



EMPLOYMENT TRIBUNALS

Claimant: Mr T Reynolds

Respondent: Capita Customer Management Ltd

PRELIMINARY HEARING

Heard at: Manchester (in private; by CVP)

On: 5 July 2021

Before: Employment Judge Grundy (sitting alone)

Representatives

For the claimant: In person

For the respondent: Mr G Hayes Solicitor

JUDGMENT

- (1) The Respondent's application for strike out of the claim under Rule 37 (1) (b) of the 2013 Regulations on the grounds that the manner in which the proceedings have been conducted, by the claimant has been scandalous, unreasonable or vexatious fails.
- (2) The Respondent's application for a costs order succeeds to the extent that the claimant shall pay £1000 in respect of the Respondent's costs to date to the Respondent within 28 days of the making of this Order.

REASONS

Background

- (3) The background is set out in the Case Management Orders of Employment Judge Sharkett in February 2021 and April 2021.
- (4) The claimant was employed as a customer services- telesales agent by the respondent from 15 August 2016. The claims in this matter relate to " whistle blowing" relating to possible fraud in the sales of rail tickets and the claimant's

actions when he asserts he was informing his employer of that and whether he satisfies the statutory criteria in Part IVA of the Employment Rights Act 1996.

- (5) The claimant alleges detriment in that he was subject to disciplinary action, the respondent asserts due to data breaches, which in part the claimant accepts. He was transferred by TUPE transfer to a new employer First Group Limited on 24 October 2020.

Issues

- (6) The matters raised to be dealt with today were set out in the Case Management order of EJ Sharkett and clarified by the correspondence from EJ McDonald on 22 June 2021 as follows:–
- (a) consider whether any of the claimant's claims are out of time.
 - (b) consider the respondent's application that the claimant should be required to pay a deposit in order to continue with each of his claims on the basis that each of them has little reasonable prospect of success and or whether they should be struck out if the Tribunal is satisfied there is no reasonable prospect of success.
 - (c) The respondent's application that the claimant's claim be struck out under rule 37 ET Regulations 2013 because the way the case has been conducted by the claimant is scandalous, unreasonable and vexatious.
 - (d) The respondent's application for the claimant to be ordered to pay costs because of the conduct of the case by the claimant.
 - (e) The claimant's application to join First Group as respondent to the proceedings.
- (7) It was clarified at the outset that the Tribunal had received the documents in a scattergun fashion, and that had included the claimant's letter dated 1 July 2021 which referred to objections to private documents and his data subject access request. The Tribunal explained to the claimant it has no jurisdiction to make rulings on his data subject access request as this is the province of the Information Commissioner and the Tribunal intends to deal with the questions identified and make decisions and orders on the matters listed above.
- (8) The Tribunal had available the Tribunal file with the CMOs, copious correspondence, appendices 1- 4 referred to , the emails to the Tribunal in response to EJ McDonald 29 June 2021 at 17.17, 24 June 2021 at 16.17. which each dealt with the nub of the issues.

Procedure at this hearing

- (9) This was a remote hearing by CVP cloud video platform due to COVID-19 restrictions. I explained the ground rules at the outset and although virtual screens can be tiring all parties were able to see and could hear fully. I

explained to the parties that I would hear submissions from each party and then I would give a ruling on the questions identified. Mr Hayes invited the Tribunal to deal with matters b) c) then d) above then looking at a) and e) from paragraph 8 above.

- (10) Issue b) is the subject of a first judgment. This judgment deals with matters c) and d) and there is a Case management order dealing with e). Issue a) was left in abeyance for any final hearing to consider if live.

Strike out for scandalous, unreasonable or vexatious conduct and costs

- (11) The Tribunal heard extensive submissions as each party was given the opportunity to explain the stance in addition to that in writing in the emails of June 2021.

THE LAW TO BE APPLIED

- (12) The Tribunal explained the principles in general terms in relation to strike out for scandalous, unreasonable and vexatious conduct. Rule 37(1)(b) of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") provides that a claim or a part of a claim may be struck out if "the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious".
- (13) No authority was submitted to the Tribunal but the Tribunal takes account of the conduct of the claimant in the context of him being a litigant in person.
- (14) The Tribunal takes heed that the fact that a ground for strike out is established may give the Tribunal discretion to strike out but this does not automatically follow. The Tribunal had already considered Rule 39 (1) - (6) in determining whether to make a deposit order.
- (15) The Tribunal considered the issue of costs and rule 75(1) and rule 76, rule 77, and rule 78 and rule 84. To assist the relevant parts are cited here:-

When a costs order or a preparation time order may or shall be made

76.(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

- (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

Procedure

77. A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.

The amount of a costs order 78. (1) A costs order may—

1. (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
2. (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles; or, in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993(b), or by an Employment Judge applying the same principles;
3. (c) order the paying party to pay the receiving party a specified amount as reimbursement of all or part of a Tribunal fee paid by the receiving party;
4. (d) order the paying party to pay another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses (of the kind described in rule 75(1)(c)); or
5. (e) if the paying party and the receiving party agree as to the amount payable, be made in that amount. "

Submissions

- (16) The Respondent sought to argue that the claimant had had the benefit of assistance by two Employment Judges at previous case management hearings where in particular EJ Sharkett had made clear the necessity to the claimant to only correspond with the respondent on issues relevant to the claim and comply with orders of the Tribunal and notwithstanding this the claimant persisted in conducting the litigation unreasonably. He was also warned regarding his language in emails.
- (17) Particularly the respondent drew attention to him not assisting regarding the Information Commissioner, failing to follow the April 2021 directions, failing to file an appropriate schedule of loss by 30 April, trying to make a claim on his wife's behalf, failing to disclose documentation, sending pictures of his feet to the respondent, sending a flurry of emails not related to the case. Further emails were sent outside business hours such as at 5.00 am.
- (18) The Tribunal was also referred to the language of the claimant's emails - he suggested he had "hacked" into his own data privacy file, he accuses the respondent of being a "corporate bully" and this post dated the previous warning. Overall it is submitted this is unreasonable conduct.
- (19) The respondent sought strike out on this basis or alternatively an order for costs.
- (20) The claimant argued he was an "amateur" rather than being privileged as a professional in this matter. He accepted in his written reply to the respondent putting him on notice as to the costs application that he, "may be too exuberant". He described himself as "passionate" re the whistle-blowing. He says he was not intending to be frivolous.
- (21) He said he had had issues regarding GDPR and his SAR, leading to non-compliance. He said the feet photos related to arthritis preventing him from

dealing with matters and he had personal difficulties. He said he felt laughed at hence his tone in emails.

- (22) He submitted he had tried to obtain advice from charitable bodies but this was difficult.
- (23) During the submissions on behalf of the respondent, I raised that there was no costs schedule setting out amounts claimed. Mr Hayes indicated that there was a preferential rate being charged to the respondent and the costs to date were at least £20,000 on the respondents behalf and rising and there were 20 emails sent since 29 June and this matter was being heard on 5 July 2021, indicating the level of communication engaged in by the claimant.
- (24) The Tribunal also raised Rule 77 with the respondent, referring to costs orders being made after a final judgment. The respondent submitted there is nothing to prevent an order being made during proceedings and the Tribunal proceeded on this basis having raised the matter with the respondent's solicitor.

Conclusions

- (25) There is evidence of unreasonable conduct of the proceedings by the claimant who is a litigant in person, He has shouldered and accepted some responsibility for this with his " exuberance". There has also been some reference to a " crusade" which is an unhappy position.
- (26) As I have found already in considering the original strike out application, the claimant has not helped himself in the manner of this litigation where it appears he has moved the goal posts, in pursuing a great number of allegations, which have been whittled down at previous hearings Nevertheless he is a litigant in person and therefore the Tribunal grants him some latitude, however this is not open ended and has to stop somewhere.
- (27) The Tribunal was not willing to strike out the claimant's claims as that would be a draconian remedy and it has not reached that position in trying to do justice between the parties and the claimant appearing in person.
- (28) However although highly unusual, the incursion of the level of the respondent's costs - £20,000 at preliminary hearing after previous case management hearings has largely been due to the conduct of the claimant, which has in part been unreasonable. I have considered the tone of the emails, the irrelevancy of many, the unnecessary correspondence re the SAR, and the excessive schedule of loss including claims for the claimant's wife, which is unacceptable and unreasonable. It is on this basis the threshold for making some costs order is reached as this position has become excessive for the respondent to properly meet.
- (29) The Tribunal is required to consider when making a costs order the claimant's ability to pay. Within submissions the claimant said he had £3000 in savings. He was not currently receiving a salary and his situation at home was complex,

nevertheless he had previously submitted he could pay a deposit order up to £4000. Given the previous order the claimant has available a further £1000 which should be payable in costs to the respondent at this stage given the unreasonable conduct of the litigation by the claimant.

- (30) The Tribunal was prepared to order £1000 to be paid without a full costs taxation schedule as it was clear that a substantial amount more of costs had been incurred by the respondent by the claimant's conduct and this was an amount he could afford to pay.
- (31) For the avoidance of doubt the Tribunal orders the claimant to pay £1000 to the respondent in respect of costs.

Employment Judge Grundy

Date: 16 August 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 August 2021

FOR THE TRIBUNAL OFFICE

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