn this case. The bundle was comprehensive, and we had witness statements. We were determined to proceed.
43. The Claimant has failed to comply with all of the Directions set out in the Case Management Summary of Employment Judge M Warren pursuant to the Hearing of 26 May 2020. The reason she says that she failed to comply was that it was not her case, it was the case that was withdrawn. We regard this as disingenuous. It is clear that there was simply an error in the transposing of the case number and the substance of the Summary of Employment Judge M Warren was entirely proper. She should have complied with those Directions and there is not proper excuse for her failure to do so, save for the fact that we accept that there was some confusion caused by the administrative slip up which I have already detailed above in this Judgment.
44. We therefore resolve to be very lenient with the Claimant and said that we would ignore her failure to comply with all of those Directions and accept her witness statement provided in advance of the Preliminary Hearing of 26 May 2020 as her witness statement in these proceedings. We felt that it was in the interests of justice and the overriding objective to try and move matters forward and allow the Claimant to have her claims properly heard and dealt with. We therefore resolved to do everything we could to assist in this respect.
45. We therefore placed no sanction on her for her failure to attend the Hearing on 26 May 2020, or to subsequently comply with any of the Directions given at that Hearing. We are prepared to accept her witness statement which is on file as being her witness statement and would resolve to proceed.
46. One thing remained. That is that we would need to proceed on the basis of the Bundle before us. It is a comprehensive Bundle and includes everything that could possibly have been included had the Claimant engaged with the Respondents about its production, which she chose not to do so. We resolved to Strike Out the offending case number which still

appeared on the top of the Bundle so that the only case number remaining was the case number which the Claimant wished to proceed with which was **3335276/2018**.

47. We then dealt with the question of the issues and the question of whether those paragraphs in italics in the list of issues amounted to additional claims and whether, therefore, the Claimant would need to make an Application to Amend. Having considered that issue overnight, we resolved that, in fact, the issues in dispute were those listed 3c, 3g, 3h, 3i and 3l. Having carefully considered the pleadings and the other documents before us, we take the view that the allegation made in 3c is actually raised in the ET1, albeit not in the exact same words. We therefore do not think that it is necessary to treat this as an Application to Amend and 3c survives as one of the issues originally raised as a protected disclosure by the Claimant in her ET1. We do, however, take the view that where 3g, 3h, 3i and 3l are concerned, these are fresh allegations, albeit that they are allegations of disclosure made verbally to individuals at the Respondent's which are not particularly detailed.
48. We consider that it is necessary for the Claimant to be given leave to amend her claim to include those. We therefore considered that issue and of course have had due recourse to the leading case on such matters, that of the **Selkent Bus Company v Moore [1996] ICR 836**. We have taken into account the principles set out in that case. On the basis of those principles we have determined that we would allow the Claimant to amend her claim to include 3g, 3h, 3i and 3l.
49. The Claimant is a litigant in person and those claims are akin to evidence which will be heard by the Tribunal and which will no doubt be countered by the Respondent. It will be perfectly possible for the Respondents to be in a position to refute those allegations, they relate to alleged verbal conversations with individuals who are going to give evidence before this Tribunal. Moreover, certainly with some of the witnesses to be produced by the Respondent, they have purported to deal with those issues in their witness statements in any event and we therefore consider that the prejudice to the Respondent is minimal in allowing those amendments. We consider that the prejudice to the Claimant would outweigh the prejudice to the Respondent and therefore we determined to allow the amendment.

The Tribunal's attempt to proceed

50. Having now dealt with those Case Management issues, the Tribunal attempted to proceed at approximately 11:35 am. It was made clear to the Claimant that she needed to agree to proceed and that we would all use the Bundles brought and produced by the Respondent as Bundles to be used in the proceedings.
51. The Claimant then launched into an enormously loud and very aggressive exposition of the self same issues by way of Case Management which had

derailed this case from the beginning and on which we had now not given full Judgment. The Claimant was simply not prepared to proceed she said. She would not use the Bundle produced by the Respondents. It was a conspiracy by the Judiciary to force her to do so. She accused me, Employment Judge KJ Palmer, of being “*not bright*” and of being “*dishonest*”.

52. She would not stop shouting and I once again warned her that if she continued to shout and to prevent proceedings from progressing, we would have little alternative but to consider a Strike Out under Rule 37. I then attempted to adjourn proceedings to allow the Claimant time to calm down and consider her position before giving a final decision as to whether she wished to proceed.
53. She would not stop shouting and would not accept this offer.
54. She continued to shout repeating the same issues concerning the Tribunal’s failure to record the proper number of the case withdrawn and that which was to continue, accusing both the Administration and the Employment Judges involved of a conspiracy.
55. Her shouting became louder and more aggressive and she began hammering on the table.
56. After several attempts to interrupt and give her an opportunity to calm down and consider her position, the Tribunal felt it had absolutely no alternative but to, of its own initiative, Strike Out the Claimant’s claims in their entirety under Rule 37 of the Employment Tribunal (Constitution Rules of Procedure) Regulations 2013.
57. More particularly, the case is Struck Out under Rule 37(1)(b), that the manner in which proceedings had been conducted by the Claimant had been scandalous, unreasonable or vexatious.
58. We consider her behaviour to have been scandalous and unreasonable.
59. We consider that there were probably many occasions when a Tribunal could have legitimately struck out the Claimant’s claims on the basis of Rule 37(1)(b) in the course of the last day and a half. Sadly, despite giving her every opportunity to calm down and to reconsider her position to continue by way of using the Respondent’s Bundle, she did not avail herself of that opportunity.
60. We also consider that the Tribunal is entitled to Strike Out the Claimant’s claims under Rule 37(1)(c) for non-compliance with an Order of the Tribunal. On many occasions I had to raise my voice to issue an Order to the Claimant to be quiet so that we could proceed, to stop shouting aggressively and on most of those occasions the Claimant ignored that directive.

61. Moreover, it is very plain that the Claimant had determined that she is not prepared to proceed with her claims, and she has made that very clear this morning. Having had her Application for an adjournment refused, she simply refused to proceed and therefore there are grounds for striking her claims out under Rule 37(1)(d) that her claims have not been actively pursued.
62. Accordingly, all of the Claimant's claims are Struck Out in case number: **3335276/2018**.
63. With respect to claim number: **3335158/2018**, this was withdrawn by the Claimant and I hereby give an Order dismissing it.
64. The Claimant refused to stop shouting and refused to leave the Tribunal despite her friend, Mr Bennett, attempting to persuade her to do so very forcibly.
65. After several minutes, the Claimant became more and more aggressive and was hammering on the table. It was unfortunately necessary for the Tribunal to call Security to have her removed. She still refused to go and for some further minutes with Security present, she continued to shout allegations and accusations of dishonesty and conspiracy.
66. Finally, she was persuaded to leave by the Security Officers.

Employment Judge K J Palmer

Date: 28 October 2020

Sent to the parties on: ...06/11/2020

..Jon Marlowe
For the Tribunal Office