



EMPLOYMENT TRIBUNALS

Claimant
Mr L Hasan

v

Respondent
UCL

WRITTEN REASONS

Background

1. At an open Preliminary Hearing on 17 November 2021, a number of complaints in this claim were struck out. Reasons were given orally at the time and were not set out in the Judgment dated the following day. By email of 23 November 2021, the Claimant applied for written reasons. These are those reasons.
2. The complaints in question form part of the Claimant's sixth claim in a series of eleven; the claims all arise from his employment with the Respondent (ending with his dismissal) and name an additional thirteen other respondents. The first five claims have been extensively case managed and where appropriate, complaints within them have been struck out and/or deposit orders made; some of the latter have been paid by the Claimant while others have not, so that the attendant complaints were also struck out at the OPH.
3. The first claim (2201127/19) was submitted on 25 March 2019 against Dr Hoffman, Director of the Respondent's Centre for Languages and International Education (CLIE), where the Claimant worked as a Teaching Fellow. The second claim (2202159/19) was submitted on 1 June 2019 and was against this Respondent.
4. At a preliminary hearing (PH) on 30 July 2019 before EJ Palca, it is recorded that the Claimant told the Tribunal that ACAS had advised him if he brought claims against more than one party, they would be rejected. He applied to amalgamate the first and second claims. At this stage, the second claim had not been served on the Respondent and so the question of consolidation was postponed to be considered at a further PH listed for 11 September 2019.
5. At that PH, EJ Walker formally consolidated the first two claims. She considered whether to permit the Claimant to amend his claim by reference to a document entitled "The applicant's list of issues". She did not allow the Claimant, in effect, to substitute a new list for what had already been discussed and identified.

6. EJ Walker has recorded that when she asked the Claimant why he had not included particular information in his claim, he merely told her that he had thought it would be reasonable for him to raise later information and that he had reserved the right to do so. EJ Walker did not however consider this sufficient. Although the case management summary and orders from that hearing were not sent out until 18 October 2019, the notes record that EJ Walker also gave her reasons orally at the time.
7. By then, the Claimant had issued three further claims (on 21 July 2019 claim number 2202770/19, also against this Respondent, on 30 August 2019 claim number 2203220/2019, against Dr Hoffman and another colleague Mr Salisbury and, on 18 September 2019, claim number 2203545/2019, against a further colleague Ms Liao). It is accordingly clear that the Claimant had understood by 30 August 2019 that it was permissible to name more than one Respondent on the same claim form, and further, that his fifth claim was presented after EJ Walker had given her oral reasons for not allowing amendments when the Claimant had failed to include in an earlier claim all the matters on which he proposed to rely.
8. On 14 January 2020 the Claimant submitted the present claim. He named not only the Respondent but another colleague, Ms Massey. However, since he had not obtained a separate Early Conciliation (EC) certificate for her, instead relying on the one against this Respondent, the claim was rejected against Ms Massey. The Claimant relied on a third EC certificate that he had obtained against the Respondent, for which he had entered EC between 30 November and 15 December 2019. Earlier EC certificates against the Respondent had been issued in respect of conciliation periods from 10 April to 22 May 2019 and from 24 May to 24 June 2019.

Issues

9. Ms Tutin has helpfully distilled the Claimant's claims into a combined list of issues for claims one to five and a separate list for claim six. At paragraph 9 of the claim six list of issues, she has set out what the Claimant agreed are the detriments on which he seeks to rely arising from the same protected disclosure described in the first five claims, namely that on 24 and 29 May 2018 he emailed the Vice-Provost of Education and Student Affairs to the effect that Dr Hoffman and Mr Salisbury had illegally improved the marks of ten students in the June 2017 exams. The detriments are said to be as follows (amended in respect of 9c following discussions with the Claimant during our hearing on 17 November 2021):
 - a. The Respondent appointed Kati Massey to investigate the Claimant's grievances against Christine Hoffmann. The Claimant alleges that Ms Massey was not impartial;
 - b. Ms Massey selected witnesses in the grievance investigation who supported Dr Hoffmann;
 - c. Ms Massey gave the Claimant insufficient time to present his case during the first grievance hearing in November 2018;
 - d. Ms Massey ignored the Claimant's comments and amendments to his statement, and finalised the grievance investigation without considering the same;
 - e. In May 2019, the Respondent initiated a disciplinary investigation against the Claimant in respect of an email he had sent to students;

- f. In July 2019, the Respondent forced the Claimant to attend a disciplinary investigation meeting, despite suffering a health problem;
- g. The Respondent forced the Claimant to attend the first grievance hearing on 12 September 2019, despite suffering a health problem and having attended a preliminary hearing the day before in respect of the related claims.

10. From that list:

- a. All alleged detriments above predate the submission of the fifth claim but were not raised until the presentation of the sixth claim;
- b. Point 9e has, additionally, been raised in both the third and fifth claims (i.e. the Claimant has already claimed it against this Respondent and against Ms Liao); and
- c. Points 9a to 9f additionally all predate 31 August 2019, i.e. three months before the Claimant entered EC for the third time against the Respondent.

11. In addition, there were allegations relating to complaints of a failure to make reasonable adjustments contrary to sections 20 and 21 Equality Act 2010, as set out in EJ Segal QC's orders following a further PH on 4 December 2020:

- a. The Respondent had failed to make a reasonable adjustment, between about 4 July 2019 and some days thereafter, by not acceding to the Claimant's request to adjourn a disciplinary investigation meeting (that meeting was shortly afterwards adjourned; but, the Claimant says, only after he was 'signed off sick'); and
- b. The Respondent had failed to make a reasonable adjustment by not acceding to the Claimant's request to adjourn a grievance interview on 12 September 2019 for at least one day, to allow him preparation and/or recovery time following a tribunal hearing on 11 September 2019.

Allegation a. predates 31 August 2019. Both a. and b. also predate the submission of the fifth claim (detriment a. in fact also predates claims three and four).

Respondent's application

12. The Respondent made an application to strike out the allegations (Rule 37 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013)) or for further deposit orders to be made (Rule 39). EJ Walker has already set out the basis for striking out a claim under Rule 37 in her judgment of 11 September 2019 and again in her judgment of 5 March 2020.

13. Ms Tutin addressed me on the principles of *Henderson v Henderson*¹, which were also referred to in EJ Walker's judgment and reasons of 5 March 2020. I summarise the Respondent's arguments before me as contending that a

¹ 1843 3 Hare 100

litigant cannot advance arguments that could and should have been advanced earlier; there should be a merits assessment as to whether the litigant is misusing or abusing the Tribunal's process by seeking to raise issues in that way. In short, while it will not automatically be an abuse of the process, everything should be considered in the round and a decision made as to whether the proceedings amount to abuse.

14. The Respondent says that the facts in the detriments set out above were all in the Claimant's knowledge when he submitted his earlier claims and that there was no good reason why they had not been presented within those claims. They thus offend the rule in *Henderson v Henderson*. This had been argued before EJ Walker on the earlier occasion in relation to claims three to five. She had rejected the argument in relation to claim three. She noted that the Claimant had been confused initially. He had thought that because there was a requirement to have separate EC certificates for each Respondent, there was also a requirement to have separate claim forms. He was also confused because he thought he could not address in the claim form things which he had not talked about in the EC process. When he brought claim three, he had said he thought he could not do that differently.
15. EJ Walker took into account the fact that the Claimant is a litigant in person and that English is not his first language. I do likewise (though in relation to the latter point I also note that he was a Teaching Fellow in a prestigious languages establishment and, I was told, has worked as an interpreter). However, EJ Walker nonetheless found that by the time the Claimant had lodged claims four and five, he knew that "the situation was not as he had first thought". She found it was clear in claim four (i.e. by the end of August 2019) that the Claimant had knowingly repeated allegations that were in the earlier list of issues which had been prepared by then. She considered that what the Claimant was doing, in choosing not to raise allegations earlier even though he could perfectly well have done so, was an abuse of process. She struck out allegations in the fourth and fifth claim accordingly.
16. Ms Tutin makes the argument that if the Claimant knew by the fourth or fifth claim that this was an abuse, the same must apply similarly to his state of knowledge by the time he presented the sixth claim, even though EJ Walker's decision was not in his possession until March 2020. The Claimant has not offered any explanation for why he has sought to offend the principle yet again. She asserted that he has sought continually to update his claims by stretching back to earlier allegations, thus trying to circumvent the rules on time limits and to reintroduce claims (or complaints within them) that have already been struck out.

Claimant's response

17. I asked the Claimant for such an explanation. He reminded me that he had intended to bring the sixth claim against Ms Massey as well as his employer but said that he had misunderstood once more the principle about having one ACAS EC certificate against both Ms Massey and the Respondent. He was aware that there were time limits. I asked why he had not brought the claim before. He said that it was simply because Ms Massey was in the process of her investigations and he had not received an outcome until January 2020, after he had met her. Whenever he had sent her emails about witnesses or given his comment, she had ignored him. He kept being

told he would have the chance to question her in a meeting that was supposed to have taken place on 12 September 2019.

18. The Claimant also said that until he got the outcome, he did not know whether her report would be in his favour. He questioned her on 12 September 2019 and, in terms, Ms Massey said that she had asked Dr Hoffman about matters and had trusted Dr Hoffman to tell her the truth in response. The Claimant said he had not put in the claim because this would suggest a lack of trust between him and the Respondent and that would in turn lead to victimisation of him.
19. I asked when the Claimant had found out that Ms Massey had been appointed to conduct the investigation (detriment 9a above). He said it was in November 2018 when he met her for the first time. He realised she was not impartial around July or August 2019 (later saying this was on 12 September). He found out in July 2019 (or when he got the bundle, in or around August 2019) that she had selected the witnesses who would support Dr Hoffman (detriment 9b). Detriment 9d also took place in August 2019. He considers the Respondent's HR team to be responsible for appointing Ms Massey (I observe that this is likely to be correct; at any rate, she did not appoint herself) and for the alleged detriments under 9f and 9g. He confirmed that it is not his case in any event that 9g is a detriment for making a protected disclosure.
20. The Claimant agreed that detriment 9e is a duplicate of allegations made in two previous claims and further that he does not advance it against Ms Massey. He said that all his earlier claims had been submitted by the time these issues arose and that he had not appreciated the rules until his hearing with EJ Walker in December 2019 when she gave him instructions. He contended that he believed he had to put in the claim against Ms Liao (the Fourth Respondent overall and named in the fifth claim) in September 2019 because of the time limits. He had prepared that claim in May 2019.
21. The Claimant said he had obtained an EC certificate against Ms Liao in August 2019 (I did not have that in the bundle) and believed he had to get another certificate against the Respondent. He thought that if he had approached ACAS again, he might miss the chance to put in the claim against Ms Liao because of the operation of time limits. He told me he had understood from his earlier hearings that if matters were still at an initial stage when he brought the claim, it could work against him because he might have a weak case after only one incident and he would have to pay a deposit and keep complaining. He submitted the fifth claim, according to his own understanding, on the last day to remain within the time limit.

Findings and Conclusions

22. I find that allegation 9e (the instigation by the Respondent of disciplinary proceedings against the Claimant in May 2019) is an abuse of process in that the same complaint has already been brought against both this Respondent and Ms Liao. It is a duplication of something already in the list of issues.
23. I find that allegations 9a to 9f are all out of time in relation to this claim. I consider the Claimant has no reasonable prospects of convincing the

Employment Tribunal that they were continuing acts since each of them is a standalone issue:

- a. Point 9a relates to the appointment of Ms Massey; the Claimant discovered this in November 2018;
- b. Point 9b relates to Ms Massey's alleged selection of witnesses favourable to Dr Hoffman. The Claimant says he discovered this in July or August 2019.
- c. Point 9c relates to Ms Massey allegedly giving the Claimant insufficient time at their first meeting in November 2018;
- d. Point 9d relates to Ms Massey's finalisation of grievance issues in August 2019;
- e. Point 9e relates to disciplinary action instigated in May 2019;
- f. Point 9f relates to requiring the Claimant to attend a disciplinary hearing in July 2019.

24. Further, in relation to each of the above:

- a. Points 9a and 9c predate the Claimant's first and all subsequent claims;
- b. Points 9b and 9f possibly predate his third claim and definitely predate his fourth and fifth claims;
- c. Point 9d similarly predates his fourth and fifth claims;
- d. Point 9e predates all claims other than the first.

25. I accept the Respondent's submission that the Claimant has given no, or no satisfactory, explanation either for the delay in raising these complaints or for the reason why they were not raised in earlier claims. Although the Claimant suggested that he did not want to delay the claim while he went back to ACAS for a certificate against Ms Massey, as I have noted above, he did not in fact do so in relation to this claim (though he did obtain an EC certificate against her for his eighth claim). So that explanation does not hold water.

26. It is a moot point whether the Claimant needed to obtain a third certificate against the Respondent, two earlier certificates having been issued on 22 May and 24 June 2019. It is notable that the fifth claim was lodged within three months of the latter EC certificate being issued. There is no reason on the face of it why the Claimant did not include all the disputed points in claim five and name the Respondent as well as Ms Liao in that claim, using the certificate he had obtained against her and one of his earlier certificates against the Respondent.

27. Further, I accept that what was said by EJ Walker as to the Claimant's earlier misunderstanding, and the allowance she made accordingly in relation to claim three, was not applied by her to claims four and/or five. I do not accept that the Claimant could have only understood what was being said once he had attended the hearing before her in December 2019. She does not deal with the *Henderson v Henderson*/abuse of process point in her case management summary from that hearing. She says that there were discussions about the claims with a view to clarification and that the Claimant withdrew a number of allegations which were dismissed on withdrawal. She expressly says that the Tribunal "did not begin to consider

the Respondent's strike out application". By contrast, as I have said above, that was specifically before her on the next occasion in March 2020.

28. As I have noted above however, EJ Walker had said on 11 September 2019 that she would not add a new issue where the Claimant had chosen not to include a piece of information in a timely fashion even though it was available to him. Her words would have been particularly fresh in his mind given that she made her decision and, as I have said, gave oral reasons just a week before he submitted his fifth claim in September 2019.
29. There can be no good reason why, in those circumstances, the Claimant delayed nearly another four months until January 2020 before detailing these allegations in claim six. His explanations that he thought the Respondent would victimise him (or consider he had breached the implied term of trust and confidence) if he raised them earlier, or that he did not yet know whether Ms Massey's report would be in his favour, do not stand up to scrutiny.
30. As to the first of those explanations, the Claimant had already brought two earlier claims against this Respondent, in consecutive months (June and July 2019). As to the second explanation, he appears to be suggesting that if Ms Massey's report had been in his favour, he would not have considered the matters complained of to be detriments at all. Clearly that cannot be right. A detriment (e.g. in relation to the appointment of a manager to conduct an investigation) does not become a detriment only if the manager's decision is ultimately not in the employee's favour.
31. To the extent (if at all) that the Claimant argues he was not aware that he could have added the Respondent to the claim against Ms Liao, I consider that in light of the fact that he had already brought the fourth claim against two different named respondents, each with their own EC certificate, that argument would also not stand up.
32. I therefore conclude that it would be an abuse of process to allow these complaints to proceed on a standalone basis and accordingly they are struck out under Rule 37(1)(a). Had I not struck them out on that basis, I should have done so (in relation to 9a to 9f) on the basis that they were brought out of time and there would be no reasonable prospect of the Claimant persuading a Tribunal to extend time. I emphasise again however that the Claimant may include details about them as background in his witness statement for the full Hearing that has been listed for November 2022. 9e proceeds as a complaint against the Respondent because it is contained in the list of issues for claim three. The Claimant expressly confirmed in any case that 9g is not relied on as a detriment for making a protected disclosure and he cannot, therefore, object to its dismissal for that reason.
33. So far as the allegations of failure to make reasonable adjustments are concerned, the same considerations apply. The first of those alleged failures is out of time and there is no prospect of time being extended; it involves a refusal to postpone a disciplinary hearing scheduled for the beginning of July which was however later postponed. This allegation predates claims three, four and five. The second of the alleged failures to

make reasonable adjustments predates the fifth claim.

34. For the reasons I have set out above, and given the Claimant's state of knowledge by the date he submitted that fifth claim, I conclude that it would be an abuse of process to allow these complaints to proceed and accordingly they are also struck out under Rule 37(1)(a) (and the first would have been struck out because of time in any event).

Employment Judge Norris
Date: 27 November 2021

REASONS SENT TO THE PARTIES ON

29/11/2021.

FOR THE TRIBUNAL OFFICE