



# EMPLOYMENT TRIBUNALS

**Claimant:** Aleksandr Zabolotnov

**Respondent:** (1) Medical Defence Shield Limited  
(2) Joydeep Grover  
(3) Sarah Dodds  
(4) Amardeep Nibber

**Before:** Employment Judge Laidler (on the papers)

## JUDGMENT

**The claimant's application for recusal of this Employment Judge is refused**

## REASONS

1. The claimant made applications dated the 20 March and 2 May 2022 that this Employment Judge recuse herself. The applications were not referred to the judge until the 16 May 2022.

### **Procedural history**

2. The claim was issued on the 22 April 2021. The claimant brought claims of race and sex discrimination, holiday pay, other payments and 'contractual breaches'. There is no unfair dismissal claim as he did not have the requisite service to bring such a claim. The claim is brought against the employer and three named individuals.
3. In its response the respondents denied all the claims.
4. By notice of the 8 August 2021 the parties were advised of a preliminary hearing for case management to take place on 7 December 2021 at the Cambridge Employment Tribunal.

5. By email of the 20 August 2021 the respondent's representative requested the preliminary hearing to be by telephone in view of the 'ongoing situation with regards to Covid 19'.
6. The request was considered by E J Tynan and by notice of the 23 November 2021 the parties were advised that the hearing would proceed as a 'hybrid hearing' where the parties attend by video or attend at the tribunal office.

### Hearing on 7 December 2021

7. The hearing was assigned to this Employment Judge and was listed for 2pm. The judge did not have the tribunal file. She was unaware that the claimant was to attend the Cambridge Employment Tribunal. There were connection difficulties when the claimant tried to join by mobile phone and he could not be heard or seen. The hearing re-started at approximately 2.30 by the claimant dialling in on his mobile. The judge's recollection is that he could be heard but not seen. The hearing then continued to identify the claims and issues.
8. The claimant alleges in his recusal application that the judge 'and the Respondents went away for a private talk without me being present...' That was not the case. When the claimant could not be heard or seen on the video the hearing adjourned until he was able to connect. There were no discussions between the judge and the respondents without the claimant present.
9. Once the claimant had been able to join the hearing it proceeded to clarify the issues and make case management orders as set out in the summary sent to the parties on the 8 January 2022. This included the listing of an Open Preliminary Hearing to determine the issues set out below and orders for the disclosure of documents relating to the preliminary issues to be determined at that hearing.
10. The issues to be determined at the next Preliminary Hearing are:
  - (i) Whether all the complaints against the first respondent are out of time and whether the tribunal has jurisdiction to determine them.
  - (ii) Whether complaints of breach of contract and/or an authorised deduction from wages can be brought against individual named respondents who were not the claimant's employer.
  - (iii) Whether the matters alleged to amount to a breach of contract are capable of being such and whether such claims having no

reasonable prospect of success should be struck out or in the alternative whether such claims having little reasonable prospect the claimant should be ordered to pay a deposit as a condition of continuing to advance those claims.

- (iv) Whether the two protected acts relied upon by the claimant as set out in the list of issues above can amount to protected acts within the meaning of section 27 of the Equality Act 2010 and if not whether the claim of victimisation on the grounds of sex and/or race should be dismissed as having no reasonable prospect of success or such claims having little reasonable prospect the claimant should be ordered to pay a deposit as a condition of continuing to advance those claims .
- (v) To conduct further case management in relation to the claims that proceed.

### **Subsequent case management**

- 11. By email of the 20 January 2022 the respondent's representative wrote to the tribunal seeking a revision to the dates for the preparation of the bundle and exchange of witness statements pointing out that the bundle was not due to be finalised until the 4 March but witness statements were to be exchange don the 14 February. As this would mean that pages in the bundle could not be cross referenced in the witness statements the respondent sought a variation to the 1 February for the finalisation of the bundle.
- 12. In an email of the 21 January 2012 the claimant objected to the respondent's application. He stated the change of date would be detrimental to him and that he was seeking legal advice.
- 13. There was further correspondence received from the parties in February and March. This was not seen by the Employment Judge until the 11 March 2022. In the meantime the parties had been sent on the 6 March notification that the Preliminary Hearing would take place on the 20 June 2022.
- 14. The judge gave instructions on the 11 March which were actioned on the 20 March when the letter the claimant refers to was sent to the parties. In this the judge endeavoured to explain that the dates for the finalisation of the bundle and exchange of witness statements had been the wrong way round and had she seen the respondent's application at the time she would have granted it as it is preferably for the bundle to be finalised prior to the exchange of witness statements.
- 15. The judge also explained in that letter that the next hearing was a preliminary one only to deal with the issues identified and it may well be that

the respondent did not intend to call evidence and did not have many documents on which it intended to rely.

### **Conclusions on recusal**

16. There are no circumstances existing which would justify my recusing myself in this case.
17. There was no private discussion with the respondents on the 7 December 2021 or indeed at any other time.
18. At the case management hearing on the 7 December 2021 various issues were identified that need to be determined before the case can be listed for a full merits hearing. No final decision on those issues or the case generally has been made by this judge. All those matters remain to be determined.
19. The orders made on the 7 December were for preparation for the preliminary hearing. It is therefore for the parties to decide which documents they seek to rely for a determination of the preliminary issues. The claimant has not been ordered to disclose all his documents, only those relating to the preliminary issues. The same order applies to the respondent.
20. Although the claimant does not use the word 'bias' his application has been read as that must be what he is asserting as he suggests the judge has acted in favour of the respondent and to his detriment. The test is whether:  
  
*'...the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.'*  
  
Porter v Magill [2002] AC 357
21. There has been no bias conscious or unconscious and none that an informed observer being made aware of all these facts could consider there had been. All that has been done is case manage the case and make standard orders. No determination has been made of the claimant's claims. The issues to be determined at the Open Preliminary Hearing go to the jurisdiction of the tribunal to hear the claims and must be determined before the case proceeds further. These are matters that the tribunal must consider whether raised by a party or not.

22. The claimant's application for recusal is therefore refused.

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Employment Judge Laidler

Date: 26 May 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

13 June 2022

FOR THE TRIBUNAL OFFICE