Neutral Citation Number: [2022] EAT 95

Case No: EA-2020-000960-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 October 2021

Before :

HIS HONOUR JUDGE WAYNE BEARD

- -

Between :

MR L GARCIA	**Appellant**
- and -	
BIGBUX AND OTHERS	**Respondent**

- -
- -

Mr L Garcia the Appellant in Person

RULE 3(10) APPLICATION – APPELLANT ONLY
Hearing date: 8 October 2021

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JUDGMENT

Revised

HIS HONOUR JUDGE WAYNE BEARD

Judgment

1. This is an application under rule 3(10) of the **Employment Appeal Tribunal Rules** at the rule 3(7) stage HHJ Taylor found there were no reasonable grounds for bringing the appeal.
2. Upon the application orders directed preparation of a bundle and provision of a skeleton argument by 10 September 2021 extended to 29 September 2021 by the registrar on 27 September 2021 for the presentation of the bundle.
3. An initial bundle of documents was presented on that date but the skeleton argument was not and was received on 7 October. Mr Garcia made an application on the 29th to extend time by 48 hours but that had not been given a response before today's hearing. At the hearing today, Mr Garcia presented further documents in a separate bundle for consideration at this hearing.
4. Although both the second bundle and the skeleton argument were presented after the time given by the registrar for being included in this 3(10) hearing, I recognise that Mr Garcia is an unrepresented party. On that basis I have taken account of the original bundle, the documents in the bundle presented today and the skeleton argument. In addition I have heard and considered the oral submissions made by Mr Garcia today.
5. The appeal is made against a decision of Regional Employment Judge Foxwell, made on 25 October 2020 (recorded in a letter from the tribunal of that date), to consolidate three claims made by the Appellant. These were to be considered at a hearing on the issue of strike out. The reasons for that decision were set out in a document that was sent from the tribunal on 18 November 2020 and were: because each claim of sex discrimination involved similar allegations, namely that a claimant, a man, has applied unsuccessfully for a job said to be offered to women only; that the name of the claimant in the cases 33304580/2020 and 33304798/2020 is Mr Ramos, but he gives the same PO box address as the claimant in case

33302095/2020, Mr Garcia, so that Judge Foxwell considered it was possible that Mr Ramos and Mr Garcia were the same person. It also sets out that Mr Garcia made a similar claim in case 3318988/ 2019 and that that claim was dismissed and adverse findings were made about Mr Garcia's credibility and the genuineness of the claim. That the claimant, in the three claims, made no reference to the other current cases, despite relevance to potential remedy. He refers to the obvious risk of double recovery were the claimant to succeed in more than one of them. He then says:

> "While it will be matter for the judge hearing the case to decide, the above factors may show that these claims are not based on genuine job applications and should therefore be struck out as an abuse of process or, alternatively, made the subject of a deposit order because they stand little prospect of success. Such orders cannot be made without a hearing."

He then finally says that:

> "The Tribunal has made these orders of its own motion because it is unlikely that the individual respondents would otherwise be aware of one another, of the similarities between their cases and/or the possible link between Mr Garcia and Mr Ramos."

6. Mr Garcia argues that the law was incorrectly applied in making that decision. His grounds of appeal are: first that issuing multiple claims is not against the law and there is no basis for banning a victim of discrimination from issuing multiple claims against different respondents. He also refers to the ET1 standard form as having no questions about multiple claims; in his second ground he argues that the judge did not follow the correct procedures, in that the judge did not ask any for any comments about this consolidation from the parties; the Appellant expressed concern about confidential information being passed between the three respondents. He argues that the reasons for the decision were not included on the 25 October 2020 letter; the third ground of appeal was that the judge had no evidence to support his decision; Judge Foxwell did not have any evidence that the three claims deserved to be struck out and that they were only placed in that position because they came from this appellant. The Appellant states that the claims were about discriminatory advertisments and there was no evidence that those

advertisements were not discriminatory; the fourth ground of complaint was that the judge was unfairly biased and that the appellant was treated differently from other claimants. The Appellant argued that he had, effectively, been black listed and victimised by consolidating the claim, he argued that privileged information had been used, that information having been obtained from a Judgment of Employment Judge Bloch Q.C.. The Appellant argued that the decision should not have been made, that with four parties a judge would be confused, processing too much information, that it was unfair to the Appellant because it forced him to deal with a number of respondents, placing pressure on him.

7. Today, in the course of his argument Mr Garcia has mentioned various orders made by Employment Judge Quill; those orders are not subject of appeal. I have not included the details of those orders in this decision. I allowed those arguments to be advanced so that, if there was anything arising from those decisions which impacted on and supported the arguments that Mr Garcia put forward, they could be taken account of in my conclusions on the order of the 25 October 2020, subject of this appeal.

8. In argument before me today, Mr Garcia raised the fact that now, other claims made by him have been added to the consolidated hearing; nine claims in total will now be considered at the same time, adding six to the original three.

9. The Appellant told me that a judgment, promulgated on 4 March 2020, made by a tribunal which was presided over by Employment Judge Bloch QC, came to the conclusion that the appellant had made a vexatious claim. The appellant made a complaint to Judge Barry Clarke, the President of Employment Tribunals. The response did not uphold the compliant on the grounds that there had been an independent judicial decision. That response had come through on 18 October2020. The decision to consolidate, as Mr Garcia puts it, was made just eight days later by Regional Employment Judge Foxwell. The appellant's argument is that this was a decision, made by Judge Foxwell, to punish him for having made the complaint against Judge Bloch QC. In terms he argues that Judge Foxwell would not have been aware of him, other than

by the complaint. This is because the complaint, as is normal in these circumstances, would be communicated between the President and the regional employment judge with responsibility for the judge who is subject of the complaint.

10. In the skeleton argument, complaints are made about later decisions of Employment Judge Quill, because his orders added other claims so that nine are now consolidated in one hearing. Mr Garcia complains that some of these claims were commenced in other regions and were transferred in. He argues that this shows a pattern because he is required to prove identity, to disclose whether there is a general civil restraint order against him and to prepare witness statements and bundles in the nine cases. He complains that, in particular, two of the respondents have presented no response to the tribunal. Further, in respect of four other respondents, they have been informed by the tribunal that they do not need to present a response until further order.

11. Mr Garcia has referred me to the **Equality Act 2010** and section 27 which deals with the victimisation. In terms of that section, insofar as it is relevant, it provides that:

> **Victimisation**
>
> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because ---
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act
>
> (a) bringing proceedings under this Act;"

Subsection (3) indicates:

> " (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
> (4) This section applies only where the person subjected to a detriment is an individual."

12. Rule 29 of the **Employment Tribunal Rules of Procedure 2013** provide that under the heading "Case Management Orders":

> "The Tribunal may at any stage of the proceedings, on its own initiative or on

application, make a case management order."

That is subject to rule 30A(2) and (3) which is not relevant because it deals with postponements.

> "... the particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made."

13. Under rule 53 of the rules it is provided that the scope of preliminary hearings is such as follows:

> " (1) A preliminary hearing is a hearing at which the Tribunal may do one or more of the following---
>
> (a) conduct a preliminary consideration of the claim with the parties and make a case management a case management order (including an order relating to the conduct of the final hearing);
> (b) determine any preliminary issue;
> (c) consider whether a claim or response, or any part, should be struck out under rule 37;
> (d) make a deposit order under rule 39;
> (e) explore the possibility of settlement or alternative dispute resolution (including judicial mediation)."

It indicates there may be more than one preliminary hearing in any case. Under 53(3):

> "'Preliminary issue' means, as regards any complaint, any substantive issue which may determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed)."

14. Rules 37 and 39 allow a tribunal to strike out a claim under rule 37. That can be done on the basis that it is scandalous or vexatious or has no reasonable prospect of success. Deposit orders can be ordered under rule 39 when a decision is made that any claim or part of a claim has little reasonable prospects of success.

15. It is clear that the decision on 25 October is a case management order under rule 29. As such, the powers of the Appeal Tribunal, in relation to such an order, are confined. The Appeal tribunal is only entitled to consider whether the employment judge, in using his discretion to make such an order, has the power under the rules to make such an order, and, if he has such power, whether that judge has taken account of any issue which is irrelevant to the decision in coming to that conclusion, or has not taken account of a matter which is relevant in coming to

that conclusion, or has made a decision that no employment judge acting reasonably could make in the circumstances.

16. In terms of the matters that have been referred to relating to Employment Judge Quill, it appears to me that they are matters under which I have no jurisdiction; there is no appeal in place in respect of them. Further I do not consider that they are relevant to this appeal, they occur after the decision of Judge Foxwell and are made by another judge. Therefore, I deal solely with the decision under appeal, that of Employment Judge Foxwell made on 25 October 2020, for the reasons disclosed by him on 18 November 2020.

17. Mr Garcia argues that victimisation applies; leaving aside that there has been no question that has been finally resolved by the Tribunal other than that there should be a preliminary hearing, I find it difficult to identify that there is any specific detriment in consolidating the hearing of these matters. But even leaving that aside, in order for victimisation to be demonstrated it is necessary that the protected act, in other words in this case the bringing of the claim, is the reason why the detriment has occurred. There is, of course, the fact that the victimisation claim does not apply to court proceedings as such. But, in any event, exploring the argument, further in my judgment, it cannot be made out because there would need to be evidence, other than simply the proximity of time, that the reason for the consolidation was the bringing of the claims themselves as opposed to the reasons advanced by Employment Judge Foxwell.

18. In terms, therefore, I think there is no substance in any argument that there is victimisation within the meaning of the **Equality Act** in this case. There is no doubt that the bringing of the claim is a protected act. There is no doubt that the bringing of a protected act can mean that there has been victimisation. However, it cannot mean that carrying out proper case management in dealing with a claim of discrimination could be considered to be detriment in my judgment. As I have already indicated, it is part of proceedings to which the **Act** would not apply in any event.

19. That leaves the questions raised on the grounds as presented by the appellant. As to the correct

law, this is a case management order for the proper conduct of proceedings. Bringing those matters together for a strike out hearing, where there a possibility arises of there being no substance to the claims, is within the wide remit of case management powers. It seems to me, therefore, that in answering the first question I posed above, as to the approach taken by the judge, he has the powers to make an order such as this.

20. The remaining question for me is, did Judge Foxwell take account of anything he should not have and/or did he not take account of something that he should have, or was the decision he made a decision that no reasonable employment judge could have reached? I have set out the reasons advanced by Judge Foxwell in writing on 18 November 2020. It seems clear to me that the similarity in the applications, the differences in names but with the connecting addresses and the reference to the claim of **Garcia v The Gift Corner**, where findings of lack of credibility and lack of genuineness were made, are proper reasons for a Judge to consider drawing these claims together in one hearing, along with the other reasons given. There were proper grounds, therefore, in the Tribunal to make such an order. It took account of matters of which it was entitled to take account in coming to that decision, and there is no evidence that anything else was behind the decision.

21. That leaves the question of bias. It seems to me that there is no indication, other than the eight day gap, that Judge Foxwell would have been acting in a biased manner in coming to his conclusions. In any event, the complaint made was not against Judge Foxwell but against Employment Judge Bloch. It seems to me in those circumstances, considering the test for bias, which is whether a reasonable person with full understanding of the relevant information sitting at the back of the court could come to the conclusion that there was bias being shown, in my judgment real or apparent bias is not shown in the circumstances set out above.

22. Looking at the grounds of appeal specifically, therefore, was Judge Foxwell applying the correct law? Under rule 29 and rule 53 he was entitled to make an order that these cases be heard by the same judge at the same hearing. He was not making a decision under rule 37 or

39, but simply allowing such a decision to be considered. He was therefore applying the correct law as to the management of claims in the Employment Tribunal.

23. In terms of following the procedure, the judge was entitled to make a decision on his own initiative. I do not consider that that ground has any substance.

24. In terms of having no evidence, the employment judge had grounds to consider that the claims should be brought together. Those grounds were the indication from the earlier case based on similar facts, that of the **Gift Box** case where findings in relation to credibility and genuineness were made, are such that that raises a possibility, where a number of other claims are made, some using other names, but where the address and other information are the same, is sufficient for that conclusion to be drawn.

25. The fourth ground, that there was a bias towards the other party and the arguments of black listing and victimisation, are all without substance. In my judgment, consolidating these claims was an appropriate use of court time and case management.

26. On that basis I have come to the conclusion that there are no reasonable grounds for bringing this appeal.