



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Hancox

In person

**Respondents:** Ms Minette Batters & Ms Sarb Heer

Ms J Shepherd – Counsel

**Heard at:** Birmingham On: 7 May 2021 and Reserved on 14 June 2021

**Before:** Employment Judge Hindmarch

**RESERVED JUDGMENT ON AN OPEN PRELIMINARY HEARING**

## JUDGMENT

The claims are struck out on the basis they have no reasonable prospects of success and/or they are out of time.

## REASONS

1. This Open Preliminary Hearing was conducted by Cloud Video Platform on 7 May 2021. The Claimant represented himself and the Respondents were represented by Counsel – Ms Shepherd. The hearing was listed for one day. For reasons explained later in this Judgment we were unable to complete the hearing and I proposed that I reserve my decision in order for the Claimant to provide written submissions and the Respondents to reply in writing if required.
2. I had a bundle of documents numbering to 188 pages and a Skeleton Argument for the Respondents. I also had a document from the Claimant which effectively commented on the Respondent's Skeleton Argument. The purpose of the hearing was to consider the Respondent's application that the claims be struck out.

3. At the outset of this Judgment I set out my previous involvement with the Claimant in other related proceedings. In 2020 the Claimant issued a claim against his former employer the National Farmers Union – case number 1304294/2020. He made an application for interim relief which I heard on 27 August 2020. I dismissed that application. The Claimant on receipt of my Judgment made a reconsideration application which I refused. By email to the Tribunal office of 6 September 2020 the Claimant specifically confirmed that he was not making a complaint about me and said that I “did not show any signs of bias during the (interim relief) hearing. In fact the Judge was helpful to me... If the same Judge was to be at the final hearing I would genuinely not have any objection”.
4. That claim (which had been combined with a number of claims brought by the Claimant against individual Respondents – ex-colleagues of the National Farmers Union) then came before me for a Case Management Preliminary Hearing on 11 December 2020. The Claimant did not object to me dealing with that hearing during which we identified the issues and I made Case Management Orders.
5. On 23 April 2021 those claims came before Employment Judge Lloyd who struck the claims out.
6. From 13 December to 14 December 2020 the Claimant entered into early conciliation against a “Prospective Respondent” Minette Batters. He issued his claim against Ms Batters on 12 January 2021. When the Response was filed on behalf of Ms Batters on 18 March 2021, her solicitors indicated that they would be making a strike out application. By that stage the claim against Ms Batters had already been listed (on 2 March 2021) for a Case Management Preliminary Hearing on 22 April 2021.
7. From 13 December to 21 December 2020 the Claimant entered into early conciliation against a “Prospective Respondent” Sarb Heer. On 19 January 2021 he issued a claim against Sarb Heer. Again when Ms Heer’s solicitors filed their Response on 18 March 2021 they indicated they wished to apply for strike out. This claim was also listed for a Case Management Preliminary Hearing on 22 April 2021.
8. The Claimant did not attend the Preliminary Hearing on 22 April 2021. Employment Judge Lloyd who dealt with that hearing, ordered that the hearing be adjourned to 7 May 2021. He listed the hearing of 7 May 2021 as an Open Preliminary Hearing to be conducted by an Employment Judge sitting alone and by Cloud Video Platform. The purpose of the hearing on 7 May 2021 was to consider the Respondent’s strike out applications as set out in the Responses and in the Respondents solicitors’ letter of 18 March 2021.
9. Employment Judge Lloyd signed his Order on 22 April 2021 (pages 90 – 92 of the Bundle) and the Notice of the (7 May 2021) Open Preliminary

Hearing was emailed to the parties on 22 April 2021. (Pages 93 – 96 of the Bundle).

10. On 29 April 2021 the Respondents' instructing solicitor sent the Claimant an email with an attached draft Bundle for the hearing on 7 May 2021 (the email appears at page 187 of the Bundle). On 29 April 2021 the Claimant acknowledged receipt of the Bundle (page 188) in which he indicated he would "very likely be seeking adjournment" (presumably of the 7 May 2021 hearing).
11. The hearing before me on 7 May 2021 commenced at 10:30am. The Claimant made a number of arguments at the outset about whether the hearing had been 'properly constituted'. He argued he had not been given sufficient notice of the hearing and that in listing the hearing Employment Judge Lloyd had not given due consideration to his disabilities. He pointed out that at the Case Management Preliminary Hearing I had conducted on 11 December 2020 he had mentioned his disabilities. He argued that an Employment Judge sitting alone could not strike out whistle-blowing claims. He said he needed a note-taker and time to prepare. He acknowledged he had had sight of the Respondents Skeleton Argument, indeed he had produced a document in reply running to more than 20 pages, but argued he had had insufficient time to prepare. He made an application to adjourn. In his application he made a number of observations regarding Employment Judge Lloyd's conduct of the hearing on 23 April 2021 which were in my view irrelevant as the hearing I was dealing with involved different proceedings.
12. In reply Ms Shepherd noted that whilst the Claimant had said much as to why he was disgruntled with the hearing on 23 April 2021, he had not explained why he wished for this hearing to be adjourned other than citing his disabilities. She pointed out that the Employment Tribunal is well used to dealing with disabled persons. He had been able to attend the hearing and had participated in a number of previous hearings. He had been able to engage in voluminous correspondence with the Tribunal office. He had been aware of the Respondents intention to apply for strike out since 18 March 2021.
13. I decided not to adjourn. I had regard to the Overriding Objective contained in Rule 2 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 which seeks to avoid delay so far as compatible with proper consideration of the issues. There had already been an adjournment on 23 April 2021, the parties were present, the Claimant had been given half a day before me to make his argument and had been able to send in detailed submissions. I noted that on 11 December 2020 the Claimant had told me he had depression, and that at the final substantive hearing he would need regular breaks and an explanation of matters in terms that he can digest. However, this was a preliminary hearing, the Claimant had been able to produce substantial written submissions, he was able to articulate himself and had previously (on 23

April 2021) conducted a day long open preliminary hearing where a strike out application had been made. I did not have any email before me in which the Claimant had requested an adjournment and/or a full panel, despite what he told me about the latter. It would not be in the interests of justice to adjourn. However, due to the fact we had now reached the afternoon, I proposed Ms Shepherd make her application and I would then reserve my decision allowing the Claimant to consider the application and to send in any further written submissions. He duly sent a number of documents to the Tribunal, including a document sent in reply to the Respondents Reply to his submissions, all of which I carefully considered before reaching this decision.

14. I have stated that the Claimant as well as contending that I should adjourn, also made oral submissions to the effect that the hearing had not been “properly constituted”. This is something he repeated in his written submissions on the day of the hearing and in the submissions he sent afterwards. He argued that he should have a full panel hear matters, that he had been given insufficient notice and that I should not decide a strike out application given my previous involvement with him, in particular my findings made at the Interim Relief Hearing as to his credibility precluded me from dealing with this hearing.

15. The Claimant was employed by the National Farmers Union from 18 November 2019 to 7 February 2020. Dismissal was accepted. As already noted above the Claimant issued proceedings against the National Farmers Union on 14 February 2020, for unfair dismissal and dismissal on account of having made protected disclosures. This claim was the subject of the aforementioned Interim Relief application before me on 27 August 2020. This claim (along with other proceedings against named individual Respondents) were later struck out by Employment Judge Lloyd as mentioned at paragraph 5 above.

16. I set out below the relevant chronology and the arguments made by the Respondent in relation to the strike out applications, and the responses from the Claimant.

### **Strike out application in claim against Minette Batters**

17. The application was made by the Respondent in its letter to the Tribunal and copied to the Claimant on 18 March 2020 (pages 74 – 75 of the Bundle) and in its Grounds of Resistance (pages 84 – 87). The Respondent contends the claim is vexatious and/or has no reasonable prospects of success and/or the claim is significantly out of time and/or elements of the claim are misconceived.

18. The Respondent, Ms Batters, is the current President of the National Farmers Union. After being dismissed on 7 February 2020, the Claimant wrote to Ms Batters on 29 June 2020. She received the letter on 13 July 2020. The letter is at pages 42 – 50 of the Bundle. The letter refers to matters which the Claimant says occurred during his employment with

the National Farmers Union, matters which were the subject of his (by then) issued claims against the National Farmers Union and other individually named Respondents.

19. In the letter the Claimant tells Ms Batters that he may require a statement from herself and others “in the future” and asks her to encourage “staff to cooperate with future Court proceedings”. He says “I am not requesting anything from you at this stage just please look into this it is awful and I believe it should not happen to anyone”.
20. The Claimant’s claim against Ms Batters is essentially that he made a ‘new’ disclosure to her and that she should have escalated his correspondence to the Director General of the National Farmers Union. His claim form (at page 62 of the Bundle) asserts “(my) letter was in line with the respondents (whistle blowing policy) and should have been dealt with as such. My understanding is that Minette Batters should have raised this with the Director General... Rather than reply to me Minette thought it would be better to pass on my disclosure to the people accused in it”. Essentially the Claimant is contending he suffered a detriment by Ms Batters not investigating his concerns and/or not escalating them.
21. In his claim form the Claimant has ticked the box for ‘unfair dismissal’. The argument made by the Respondent is that Ms Batters was not the employer and a claim against her of unfair dismissal is misconceived. The Claimant accepts in his submissions that he did not intend to bring an unfair dismissal claim.
22. Ms Batters it appears did not reply to the Claimant but instead sent his letter to the Head of HR at the National Farmers Union, on 13 July 2020. The Head of HR sent an email to the Claimant on 30 July 2020 (page 51 of the Bundle) acknowledging his letter and confirming that his allegations would be responded to in the Responses to his Employment Tribunal claims and that an internal investigation was underway.
23. The Respondent submits that in her role as President, Ms Batters is an office holder and not an employee of the National Farmers Union. She has no responsibility for employee relations issues or dealing with whistle blowing issues. The Whistleblowing Policy and Procedure does not require escalation to the President.
24. As noted above Ms Batters received the Claimant’s letter on 13 July 2020 and on the same date sent it to the Head of HR. The Head of HR responded to the Claimant on 30 July 2020. On 28 October 2020 the Claimant emailed the Respondent’s solicitor (page 54 of the Bundle) to say “I have however brought a claim against Minette Batters for a detriment that happened since my Employment”. The Claimant did not start ACAS early conciliation regarding Ms Batters until 13 December 2020 and he issued the claim on 12 January 2021. The Respondent says the claim is out of time.

## **Strike out application in claim against Sarb Heer**

25. The Respondent's strike out application is set out in its letter to the Tribunal and copied to the Claimant, of 18 March 2020 (pages 172 – 173 of the Bundle) and in its Grounds of Resistance (pages 182 – 184). In short the grounds are that the Claimant should be estopped from bringing this claim under the principle of res judicata and/or the claim has no reasonable prospects of success and/or the claim is out of time and /or certain elements of the claim are misconceived.
26. I have already mentioned that in 2020 the Claimant brought claims against both his former employer and individual Respondents, essentially former co-workers. One such claim was made against Sarb Heer – case number 1306228/2020 – issued on 15 June 2020. The ETI (pages 97 – 112 of the Bundle) refers to whistleblowing detriment and alleges that the Respondent “failed to... protect me from victimisation... failed to respond to emails...colluded to falsify documents by retracting information from meeting minutes”.
27. The Claimant had made a Data Subject Access Request to the National Farmers Union on 23 January 2020. The documents were provided to him in hard copy on 20 August 2020, 7 days before the Interim Relief Hearing. At the Interim Relief Hearing I had a bundle of witness statements and a bundle of documents running to 581 pages. The Interim Relief Hearing bundle contained minutes of meetings at which Ms Heer was present. There were notes of a meeting attended by Ms Heer on 15 January 2020 and a version of notes of a meeting on 14 January 2020 with track changes (page 181 of that bundle). The Claimant now says that he did not have sufficient time to familiarise himself with all the documents in his possession at that time, before he withdrew his claim against Ms Heer. He also says he cannot have had in mind the notes he now complains about when he issued his first claim (in June 2020) as they were not disclosed to him until August 2020.
28. Despite issuing proceedings against Ms Heer, on 24 August 2020 the Claimant sent an email to her stating “I will be looking to remove your name from complaint” (page 113 of the Bundle). The following day on 25 August 2020 the Claimant emailed other former colleagues stating “Once I have won the Tribunal every single one of them with the exception of Sarb will be in litigation for defaming me” (page 114).
29. When the case came before me at the Interim Relief Hearing on 27 August 2020 the Claimant withdrew his claim against Sarb Heer and I accordingly issued an Order to that effect on 3 September 2020, dismissing the claim. My note of the hearing confirms the Claimant told me he wished to withdraw, that I clarified this with him, and he did so without qualification.

30. The Claimant at the hearing on 7 May 2021 contended that he had in fact raised a caveat on withdrawing his claim against Ms Heer on 27 August 2020. He said that he 'categorically' did say he would seek to resurrect the claim if having reviewed the evidence, he felt there was in fact a valid claim against Ms Heer.
31. On 16 September 2020 the Claimant emailed the Respondent's solicitor stating it was "very likely" that he would "resubmit Sarb Heer case due to further evidence I have uncovered" (page 117 of the Bundle). The Respondent says that it had not disclosed any further documents to the Claimant between 27 August and 16 September 2020. Hence any 'further evidence' discovered by the Claimant must have been in his possession when he withdrew the claim.
32. There was a Preliminary Case Management hearing on 20 October 2020 before Employment Judge Self. In the Agenda the Claimant prepared for that hearing he stated (page 119) "although I originally asked for an 8<sup>th</sup> respondent Sarb Heer to be removed recent uncovered notes have led me to reassess my view on this and believe Sarb Heer should be listed as a respondent". Employment Judge Self ordered the Claimant to produce a list of detriments. The Claimant in his written submissions says he included detriments involving Ms Heer (and Ms Batters) in that list but that the Respondents legal advisors removed those before producing the list of issues that was produced for the next Case Management Preliminary Hearing on 11 December 2020. In her Reply to the Claimants submissions, Ms Shepherd accepts she produced a list of issues and provided it to the Claimant. She had not included those referring to Ms Heer as they had not been withdrawn at the Interim Relief Hearing.
33. On 28 October 2020 the Claimant emailed the Respondent's instructing solicitors (page 134) stating "I am still likely to make a new claim against Sarb Heer but I am awaiting advice on that".
34. On 11 December 2020 the Claimant produced an Agenda for the forthcoming Case Management Preliminary Hearing before me on 11 December 2020. In answer to the question "should any person be joined as a Respondent", he answered "No, not at the current time" (page 136).
35. At the Case Management Preliminary Hearing on 11 December 2020 I noted the Claimant had listed Sarb Heer as a witness. The Claimant made no mention of her being a Respondent. I referred to the list of issues (drafted by Ms Shepherd and provided to the Claimant in advance).
36. As already noted above the Claimant commenced ACAS early conciliation on 13 December 2020 to 21 December 2020 and issued proceedings on 19 January 2021. In his claim form he states "This claim against Sarb Heer is new and is down to Sarbs central role in falsifying documents that were firstly used to discredit my protected disclosure but

have subsequently been used to pervert the course of justice in a Tribunal hearing. Originally, I had made a claim against Sarb Heer but at that point it looked like she had played a minor role in the falsifying of documents. I asked on August the 27<sup>th</sup> 2020 that Sarbs name be removed. This was not just based on Sarbs seemingly minor role but also a keenness to save the Tribunal time and taxpayers money. On the basis of new evidence released in recent months I am bringing a substantially new claim against Sarb Heer in line with the Tribunal procedures. If in August I had the evidence available of Sarbs central role in covering up evidence I would have asked the case to be amended. The new claim includes detriments and claims of a central role in falsifying statements alongside a separate Claimant Ben Coates. The new claim is in time as it is not only new but based on new evidence given to me in the past three months.” The Claimant says this (second) claim involves new evidence and is “completely different and far more serious in the use of...edited documents” than the first claim. He appears to be asserting the first claim was based on redactions he says Ms Heer made to her notes on 14 January 2020, and the second claim is in relation to redactions to her notes of 15 January 2020.

37. The Respondent says the claim is out of time.

### **The Law**

38. *Rule 55 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 provides “Preliminary Hearing shall be conducted by an Employment Judge alone, except that where notice has been given that any preliminary issues are to be, or may be, decided at the hearing a party may request in writing that the hearing be conducted by a full tribunal in which case an Employment Judge shall decide whether that would be desirable.”*

39. *Rule 54 provides “A preliminary hearing may be directed by the Tribunal on its own initiative ... The Tribunal shall give the parties reasonable notice of the date of the hearing and in the case of a hearing involving any preliminary issues at least 14 days’ notice shall be given and the notice shall specify the preliminary issues that are to be, or may be, decided at the hearing.”*

40. *Rule 51 provides “where a Claimant informs the Tribunal... in the case of a hearing, that a claim... is withdrawn, the claim...comes to an end”.*

41. *Rule 52 provides “where a claim ... has been withdrawn under Rule 51, the Tribunal shall issue a judgment dismissing it (which means that the Claimant may not commence a further claim against the respondent raising the same, or subsequently the same, complaint, unless –*

- a. *The Claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so...”*



42. Ms Shepherd referred me to 2 cases Barber v Staffordshire Council 1996 ICR, 379, CA and Ako v Rothschild Asset Management Ltd 2002 ICR 899, CA.
43. In Barber the Court of Appeal highlighted “the decision to dismiss is not simply a rubber stamping, administrative act; it involves the exercise of a judicial discretion and an adjudication by a competent tribunal as to whether or not it is “fit” to dismiss proceedings where the applicant has given notice of withdrawal”. In Ako the Court of Appeal identified the critical issue as seeing whether the Claimant intended to abandon his claim.
44. Rule 37 deals with ‘striking out’ and provides “(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...on any of the following grounds –
- a. That it is scandalous or vexatious or has no reasonable prospects of success;”
45. I must have in mind the caution expressed by the Court of Appeal in Ezsias v North Glamorgan NHS Trust regarding the striking out of whistle-blowing claims, namely that it will only be in an exceptional case that such a claim will be struck out where the central facts are in dispute.
46. Under S118 Employment Rights Act 1996 whistleblowing detriment claims must be brought “(3) (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates...  
(b) within such further period as to tribunal decides reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months”.

## **My Conclusions**

47. Firstly I deal with whether the hearing was ‘properly constituted’. Employment Judge Lloyd on 22 April 2021 decided that the Open Preliminary Hearing be listed on 7 May 2021. His Order and the Notice of the Hearing were sent to the parties on 22 April 2021. The Order makes it clear “that...hearing will consider the Respondents application to strike out”, and that the hearing will be conducted by an Employment Judge sitting alone, which is the norm as per Rule 55. I have no evidence of either party asking for a full panel. Rule 54 requires at least 14 days’ notice to be given and this was duly given. Thus in my view the hearing was properly constituted and the Claimant was made aware in writing and in good time of the purpose of the hearing.
48. I see no reason why I must recuse myself from this matter. I have set out above my previous involvement with the Claimant who in September

2020, having received my Judgment on the interim relief application, informed the Tribunal he would have no objection to me dealing with him again. Indeed, at the hearing on 7 May 2021 the Claimant told me I was quite “reasonable”. I have looked at the written reasons I gave with my Judgment on the Interim Relief application and cannot see any observations made as to the Claimant’s credibility, indeed I described him as “passionate” and noted “I have some sympathy with the Claimant’s position”, albeit I found he had not met the burden of proof required for the relief sought. I am not in any way biased towards the Claimant.

49. Dealing now with the application to strike out in respect of Ms Batters. The unfair dismissal claim (to the extent the Claimant ticked that box on the form ET1) is clearly misconceived as Ms Batters was not the Claimant’s employer. In any event the Claimant has made clear what he is pursuing is a whistle-blowing detriment claim. The Claimant is in short asserting that by not escalating his complaint and/or not investigating it and/or by forwarding it to HR, Ms Batters subjected him to detriments. He does not say anything on causation, by which I mean he does not plead that Ms Batters acted in this way because he made a protected disclosure. In my view these assertions have no reasonable prospects of success but even if I am wrong, they are plainly out of time. The Claimant sent his correspondence for the attention of Ms Batters on 29 June 2020. She received it on 13 July 2020 and forwarded it to HR on the same date. That ended her involvement. On 30 July 2020 HR wrote to the Claimant and acknowledged receipt of the correspondence. So by 30 July 2020 the Claimant knew that Ms Batters had not acted in the way he wanted her to act and in the way he asserts to be a detriment or detriments. He should therefore have issued proceedings by 29 October 2020. However he did not go to ACAS until 13 December 2020 and did not issue his claim until 12 January 2021. This is despite him telling the Respondents solicitor on 28 October 2020 that he had “brought a claim”, which was plainly not so at that time. The claim is significantly out of time in circumstances where the Claimant has not explained the delay. I cannot be satisfied that it was not reasonably practicable to present in time.
50. Dealing with the strike out application concerning Ms Heer, I accept the Claimant’s submission that when he issued the first claim in June 2020, he had not received the notes he says that he complains of in the second claim.
51. He had however received the notes by the Interim Relief Hearing on 27 August 2020. The Claimant withdrew his claim against Ms Heer at that hearing. He now says that was because he had “thousands of pages” of documents to read in a short period of time (it is the nature of Interim Relief Hearings that the turn around is quick) and he withdrew his claim in circumstances where he had not understood the extent of Ms Heer’s alleged wrongdoing.

52. Firstly I make the point that the claim was validly withdrawn and that the Claimant did not caveat his withdrawal in the manner he now seeks to argue. I issued a Rule 52 Judgment on the withdrawal and under Rule 51 that claim came to an end and the Claimant would be estopped under the principle of res judicator from pursuing it again.
53. If I accept that the second claim is based on different notes, that the Claimant did not receive until August 2020, the next issue must be a time point. The Claimant received the notes in question in August 2020. He did not go to ACAS for early conciliation until 13 December 2020 and issued the claim on 19 January 2021. He was clearly aware of the potential of bringing a new claim against Sarb Heer in September 2020 when he informed the Respondent's solicitor it was "very likely" he would "resubmit Sarb Heer's case due to further evidence I have uncovered". Again, he has given no explanation for why he delayed so long. He seeks to argue in submissions that he was thwarted by pressures of time in his Case Management Preliminary Hearing before Employment Judge Self from making an application to "resurrect the case" against Ms Heer, and by the Respondent limiting the draft list of issues at the Case Management Preliminary Hearing before me. None of these arguments explain why he delayed until January 2021.
54. The Claimant was clearly aware in September 2020 he would need to issue new proceedings (he says he would "be doing so") and in October 2020 he said he was "likely to make a new claim". The new claim is plainly out of time and the Claimant has not produced any evidence to show it was not reasonably practicable for him to present in time.
55. For the reasons set out above I grant the Respondents applications.

Employment Judge Hindmarch

Date 18/06/2021