



EMPLOYMENT TRIBUNALS

Claimant

Mr T Hancox

v

Respondent

National Farmers Union &
Others¹

JUDGMENT AT OPEN PRELIMINARY HEARING BY CVP

Heard at: Birmingham (By CVP)

On: 23 April 2021

Before: Employment Judge Lloyd

Appearances

For the Claimant: In person

For the Respondents: Ms J Shepherd, Counsel

JUDGMENT

Pursuant to r.37 of the ETs (Constitution & Rules of Procedure) Regs 2013:

I forthwith strike out all the Claimant's 2020 case referenced claims against all respondents on the grounds that: -

- a) the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious; and,
- b) that all of all the substantive matters and issues are prejudiced to an extent that a fair trial of the claims (which was scheduled for May 2022) is no longer possible.

[The judgment reasons begin on page 2]

¹ A schedule of the claims is annexed to this judgment at page 6.

REASONS

Background and context

- 1.1 The claims to which this judgment relates are identified in the heading of this judgment as 1304294/2020 and others. They are particularised in the Schedule to this judgment at page 6.
- 1.2 This judgment does not relate to cases number 1300129/2021 and 1300232/2021. Those claims were the subject of a separate open preliminary hearing on 22 April 2021. The Claimant did not attend that hearing. The Tribunal made an order issued to the parties before close of business on 22 April 2021.
- 1.3 I ordered that the open preliminary hearing in cases number 1300129/2021 and 1300232/2021 (Ms M Batters and Mr S Heer) listed for, Thursday 22 April 2021, would be adjourned to Friday 7 May 2021 commencing at 10.00am and listed for 1 day, by CVP. The hearing would be before an Employment Judge sitting alone². That hearing will also consider a strike out application by the Respondents. That is not affected by this judgment which I give in relation to the 2020 cases.
- 1.4 The Claimant was ordered to pay the Respondents' wasted costs of 22 April in the amount of £3,000.00.
- 1.5 The Tribunal also made an unless order in respect of the Claimant's attendance at the adjourned hearing: in the event that the Claimant failed to attend the adjourned hearing, those claims would be struck out without further consideration by the Tribunal.³

The Application

- 2.1 My aim in this reasons judgment is to present in a clear and uncomplicated manner the legal and factual basis for the Tribunal's decision to strike out the Claimant's 2020 claims in their entirety.
- 2.2 I have considered the essential law and procedure in explaining the Tribunal's decision. Properly, this hearing has been dealt with very thoroughly by submissions on the facts and law on both sides. In line with standard procedure for this sort of preliminary hearing there has been no live witness evidence called by either side.
- 2.3 The Claimant was employed by the First respondent from 21 October 2019 to 7 February 2020. His job title appears to have been handyman.
- 2.4 In the substantive claim, he claims that he suffered disability discrimination, and detriment and dismissal because of whistleblowing.

² The application came before Employment Judge Hindmarch on 7 May 2021

³ The claimant duly attended before Employment Judge Hindmarch on 7 May 2021. Judge Hindmarch will give a reserved judgment on 14/06/21 subject to the parties' compliance with directions.

2.5 I have had before me the case papers which set out the history of the Claimant's claims. I have read the preliminary orders of Employment Judge Hindmarch, of 27 August 2020 and 11 December 2020, and of Employment Judge Self of 19 October 2020. I have considered the Respondents' draft list of issues, revised on 4 December 2020.

2.6 The respondent's counsel has submitted to the Tribunal and the Claimant a skeleton argument of the Respondents' case in the present application to strike out.

Decision: Law, Discussion and Findings

3.1 By letter of 31 March 2021 the Respondents made an application to strike out the Claimant's claims pursuant to Rule 37(1)(b) ETs (Constitution and Rules of Procedure) Regs 2013, Sch 1.

3.2 I accept, having regard to the substantial documentary evidence placed before me, that since March 2021 the Claimant has embarked upon a campaign, specifically on the social media website, Linked-In, criticising the NFU and the individual Respondents. Further, and although he vehemently disputes this, in some of his posts, he has publicised information relating to the subject matter of his ET claims and has also attached documentation disclosed to him by the Respondents during the course of these proceedings. On 29 March 2021, the Respondents' solicitor wrote to the Claimant requesting that he immediately cease his behaviour as described above.

3.3 The Claimant was properly put on notice that the Respondents considered that his recent posts on social media amounted to conducting these proceedings in a scandalous, unreasonable, and vexatious manner. The Respondents' solicitors reminded him in clear terms that documents disclosed in this litigation are not to be used for any purpose other than the litigation itself.

3.4 In the face of all that I accept and find on the evidence, that the Claimant continued his behaviour and posted a large number of posts on Linked-In in the following days.

3.5 After receiving the Respondents' strike out application on 31 March 2021, setting out the clear impact his behaviour was having on the individual Respondents in this case, the Claimant has nevertheless persisted. After receiving the witness statement of Kenneth Sutherland, a senior officer of the NFU, and the emails of the individual Respondents setting out in their own words the impact the Claimant's conduct was having upon them, the Claimant has continued his personal campaign with an air of impunity. He has been without remorse or genuine apology.

3.6 In my finding his scandalous, vexatious, and unreasonable behaviour has persisted.

Relevant Law

- 4.1 The Tribunal must consider whether a fair trial is still possible as part of its consideration of this strike out application. I have referred to De Keyser Ltd v Wilson 2001 IRLR 324, EAT. 7. Counsel for the Respondents, Ms Shepherd, has rightly, analysed the relevant case law on that issue in her submissions to this Tribunal, and also in her written skeleton argument. The Claimant was provided with copies of that before the hearing together with other material. The Claimant says he has not had time to read it. Yet he has taken the time to engage in hurried email correspondence with the Tribunal and has also had time to submit substantial additional documentation to the Tribunal shortly before the hearing today. In particular, some 16 separate pieces of email documents were received by the Tribunal of the morning of this hearing.
- 4.2 In Bolch v Chipman 2004 IRLR 140 the EAT set out the steps that a Tribunal must ordinarily take when determining whether to make a strike-out order:
- 4.2.1 Before making a striking-out order under what is now rule 37(1)(b), an Employment Judge must find that a party or his representative has behaved scandalously, unreasonably, or vexatiously when conducting the proceedings.
- 4.2.2 Once such a finding has been made, he or she must consider, in accordance with De Keyser v Wilson, whether a fair trial is still possible as, save in exceptional circumstances, a striking-out order is not regarded simply as a punishment. If a fair trial is still possible, the case should be permitted to proceed.
- 4.2.3 Even if a fair trial is unachievable, the Tribunal will need to consider the appropriate remedy in the circumstances. It may be appropriate to impose a lesser penalty, for example, by making a costs or preparation time order against the party concerned rather than striking out his or her claim or response.
- 4.3 In Force One Utilities Ltd v Hatfield 2009 IRLR 45, a Tribunal was justified in striking out an employer's defence to a claim of unfair dismissal in circumstances where a witness had threatened the Claimant. Although the Claimant had indicated a willingness to continue with the case, the Tribunal did not feel that he was free of the fear that had been caused to him, nor was it satisfied that the Claimant could give reliable evidence if that evidence were to come into conflict with that of the employer. It therefore concluded that a fair trial was no longer possible and struck out the response. The EAT held that the conduct of the witness had made a fair trial of the issues impossible, and that striking out the defence was a proportionate response to that conduct. It rejected the idea that Tribunals should carry out a 'balancing act' in determining whether striking out is a proportionate response.
- 4.4 The critical question is whether a fair trial remains possible.

4.5 In Jones v Wallop Industries Ltd. ET Case No. 17182/81, the Tribunal found that the Claimant was 'hell-bent on causing the respondent company and a number of individuals as much inconvenience, distress, embarrassment and expense as possible' and ordered the whole claim to be struck out as being largely scandalous or vexatious.

Findings

4.6 I conclude on what is put before me, that the Claimant has made it plain even at this hearing today that he is determined to cause the NFU and the individual Respondents as much inconvenience, distress, embarrassment, and expense as possible. He is completely unapologetic about his campaign on social media. He refers frequently to his right of free speech and even his right to offend people if he thinks that is called for. The Claimant has made over 145 posts on Linked-In relating to the subject matter of his Tribunal claims since 15 March 2021.

4.7 In my finding, it can clearly be seen from the written witness statement of Mr Sutherland, and the correspondence from the other individual Respondents, that the Claimant's conduct has had, and continues to have, a significant adverse impact upon the individual Respondents to these claims. As a consequence of the Claimant's recent behaviour, they are anxious about facing the Claimant in Tribunal. They are fearful of the action that the Claimant will continue to take on public forums both in the lead up to, and following the final hearing, which is not listed to take place until May 2022.

4.8 In my conclusion, creating this culture of fear and intimidation with his efforts to publicly ridicule the individual Respondents will affect the ability of the individual Respondents to give evidence. In some cases, they may feel simply unable to appear to give evidence. In other cases, even if they are able to attend to give evidence, being fearful of the public repercussions against them if they give evidence that conflicts with the Claimant's point of view will undoubtedly impact upon the way in which they give their evidence, and whether they feel able to disagree with the Claimant's views.

4.9 The claimant has persisted in spreading inaccurate and distressing information to the colleagues of the individual Respondents, whilst at the same time insisting that he has, and will continue to, approach some of those former colleagues to give evidence on his behalf.

Conclusion

5.1 In seeking to influence the opinions of the Respondents' colleagues in the way that is described in the evidence before the Tribunal, the Tribunal proceedings will themselves be prejudiced if some of those individuals should give evidence on the Claimant's behalf having been influenced by the material he has posted on social media.

5.2 I accept the submission of Counsel, Ms Shepherd, that there can be no confidence that any action less than a strike out of the Claimant's claims will have any impact upon his scandalous, vexatious, and unreasonable conduct of these proceedings, further prejudicing a fair trial in this matter.

5.3 I strike out the Claimant's claims in their entirety.

Schedule of claims

Case Number	Claimant	Respondent/s
1304294/2020	Mr T Hancox	National Farmers Union
1306006/2020	Mr T Hancox	National Farmers Union
1306228/2020	Mr T Hancox	Kenneth Sutherland Ben Coates Catherine Cooper Vicky Jones
1306229/2020	Mr T Hancox	Tamsin Richards Tony Taunton

Short Judgment

Signed electronically by Employment Judge B Lloyd

Signed and Dated 28 April 2021

Reasons Judgment

Signed electronically by Employment Judge B Lloyd

Signed and Dated 17 May 2021