EMPLOYMENT TRIBUNALS

Claimant: **Ms I Cetin**

Respondent: **(1) A Limited**
(2) Mr B.C.

JUDGMENT

The claimant's application dated 2 June 2021 (and expanded upon, in particular, in her correspondence dated 7 June 2021, 12 July 2021, 1 August 2021 and 15 August 2021) for reconsideration of the orders made under Rule 50 of the Employment Tribunals Rules of Procedure 2013, made orally on 2 June 2021, written reasons for which were sent to the parties on 28 June 2021 is refused.

The claimant's application made on the same date for reconsideration of the rejection of her application for orders under rule 50 anonymising her identity has no reasonable prospect of success.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The claimant's reasons for her application for a reconsideration of the restricted reporting order (hereafter referred to as a RRO) may be summarized as follows:

    a. the parties had not been notified about the possibility of a RRO being implemented and it was not possible to prepare for the application;

    b. the order was unnecessary due to the anonymity order;

    c. it further limits freedom of expression;

    d. the respondents' actions in sharing their children's information meant that it was an unreasonable infringement of the right to freedom of

expression and not reasonably necessary to protect any human rights of the children; and

e. In her email of 1 August 2021, the claimant (at paragraph 25) argues that there was no press at the hearing or another reason what would necessitate the RRO.

2. The claimant's reasons for her application for a reconsideration of the anonymity order and the refusal of an order anonymizing her own identity may be summarized as follows:

a. She states that she considers that the respondents' opposition to her application for anonymity is in order to label her as someone who reports people randomly for child abuse so that no one would believe her in the future and to make her unemployable.

b. Some of the information in the judgment would be personal which she had had to divulge in order to "defend my claims I have to divulge information but the way this information is used in the judgments is out my control". This, she alleges, put pressure upon her to opt out of asking for the written reasons of the decision.

c. She makes complaints, in essence, about the sufficiency of the police investigation and defends her actions in reporting the respondents to the police as being her duty as a nanny. She complains that parents would inevitably be protected in such a scenario whereas the nanny runs the risk of being identified.

d. She argues that there is an inconsistency in the respondent's position that identifying her would not lead to identifying the children whereas descriptions of them as "theatre/ballet enjoying gay" would identify them.

e. She argues the company should not be anonymized because it just exists for avoiding paying tax.

f. She alleges that the fact that counsel for Mrs Griffiths and I were, prior to 7June 2021 when I left the Bar, members of the same chambers "creates a strong possibility of the claims having been discussed between professionals. Judge George could have been offered to represent them which would mean she would read a case file" and suggests that I changed my mind on the applications to strike out the claim between November and June 2021. This allegation appears in paragraphs 11 & 12 of her email of 7 June 2021 and also in paragraph 22 of her email of 5 July 2021.

g. She relies upon alleged new evidence submitted by email dated 12 July 2021. Those are police notes from around the time they visited the respondents in May 2017 for which she offers some explanations but also states to be largely incorrect; "The notes seem to have been designed to cover their own back and reveals the investigation had not been done in a timely manner and that the Respondents were given a month's notice before anything was done."

h. She alleges (para.9 of the email dated 12 July 2021) that I excluded some of the evidence and her explanations and argues that the prospect of the strike out judgment in this case being available online is worrying in terms of safety for her.

i. She argues that in para.15 not being anonymized would limit what she could share to defend her claim. She asked for temporary anonymity until her claims were concluded and worried that the judgment would help her other employers and suggests that my reference of evidence is unbalanced. She argues that the failure to anonymise her in these proceedings would interfere with her right to a fair trail on her other claim.

j. In para.23 of the claimant's communication of 1 August 2021 (which is on the face of it an application for reconsideration of the judgment striking out the claim), the claimant makes the following comment,

> "At the hearing when she read out the relevant legislation for anonymity order she mentioned the term 'identifying person' who would have been me. I made this argument at the time and she removed that wording from the written reasons that are sent to us, presumably because it would make it easier for me to appeal."

k. In her email of 15 August 2021, she argues that the respondents' identities are discoverable by her connection to the other litigation she is pursuing against a different former employer in London Central Employment Tribunal and, apparently, argues that the rule 50 orders are unnecessary because the respondents can be identified by other means. She states that the existence of the RRO in these proceedings was mentioned at a hearing in that claim on 22 July 2021.

l. She also refers to documents apparently available online which arise out of litigation in the United States of America which identify the respondents.

> "Considering the Respondents created a case law in US and their names have been displayed on my claim in UK, the Respondents' names would have seen (sic), downloaded, shared, used and published on other sites many times since the 14th of July 2021."

m. She argues that there is a public interest in keeping public the names of the respondents whom she describes as having "a history of litigation with their child related employees and they breach their contracts."

3. The claimant's application for a reconsideration of the RROs has no reasonable prospect of success because:

a. In the letter sent by the Tribunal to the parties on 1 December 2020 by which the parties were informed of my concern that, without use of the Tribunal's powers under rule 50 of the Employment Tribunals Rules of Procedure 2013, the children's right to anonymity might be infringed, I invited the parties to say whether they intended to apply

for "any other order restricting the public disclosure of any other aspect of these proceedings". Although the parties did not apply for a restricted reporting order, this raised the prospect of others of the orders available to the Tribunal being made.

b. I considered that, in the circumstances of the case – including those mentioned in paragraph 17 of the written reasons, and given the respondents' allegation that potentially identifying matters about them were publicized by the claimant who is active online, anonymity orders were insufficient to provide the children with the protection from identification intended by s.1 of the Sexual Ofences (Amendment) Act 1992. The additional interference with the Art.10 right to freedom of expression was proportionate, in my view, to the children's right not to be identified as alleged victims of a sexual offence and there is no reasonable prospect of claimant's submissions causing me to change my view on that.

c. The fact that no members of the professional press were present at either the hearings is not something which weighs strongly against the need for RROs in the circumstances of citizen reporting and the claimant's activities in publicizing details of the litigation online.

4. The claimant repeats her argument that the respondents' objections to her being anonymized were motivated by a desire on their part, in effect, to make her unemployable. I also note her argument set out in paragraph 2.c. above. This seems to me to be slightly different to the way that she argued her need for anonymity at the preliminary hearing where she said that she did not know which aspects of her private life were potentially affected. The right to seek employment seems to me to be an aspect of private life and the right to protection in employment and in seeking employment as a whistleblower or former whistleblower seems to me potentially to engage both art.8 and art.10 of the European Convention on Human Rights. The claimant does not explain why this argument was not raised before. These are complex matters of law and some leniency is due to her as a litigant in person. The argument, as I understand it, is that any nanny who reports such wrongdoing to the relevant authorities and is victimized for it inevitably faces the dilemma of whether or not to seek to enforce their employment rights, knowing they would then be revealed as someone who has reported child abuse against their employers in the past when those employers, as parents of the alleged victim(s) enjoy anonymity. Although I could not reasonably expect the legal basis of the claim to be known to the claimant, the concern and the argument could, in my view, have been articulated at the time of the hearing on 2 June 2021. The question for me now is whether there is a reasonable prospect of my decision that she should not benefit from anonymity being varied or revoked. I do not think that there is such a reasonable prospect because the claimant (as set out in paragraph 14 of the written reasons) is a prolific blogger who chooses to reveal information about her litigation with previous employers which would be available to potential future employers. Therefore, although, in principle I can see that there would be an argument that former whistleblowers' art.8 rights might be interfered with, I see no reasonable prospect of this argument causing me to vary or revoke my decision in the present case.

5. As to the other arguments raised by the claimant in relation to the anonymity order which was made and the refusal of anonymity for her:

    a. It was the claimant who requested written reasons. She was not deterred from doing so by the lack of anonymity. There is no explanation of what the personal information is that she has to divulge and I do not see that she is in a different position in that regard to any other comparable litigant.

    b. Complaints about the sufficiency of the investigations by the police and other authorities are not relevant to the question of whether the parties in this case should be anonymized. The reason for the orders made was in order to give effect to the aims of parliament in passing s.1 of the Sexual Offences (Amendment) Act 1992.

    c. The children's right is not to be identified as the alleged victims of an alleged sexual offence and the risk of identification comes if they are identified as *connected with this claim* which, as a protected disclosure claim, necessarily requires explanation of the nature of the alleged protected disclosure. The arguments that Mr B.C. and Mr D.E. are identified in online reports of other proceedings – whether in this territorial jurisdiction or that of the United States of America, and that, therefore, the restriction on publication of their identity is not justified in these proceedings overlooks this fact. It is not whether Mr B.C. and Mr D.E. are identified online in connection with other matters which risks infringing the children's rights, it is whether they are, by name, identified as parents of children about whom these allegations are made.

    d. The argument that it is inconsistent for the respondents to argue that the children could not be identified from her own name was one which she raised at the hearing on 2 June 2021 and which I dismissed on that occasion. She raises no different or additional argument in the reconsideration application.

    e. The rights specifically protected under s.1 of the Sexual Offences (Amendment) Act 1992 seem to me to outweigh any public interest in it being reported that the claimant alleges that she was employed by a company as a vehicle to put personal expense through accounts of a corporate body which had no interest in her services. This allegation was not one which, in any event, was relevant to the underlying issues in the case and not one which, had the claim come to final hearing, would have been considered by the Employment Tribunal.

    f. Taken as a whole, I presume that, by the section of her email of 1 August 2021 under the side heading "Bias", the claimant intends to allege actual or apparent bias on my part. Much of what she says concerns her claim against Mrs Griffiths, whose actions are not relevant to the issues in the present case. Further arguments, in essence, amount to a complaint that I accepted the respondents' arguments and supposition. However, it is right that I address her allegation set out in paragraph 2.f. above. The only knowledge I have

about the dispute between these parties or that between the claimant and Mrs Griffiths I have obtained in my capacity of (as it then was) fee-paid employment judge from this claimant and these respondents through conducting the hearings on 27 November 2020 and 2 June 2021 and deciding the relevant issues at them. Until reading the claimant's applications for reconsideration, I had no knowledge of the identity of Mrs Griffiths' representative at any stage in any proceedings in London Central Employment Tribunal. It is true that Mr Wilson, who acted for Mrs Griffiths, and I were, until my appointment with effect from 7 June 2021, members of the same chambers. We have no business or personal relationship beyond the fact that we were colleagues in chambers. In most circumstances, an objection to a judge's involvement in a case, could not be soundly based solely upon that judge's membership of the same chambers as an advocate engaged in a case before them: Locabail (UK) Ltd v Bayfield Properties Ltd [2020] IRLRL 96, CA. This is even more the case when the objection is that the judge is in the same chambers as an advocate engaged for a third party involved in separate litigation against one of the parties before them. There is, in my opinion, no possibility that a fair-minded and informed observer would conclude that the facts in this case give rise to the real possibility that I was biased. There is no reasonable basis for an allegation of actual or apparent bias.

g. Although it appears that the new evidence submitted by email dated 12 July 2021 is, quite possibly, evidence which could not with reasonable diligence have been available at the original hearing, the claimant appears to be putting forward evidence which she herself regards as "largely incorrect". There is no reasonable prospect that this evidence would cause the decision to be revoked.

h. In terms of the concerns she raises about her safety, I reflect on the arguments raised by the respondents which I referred to in paragraph 14 of the written reasons. Any argument the claimant raises about the impact upon her of publication of her identity has to be seen in the context of the information which she chooses to reveal through her blog. In those circumstances, I do not see that these arguments have a reasonable prospect of causing me to vary or revoke my decision on her application.

i. I do not see how a judgment that she presented her claim out of time against these employers would interfere with her right to a fair trial in her other claim. There has been no determination of the substantive merits of her allegations in this case and no adverse determination in relation to her credibility.

j. As to paragraph 2.j. above, the claimant is correct in her recollection that when I read out the terms of the anonymity order I initially read out that "identifying matter" meant

'any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation'

This was a simple error on my part in reading out the standard wording which, as I explained at the time, was designed to cover the more common situation when the allegations which are the subject of the claim are allegations by the claimant of sexual misconduct against them and they are therefore the alleged victim. This is not the situation in the present case, hence my correction.

k. As to the argument set out in paragraph 2.k. and 2.l. above, I refer to paragraph 5.c. above.

l. As to the argument set out in paragraph 2.m. above, this may or may not be so, however it does not outweigh the public interest, recognized by parliament, in protecting the identities of alleged victims of sexual misconduct, especially when those alleged victims are minors.

I confirm that this is my Reconsideration Judgment and Reasons in the case of Case No: 3325658-2019 Cetin and that I have signed the Judgment by electronic signature.

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Employment Judge George

Date: 18 October 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE