



EMPLOYMENT TRIBUNALS

Claimant: Professor R. Werner
Respondent: University of Southampton

TELEPHONE PRELIMINARY HEARING

Heard at: Exeter by CVP **On:** 4 June 2021
Before: Employment Judge Smail
Representation
Claimant: In Person together with Mr Wright, McKenzie Friend
Respondent: Mr B Mitchell, Counsel

JUDGMENT

1. There is no Order on the claimant's application for specific disclosure dated 24 November 2020. The matter is before the Appeal Courts.
2. The parties agree to exchange witness statements on the liability issues on Tuesday 8 June 2021.
3. All outstanding interlocutory applications and matters with view to preparation for the full merits hearing in November 2021 are to be contained in one document provided by the claimant served on the respondent and the Tribunal by 25 June 2021, in advance of the Telephone Pre-Hearing Review to be held on 2 July 2021.

REASONS

1. I come new to this long running case. I deal with the claimant's claim for specific disclosure first made on the 24 November 2020.
2. A full merits hearing has been listed over fifteen days between 1 – 23 November 2021 in person before a full Tribunal at the Southampton Employment Tribunal.
3. The parties have agreed to exchange witness statements on 8 June 2021. There have been 4,000 pages of disclosure relevant potentially to the liability issues. There is a very extensive Tribunal-approved list of issues detailing, I assume, the claims the claimant has made in his pleadings. I came to this specific disclosure application rather assuming it would relate to the November 2021 liability issues: it does not.

4. It relates to the contentions made by Ms Barbara Halliday, the respondent's in-house General Counsel, made in her witness statement dated 26 June 2019, in connection with the respondent's application for a reconsideration/ or to set aside a Default Judgment first made on 14 February 2019. This had to be made because the respondent had failed to serve a Response notwithstanding extensions of time obtained following applications on 13 December 2018 and 24 January 2019. The default judgment led to a remedies hearing on 5 June 2019, at which I am told the respondent was ordered to pay the claimant £2,300,000, in the respondent's absence.
5. At a hearing on 10 July 2019, Employment Judge Emerton was persuaded to set aside that Judgment, a response was accepted and the case was to proceed in usual fashion, on a contested basis.
6. The claimant appealed the order of the 10 July 2019, to the Employment Appeal Tribunal. There were as I understand it two principal grounds. First, it was an error of law to set aside the Judgment; secondly, Employment Judge Emerton was biased. The Employment Appeal Tribunal, again I am told, by order dated 27 August 2020 dismissed the first ground but allowed the second ground to proceed to a full hearing. If it finds that Judge Emerton was biased or apparently biased, then plainly that will have implications for the validity of the Judgment setting aside the Default Judgment dated 10 July 2019.
7. The claimant moreover has appealed the Employment Appeal Tribunal's Order on the first ground to the Court of Appeal and as I understand it, an application for permission to appeal to them is outstanding.
8. The present application is an application for specific disclosure which can only be understood in the context of the appeal, whether to the EAT or the Court of Appeal. I reject the suggestion that the application also has relevance to the determination of the November 2021 liability issues. There have been 4,000 pages of disclosure in respect of those issues. The claimant tells me that he is ready to exchange his witness statement which has already been prepared.
9. The present disclosure relates directly only to the appeal. The documents on their face are subject to privilege whether legal advice or litigation privilege. It seems, although it has not been pitched as directly as might be appropriate, that the claimant wants to argue that Ms Halliday made dishonest representations as to what she was doing during the time she might have served a response in time, which representations induced Employment Judge Emerton's decision. An exception to privilege is hinted at - namely fraud - but it has not been put in writing with the desirable precision that such an allegation would merit. The essence of what the claimant wants to say is that information obtained from data subject access requests suggests that no emails came out of Ms Halliday's inbox on days she suggests she was working on this case, casting doubt on representations she made in her witness statement, described above. Employment Judge Emerton was misled, is the contention.
10. There is no application for a further reconsideration of Employment Judge Emerton's Order, and I do not know whether that would even be permissible now. The appeal of Employment Judge Emerton's Order of 10 July 2019 is

both before the EAT and the Court of Appeal. It is no longer before the Employment Tribunal. This aspect of the case is now outside the jurisdiction of the Employment Tribunal because it has been appealed to the higher courts.

11. Accordingly, on that basis, I do not entertain this application. It is procedurally inappropriate for me - an Employment Judge at the Employment Tribunal level - to do so and accordingly, I make no order on the application. I do not go on in the alternative to make a Judgment on the merits of the application as though I did have jurisdiction. I can and do say, that it is not properly before me as an application for disclosure, relevant to the liability issues in the case. Ms Halliday is not a witness in the proceedings save for this present purpose. She is not mentioned in the Tribunal approved list of issues.
12. The claimant together with his McKenzie friend Mr Wright have submitted that there is also a direct or possibly indirect relevance to the liability issues in that Ms Halliday was the respondent's General Counsel, pulling all strings. I regard that way of seeking to put the application as contrived. This application is essentially wholly related to the appeal. If the claimant can persuade an Appeal Court that the Employment Tribunal should consider the application in the context of an appeal or any reconsideration which has not been formulated, as yet, then the Tribunal will entertain the merits of the application.
13. For the moment, I rule that this matter is not appropriately before the Employment Tribunal and accordingly, I make no order on the claimant's application for specific disclosure, first made on 24 November 2020.

Employment Judge Smail
Date: 11 June 2021

Order sent to the Parties: 17 June 2021

FOR THE TRIBUNAL OFFICE