



EMPLOYMENT TRIBUNALS

Claimant

Mr A Adenekan

v

Respondent

British Gas Trading Limited

PRELIMINARY HEARING

Heard at: Watford by CVP
Before: Employment Judge R Lewis

On: 8 April 2022

Appearances:

For the Claimant: In person

For the Respondents: No participation

JUDGMENT

1. The claimant's application for reconsideration of rejection of the above claim is refused and accordingly the claim has been rejected.

REASONS

1. I first set out the procedural history of this hearing. On 11 February 2021 the claimant presented an ET1. It stated that it related to employment which had been between March 2015 and January 2017. Day A was 4 January 2021 and Day B was 18 January 2021. On its face, it was years out of time.

2. At Box 8, the claimant wrote:

“I am challenging the validity of liability judgment and/or set aside the liability judgment on the ground that the said judgment was procured through fraud on the tribunal.”

3. At Box 9.2, in reply to being asked what compensation was sought, the claimant wrote:

“To set aside the liability judgment.”

4. The claimant attached a five-page annexe, which started as follows:

“1 This claim relates to the liability judgment of an Employment Tribunal sitting at Watford and promulgated 12 December 2019 in relation to my claim that the

respondent treated me unlawfully (1300349/2017, 1301347/2017 and 3334419/2018)

2. This claim is a challenge to the validity of liability judgment and/or set aside the liability judgment on the ground that the said judgment was procured through fraud on the court ...
3. The law should not allow manipulation of the underlying facts.
4. It would be wrong not to interfere in a case where it can be shown that a judgment was procured by false evidence and ... documents.
5. A number of documents upon which the respondent relied had been altered or doctored.”

5. Rule 12(1) provides as follows:-

“The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim or part of it may be

- (a) one which the tribunal has no jurisdiction to consider,
- (b)...or is otherwise an abuse of the process...;

(2) The claim or part of it shall be rejected if the Judge considers that the claim or part of it is of a kind described in sub paragraphs (a), (b) above.”

6. The file was referred at vetting stage to a Judge. On 23 February I gave a direction that the claim should be rejected, of which the claimant was notified by letter the same day.

7. The rejection letter stated that the reason for rejection was:

“Your complaint is one which the tribunal has no jurisdiction to consider and is an abuse of process.”

8. The claimant asked for written reasons for rejection and there was a delay in that request reaching me. By letter of 14 May the tribunal repeated what had been said in the February letter.

9. There was an event on which the tribunal file is not fully clear. It appears that the claimant applied for reconsideration of the rejection and in doing so requested a hearing in accordance with Rule 13(3). The sub-rule confers an unqualified right, if applied for, to an oral hearing of an application for reconsideration of a rejection. It is not clear if the full application was drawn to my attention, but I failed to direct a hearing, and so no hearing took place. To the extent that that was my mistake, I apologise to the claimant for it.

10. The claimant also appealed against the rejection, and by Order sealed on 13 January 2022 the EAT (HHJ Shanks) directed that this hearing take place. The direction referred to a denial of the claimant’s rights under Rule 13(3). The learned Judge wrote:

“Although his application looks extremely unpromising [a hearing] should happen before a final decision is made and the [EAT] appeal proceeds any further.”

11. The Tribunal file included a letter which I had not seen before the start of this hearing, in which the claimant's wife, who has assisted him, but is not a lawyer, asked for this hearing to take place after May. The claimant mentioned this, and it therefore seemed to me right (although he did not ask for an adjournment), to take a 20-minute break in the middle of this hearing, to enable the claimant to reflect on the discussion so far, and if need be to speak to an advisor.
12. Due to office error, the CVP link for today was sent to Messrs. Pinsent Masons, representing the respondent. Not surprisingly, not knowing about the case, they had contacted the tribunal on 7 April, and on my direction were told that this was a hearing under Rule 13(3) at which the claimant only would be heard. I have nevertheless directed that a copy of these reasons be sent to them.
13. For the purposes of this hearing the claimant submitted a bundle of about 430 pages (I note that that would have been around 10% of the material before the 2019 Tribunal), a skeleton of which the first 3 pages consisted of submissions on Takhar (see below) and some 18 pages of amended particulars of claim in which the claimant set out at length his analysis of the alleged frauds which he considered had taken place at the previous hearing.
14. The claimant's submission referred at length to Takhar v Gracefield Developments Limited, 2019 UK SC13. I read the judgment, and was particularly assisted by paragraph 60 in which Lord Sumption wrote:

“An action to set aside an earlier judgment for fraud is not a procedural application but a cause of action.”
15. I noted the similar statement by Lord Briggs at paragraph 81:

“The starting point is clearly to recognize that the right to have a judgment set aside for fraud is a distinct cause of action recognised by the common law”.
16. Today's bundle included the 70-page judgment of the Tribunal in the claimant's 2017 and 2018 cases. They had been heard by a full Tribunal over 12 days in November and December 2019 and reasons sent to the parties on 20 December 2019.
17. The claimant told me that he had applied to the hearing judge (EJ Hyams) for reconsideration which had been refused without a hearing. He had also attempted to appeal and although there was no record of it, I understood that he had failed at the Rule 3(10) stage.
18. It became apparent during this hearing that although the claimant used some legal terminology, he used it with incomplete understanding. It also became apparent that the claimant had misunderstood the Takhar principle.
19. In addition to his written submission, the claimant made a number of major points.

20. I here set out my summary of the main points in the claimants submissions. They are not set out exhaustively or in order of priority. Save where I have used parentheses, I have tried to paraphrase the claimant's points concisely.
- 20.1 This is an independent freestanding claim of fraud, in which the tribunal is asked to set aside the judgment of Judge Hyams and members;
 - 20.2 In setting aside the Hyams judgment, the Tribunal should be proactive, so as to purge its records of any judgment procured by fraud;
 - 20.3 In the event of that taking place, the Tribunal "would need to provide the necessary remedy" and it would know how matters were to proceed after that;
 - 20.4 The tribunal has in any event power to reconsider a judgment without being asked of its own initiative;
 - 20.5 There is no reason why the principles in Takhar should not apply to an Employment Tribunal case and should not enable this fraud case to be heard;
 - 20.6 Every court has the authority to set aside a judgment obtained by fraud and for those purposes the Tribunal is a court like any other;
 - 20.7 As a litigant in person the claimant should have the benefit of the maximum possible flexibility to enable justice to be done;
 - 20.8 The claimant's submissions proved facts about fraud, as a result of which the tribunal was duty bound to proceed to deal with them;
 - 20.9 That at this stage the essential question is whether there is sufficient evidence to raise a serious question of fraud, fraud not having been decided in the previous proceedings;
 - 20.10 Even if the tribunal rules contain no express power to hear this case, or a case of this type, that absence should not put a bar on allowing the claimant to progress this claim.
 - 20.11 The Tribunal could deal with this in a relatively short timescale and set its own directions.

Discussion

21. I record that I did not permit the claimant to explain any of the allegations of fraud to me. It would not have been right in principle to do so in the absence of the other party. This hearing was on jurisdiction only. It was not a hearing on whether or not the fraud allegations are weak or strong. Furthermore, the task, in a three-hour preliminary hearing by CVP, of coming to an understanding of a document heavy case decided by full Tribunal over 12 days, seemed to me impossible.

22. That said, I observe that the claimant proceeded on the basis that his submissions on aspects of the hearing before EJ Hyams proved that fraud had taken place. I note that in the Takhar case (1) the allegation of fraud was based on advice from Mr R Radley, who was independent of the first trial; (2) that Mr Radley is an eminent expert in his field; (3) that unusually for an expert, he assessed his opinion as 'conclusive;' (4) that the point on which he advised was at the heart of the first trial; and (5) that the alleged fraud could not, on its face, be explained by anything other than deliberate fraud by a party. I was sceptical that the claimant's particulars could be seen as presenting a comparable case.
23. I proceeded on the following, simple basis:
- 22.1 The remedy available to any party disappointed by the outcome of tribunal proceedings is to ask the same tribunal or the same Judge for reconsideration, and/or to appeal. The claimant has exhausted both those remedies a long time ago. He has not made a second request for reconsideration, or a second attempt to appeal.
- 22.2 Rule 72 indeed empowers the Tribunal to reconsider a matter of its own initiative. That power is available to the tribunal which heard and decided the case. I do not have authority to reconsider the judgment of another Judge unless appointed to do so by the Regional Judge. I do not have that authority of my own initiative.
- 22.3 While I do not decide the point, and in the absence of full, reasoned argument, I accept for today's purposes that the broad principle in Takhar, set out in the two sentences which I have quoted above, applies to litigation in the Employment Tribunal. While I accept in principle that there is a freestanding common law cause of action to set aside the judgment of an employment tribunal which has been obtained by fraud, I make no decision on the relationship between that right and a party's statutory rights of appeal against an ET judgment.
- 22.4 It does not follow that that claim is one which an Employment Tribunal has jurisdiction to consider. The Employment Tribunal is a creature of statute and has only jurisdiction to hear such cases as statute requires or authorises it to do. A civil claim based on the cause of action summarised by Lords Sumption and Briggs is not a claim which the Employment Tribunal has been granted power to hear. This claim cannot proceed in an Employment Tribunal.
- 22.5 Does the County Court or High Court have power to consider such a claim arising out of an Employment Tribunal judgment? That is not a matter for me to decide, but if the approach in my two previous sub paragraphs is right, then that would seem to follow.
- 22.6 I therefore conclude that I was right to reject this claim on the basis that the tribunal has no jurisdiction to hear it.
- 22.7 Having heard the claimant explain, at some length, that this is not an application to rehear the earlier proceedings, but a free-standing independent cause of action, I accept that it could be argued that these

proceedings are not an abuse of process. I need not make any further determination on this point.

Employment Judge R Lewis

27 April 2022

Sent to the parties on:

.....

For the Tribunal:

.....