



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimants**

C1 – Miss Sidra Rana  
C2 – Miss Mobina Saif  
Applicant - TYU

**Respondent**

ILA Spa Limited

**Private Preliminary Hearing  
held at Reading on**

12 August 2019

**Representation**

<b>Applicant</b>	Mr J Davies, counsel
<b>Respondent</b>	Ms T Burton, counsel

**Employment Judge**

Vowles (sitting alone)

### RESERVED DECISION ON APPLICATION FOR RULE 50 ORDER

**Evidence**

1. The Tribunal heard evidence on oath and heard submissions from the representatives and read documents provided by the parties. The Tribunal determined as follows.

**Applicant - Application for a Rule 50 Order**

2. The application for a Rule 50 Order is refused.

**Reasons**

3. This decision was reserved and written reasons are attached.

## REASONS

### Background

1. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 include the following:

#### *Regulation 14 - Register and Proof of Judgments*

- (1) *The Lord Chancellor shall maintain a register containing a copy of all judgments and written reasons issued by a Tribunal which are required to be entered in the register under Schedules 1 to 3*
- (2) *(...)*
- (3) *A document purporting to be certified by a member of staff of a Tribunal to be a true copy of a judgment in the register shall, unless the contrary is proved, be sufficient evidence of the document and its contents.*

#### Schedule 1, paragraph 67 - The Register

- 67 *Subject to rules 50 and 94, a copy shall be entered in the Register of any judgment and of any written reasons for a judgment.*
2. Since February 2017 Her Majesty's Courts and Tribunal Service (HMCTS) has published all Employment Tribunal judgments and reasons in an online public register. Accordingly, members of the public may read judgments and reasons online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions).
  3. On 27 and 28 March 2018 at a public full merits hearing held at Reading, the Tribunal (Employment Judge Vowles sitting alone) heard complaints of unfair dismissal and wrongful dismissal. The complaints failed and were dismissed in a reserved judgment with reasons promulgated on 30 April 2018.
  4. TYU, the Applicant, was not party to those proceedings, nor was she a witness at the hearing. She was however referred to by name in paragraphs 8, 9, 10, 11, 12 and 35 of the judgment reasons.
  5. On 2 July 2018 the Applicant wrote to the Tribunal as follows:

*"Watford Employment Tribunal – Case Numbers 3324788/2017 and 3324789/2017"*

*I am writing to express serious concerns about the use of my name in the Reserved Judgement on this case, which has been made public on the internet.*

*I was neither the complainant nor the respondent in this case, nor was I a witness, yet I have been repeatedly named in ways which are highly damaging to my reputation and employment prospects and which have caused me a considerable amount of distress.*

*Simply regurgitating statements made by the respondent in this case does not make those statements true.*

*My understanding of the absolute privilege is that it can only apply to statement that are relevant to the particular claim in question.*

*Paragraphs 8, 9, 10 and 11 of this document are totally irrelevant to this claim. The judge himself even states the family connection was irrelevant to the claimants' dismissal in paragraph 35.*

*Paragraph 12 is a summary of two statements made by the respondent's employees, copies of which I have. Neither of these statements mentions me by name in this context. The inclusion of my name in this paragraph is therefore a fabrication/inference of the part of the judge.*

*For these reasons, I believe these parts of the document are not subject to absolute privilege and are therefore defamatory.*

*Irrespective of this, any mention of my name in this document is a breach of my right to privacy as set out in Article 17 of the General Data Protection Regulation.*

*I would be grateful therefore if you would remove this document from public view or, at the very least, redact it so my name does not appear.*

*Please confirm that this is being done.*

6. The relevant paragraphs in the judgment reasons are as follows:

*8. There were a number of staff members who were part of the same family. TYU, Saeeda Rana (Orders & Despatch – self-employed), Sidra Rana (Production Co-ordinator) and Mobina Saif (Production Assistant).*

9. *At the beginning of October 2016 concerns were brought to the attention of Mr John Leicester (CEO and Managing Director) that Saeeda had been falsely claiming payment for hours not worked and that TYU had been signing off payment of invoices which were false. A news article was also brought to Mr Leicester's attention which showed that Saeeda had a previous conviction for fraud as director of a charity. TYU was invited to a disciplinary hearing but resigned before the hearing took place. Saeeda's engagement was terminated.*

10. *Following TYU's departure, Mrs Steedman took up responsibility for HR matters although she had no HR training or experience.*

11. *Because of the circumstances of the departure of TYU and Saeeda, Mrs Denise Leicester (John Leicester's wife and the founder of ILA-Spa) invited staff to meet with her to talk confidentially about their experiences at work. Meetings were held on 25 and 26 October 2016. Although the meetings primarily concerned TYU and Saeeda, concerns were also raised in relation to the conduct of the Claimants. There were allegations that the Claimants were either involved in or knew about thefts from the company. Miss Saif was suspended by John Leicester on 25 October 2016 and Miss Rana was suspended by Denise Leicester on 26 October 2016. Both suspensions were on full pay. The police were consulted about the allegations of theft by Saeeda and TYU and by Miss Saif and Miss Rana. Saeeda was prosecuted for fraud but on 7 July 2017 at Oxford Crown Court the CPS discontinued the case due to an unrealistic prospect of conviction.*

12. *Mrs Steedman conducted further interviews with the staff on 9 November 2016. The statements of four witnesses implicated the Claimants' wrongdoing but only two witnesses, Gemma Norville and Rosanna Wilkins, were prepared to have their statements disclosed to the Claimants. The other two witnesses stated that they were frightened about their statements being seen by TYU or her family members and referred to instances of threatening behaviour.*

...

35. *The Tribunal did not accept this submission. There was ample evidence to support the allegations against the Claimants, based in part upon their own admissions, and to support the dismissals and the decision to reject the appeals. Although it is true that both Claimants were related to Saeeda and TYU and to each other and Mrs Hyde found that members of the family were "working in cooperation", there was no reliable evidence to support the assertion that the Claimants were dismissed solely because of the family connection. The Tribunal*

*found that the Respondent had a genuine belief in the guilt of the Claimants and that the true and sole reason for dismissal was misconduct.*

7. On 13 December 2018 the Applicant applied to the Tribunal for an order under rule 50 for her name to be redacted from the judgment reasons. That application was copied to the Respondent and to the Claimants.
8. On 28 January 2019 the Claimants confirmed that they had no objections to the application. On 22 February 2019 the Respondent responded opposing the application.
9. On 30 March 2019 the Applicant responded to the Respondent's letter.
10. On 23 June 2019 a one day private preliminary hearing was listed for 12 August 2019 to consider the rule 50 application.

### **Evidence and Submissions**

11. At the hearing on 12 August 2019 the Tribunal considered the following:

#### Applicant

Applicant's application dated 2 July 2018;  
Response dated 30 March 2019;  
Applicant's written argument dated 12 August 2019;  
Applicant's witness statement dated 12 August 2019;  
Applicant's evidence on oath;  
Mr Davies's oral submissions on behalf of the Applicant.

#### Respondent

Respondent's response dated 22 February 2019;  
Respondent's written submissions dated 12 August 2019;  
Mr Burton's oral submissions on behalf of the Respondent.

12. The Tribunal also considered a bundle of documents and case reports provided by the parties.
13. The Claimants did not attend and were not represented at the hearing.

### **Applicant's Application**

14. The Applicant referred to the correspondence above (in particular those of 2 July 2018 and 30 March 2019) and asked for an anonymity order under rule

50(3)(b). She said that rule 50 applies because there has been a breach of her rights under Article 8 of the ECHR, that is respect for private & family life, which includes a person's honour and reputation. Further or alternatively, because it would be in the interests of justice to restrict and remove the relevant disclosures. She said she had an expectation of privacy as she had no involvement in the claim which led to the Judgment. The disclosures are false and damaging and she would like her name to be removed completely from the Judgment & Reasons. Further or alternatively, for the mistakes and inaccurate impressions set out below to be redacted or corrected and for her name to be replaced by the expression "[role redacted]", or replaced by initials.

15. The application was set out in the Applicant's written argument as follows:

*(a) The allegations made against the Claimants were not intrinsically linked to the allegations made against the Applicant. At paragraph 35 of the Judgment, there appears to be a finding that there was no reliable evidence to support the assertion of any such connection.*

*(b) The Applicant had no reasonable knowledge or understanding that the false allegations made against her following her resignation would be aired at the tribunal in respect of a claim involving third parties or that they would be included in the Judgment. The Respondent did not inform the Applicant that any of its witnesses said she was threatening them or ask her to desist from such alleged behaviour.*

*(c) The removal of her names harms no-one and does not affect the clarity of the Judgment. It does not affect freedom of expression.*

*(d) The information within the Judgment contains actual references to personal relationships, namely the family relationship. This is a personal matter. There was no need to give her name or family connection in the Judgment. The Judgment goes much wider than just referring to the alleged situation concerning a previous work colleague. The Applicant together with other unnamed family members are also accused of threatening behaviour. The implication is that this occurred after the claim had begun, after she had left the Respondent's employment and outside the workplace.*

*(e) The Respondent does not appear to dispute that some of the allegations repeated as findings of fact in the Judgment are simply incorrect (contrary to paragraph 9, the Applicant gave notice of resignation before being invited to a disciplinary hearing).*

*(f) The fact that a Google search links the Applicant to the Judgment is clear evidence of potential harm being done to privacy rights and reputation.*

*The Applicant should not have to provide evidence from a third party that they have searched for her name, found the link and held a negative view of her after reading the relevant allegations. Future potential employers are very unlikely to admit that this was a reason for rejecting any job application. The same applies to neighbours or friends who might have Googled her name.*

*(g) Whilst it is accepted that the various authorities referred to by the Respondent are of general relevance to a rule 50 application, they all concern the situation when the applicant has also been a party or a witness in the original claim or relate to a period of time long before the internet.*

### **Respondent's Objection**

16. The main arguments in the Respondent's written submissions were as follows:

*(i) The tribunal has no jurisdiction to grant the application*

*16 The Respondent's primary submission is that the tribunal does not have jurisdiction to grant this application.*

*17 The wording of rule 50(1) states that an application under rule 50 may be made at 'any stage of the proceedings'. There are no proceedings here. The Claimants did not appeal the employment tribunal judgment, there was no application for reconsideration and there is no outstanding costs application."*

...

*(ii) Article 8 is not engaged*

*20 Further and alternatively, it is submitted that the Applicant's article 8 rights are not engaged as the Applicant could not have any reasonable expectation of privacy in these circumstances. This is for the following reasons:*

*(a) The Claimant had previously brought her own proceedings against the Respondent: [9-17]. She withdrew that claim after the Respondent had filed a grounds of resistance. As far as the Respondent is aware, she made no application for anonymity in the course of those proceedings.*

*(b) As their relation and former colleague, the Applicant was plainly aware of the Claimants' employment tribunal proceedings. ....*

*(c) By the time of the Claimants' employment tribunal hearing in March 2018 it is inconceivable that the Applicant was unaware of the Respondent's concerns about her alleged conduct. ..."*

...

*(iii) The prominence of article 6, article 10 and open justice*

*22 If contrary to the above submissions the tribunal concludes that the Applicant's article 8 rights are engaged, it is submitted that such rights do not outweigh article 6, article 10 and the common law principle of open justice. Applying Roden, there is no 'strict necessity' for the tribunal to derogate from article 6, 10 and the open justice in these circumstances.*

*23 As far as the Respondent understands, the Applicant seeks to remove her name from §8, §9, §10, §11 and §12 of the unfair dismissal judgment. The references in §8 and §10 are merely factual and are relevant background to the issues the tribunal was considering. It is submitted that the Applicant cannot reasonably take umbrage at the tribunal recording the factual background.*

...

*(iv) Ineffective nature of anonymity order*

*30 It is further submitted that if the tribunal was to make a ruling for anonymity in the manner requested by the Applicant it would be ineffective. This is for two main reasons.*

*31 First, under rule 50(c), where the tribunal makes such an order, the method of disseminating the order is to put a list up on the door of tribunal. The purpose of this is to inform parties, witnesses, members of the public and journalists that there is an anonymity order in place. Due to the passage of time, this would be highly ineffectual in the present case. The Applicant's name has appeared online since 29 May 2018: It may well be, for example, that journalists have already reported on the facts of this case and an order now made by the tribunal would be ineffective.*

*32 Second, the Applicant seeks to remove her name from §8, §9, §10, §11 and §12 of the unfair dismissal judgment. If the tribunal were to make this order, it is submitted that her identity could still be found out because the details of her three relatives and the identity of the Respondent would still be apparent from the judgment.*

## **Relevant Law**

17. Rule 50 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states as follows:



50.—(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

(4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d) above—

(a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;

(b) it shall specify the duration of the order;

(c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and

(d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

(6) “Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998.

18. In Ameyaw v PriceWaterhouseCoopers Services Ltd [2018] UKEAT/0244/18, the published summary of the decision contained the following:

*The ET had correctly held that it had no power to exclude or remove a Judgment from the public register. By Rule 67 of the ET rules it was required that, subject to Rules 50 and 94, every Judgment and document containing Written Reasons for a Judgment was entered on to the public register. Although the ET could decide not to enter Written Reasons for a Judgment in a national security case (Rule 94), there was no corresponding power under Rule 50.*

*The real issue raised by the appeal was whether the ET had properly exercised its discretion in refusing to make an Anonymity Order under Rule 50. The Appellant had contended that such as Order was necessary to protect her Article 8 ECHR rights. Her application related, however, to a Judgment reached after an open Preliminary Hearing at which the ET had considered an application to strike out the Appellant’s claims on the basis of her conduct at an earlier (closed) Preliminary Hearing. The matters to which the Appellant objected had, therefore, been the subject of discussion at a public trial of the strike out application; Article 8 was not engaged – the Appellant could have had no expectation of privacy in that regard.*

*Even if that was wrong, it was for the ET to carry out the requisite balancing exercise (see Fallows and Others v News Group Newspapers Ltd [2016] ICR 801 EAT) and, in the particular circumstances of this case, it had been entitled to take the view that the principles of open justice and the interests arising from Articles 6 (fair trial) and 10 (freedom of expression) were not outweighed by the Appellant’s interests under Article 8 ECHR such that there should be any restriction on publicity under Rule 50.”*

19. The Employment Appeal Tribunal in that case said that the starting point was the principle of open justice which could only be curtailed where other competing rights were engaged such as to effectively mean that justice would otherwise be denied. The principle did not simply require that judicial hearings should take place in public, it also required that judgments would generally be publicly available. That was a consequence of the rights under Article 6 (the right to a fair trial) and 10 (the right to freedom of expression) though both rights might need to be qualified to respect other competing convention rights. Rule 67 provides that, subject to Rule 50 and Rule 94, judgments and written reasons shall be entered in the register. There is a

broad discretion under Rule 50, but it was likely to be a rare case where other rights were so strong as to grant an indefinite restriction.

20. The Tribunal would first have to determine whether the information was private in the sense that it was in principle protected by Article 8. If it was satisfied that such a right was engaged, it would then need to consider whether those interests should yield to the broader interests established by Article 6 and Article 10. In carrying out the balancing exercise thus required, the Tribunal will be guided by the following principle:

*“(i) the burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation; (ii) it must be established by clear and cogent evidence that harm will be done by the reporting to the privacy rights of the person seeking the full restriction on full reporting so as to make it necessary to derogate from the principle of open justice; (iii) where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, the ET should credit the public with the ability to understand that unproven allegations are no more than that; and (iv) where such a case proceeds to judgment, the ET can mitigate the risk of misunderstanding by making clear it has not adjudicated on the truth or otherwise of the damaging allegations.”*

21. The analysis in Ameyaw v PriceWaterhouseCoopers Services Ltd was approved as being helpful in L v Q Limited [2019] EWCA Civ 1417.

## Decision

22. I did not accept the Respondent’s submission that the Tribunal has no jurisdiction to grant the application because the proceedings had concluded. Although there were no outstanding matters to be determined in the proceedings, I could find no authority to conclude that applications such as this one could not be considered in these circumstances. There are reasonable grounds for the application and it is in the interests of justice to consider it even though the substantive part of the case has been concluded and there are no other outstanding applications.
23. I concluded that the Applicant had sufficient legitimate interest within the terms of her application for a Rule 50 Order such that I should permit her to participate in the proceedings at this stage as permitted under Rule 35 of the Employment Tribunals Rules of Procedure.
24. I found however that the Applicant’s Article 8 rights were not engaged. She could not have any reasonable expectation of privacy because information

revealing her identity had been discussed in a public trial. In Khuja v Times Newspapers Limited [2019] AC161 at paragraph 34(1) it was stated:

*PNM's application is not that the trial should be conducted so as to withhold his identity. If it had been, the consideration urged by Lord Kerr and Lord Wilson JJSC in their judgments in this case, might have had considerable force. But it is now too late for that. PNM's application is to prohibit the reporting, however fair or accurate, of certain matters which were discussed at a public trial. These are not matters in respect of which PNM can have had any reasonable expectation of privacy. The contrast between this situation and the case where a newspaper responds to a tip-off about intensely personal information such as a claimant's participation in private drug rehabilitation sessions could hardly be more stark.*

25. That paragraph was referred to at paragraph 47 of the Ameyaw judgment referred to above.
26. The Applicant claimed that she was in a different position to someone who had been a party or a witness in a case and that all the various earlier authorities referred to by the Respondent did not involve, or apply to, a third party such as herself.
27. I took the view that a third party who was not a party to proceedings, nor a witness, had no greater or lesser Article 8 rights than those who participated in the proceedings.
28. Even if the Applicant's Article 8 rights were engaged, I concluded that those rights did not outweigh Article 6 and Article 10 and the common law principle of open justice referred to in Rule 50(2) of the Employment Tribunals Rules of Procedure. As was said in the Ameyaw case, there is a broad discretion under Rule 50 but it was likely to be a rare case where other rights were so strong as to grant an indefinite restriction. This was not such a rare case and I found no grounds to override the principle of open justice in this case.
29. The Applicant's circumstances, her family relationship with the Claimants, and her former employment relationship with the Respondent, were all intrinsically linked to the claims and issues which were considered and determined during the course of the full merits hearing.
30. I do not accept that the judgment reasons contained any findings of fact that the Applicant was guilty of misconduct. Although the Respondent had made allegations of wrongdoing by the Applicant, the Tribunal did not adjudicate on the truth or otherwise of the allegations. It would not have been possible to properly set out the factual background to the claims being made by the

Claimants without reference to the allegations. The judgment reasons made clear that these were unproven allegations and no more than that. The unproven allegations were part of the intrinsic matrix of the case.

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Employment Judge Vowles  
Date: 7 October 2021

Sent to the parties on:  
11 October 2021

L TAYLOR-HIBBERD  
For the Tribunal Office