EMPLOYMENT TRIBUNALS

Claimant: Ms ST Afitlhile

Respondents: (1) BUPA Care Homes (GL) Ltd
(2) Jane M Madden
(3) Patricia Ramsden
(4) Catherine Johns
(5) Dr David Batman

Heard at: Manchester (preliminary hearing in public via CVP and in person)

On: 4 July 2022

Before: Judge Brian Doyle (via CVP)

Representation:
Claimant: Dr E Mapara, representative (in person)
Respondent: Ms J Smeaton, counsel (via CVP)

JUDGMENT

1. The claimant's claim is an abuse of process because it is vexatious. The claim also has no reasonable prospect of success and it is out of time. The claim is therefore struck out.

2. Consideration of the respondents' application for costs against the claimant is deferred so that the judge may consider a bundle of documents submitted on behalf of the claimant and, if necessary, the claimant's means as to ability to pay. Further consideration shall be on the papers and without a further hearing, with the agreement of the parties.

WRITTEN REASONS

1. These are the written reasons for the above judgment, signed on 4 July 2022 and sent to the parties on 8 July 2022. They are provided following a timely application on 20 July 2022 under rule 62 by Dr E Mapara, the claimant's representative, which had been referred to the judge on 26 July 2022. The Tribunal notes the respondents' representative's email of 21 July 2022 in reply.

The preliminary hearing

2. The preliminary hearing was listed to determine whether (1) the claimant's claim had been brought out of time and, if so, whether time could be extended; and (2) whether the claim should be struck out on the ground that it is an abuse of process.

3. The Tribunal heard no evidence. The claimant was not in attendance. Dr Mapara attended at the Tribunal's offices. The judge and the respondents' legal representatives attended remotely. Nevertheless, all participated via CVP. The hearing was conducted based on oral submissions by Dr Mapara and Ms Smeaton.

4. The Tribunal also had before it: (1) the respondents' written submissions; (2) an indexed bundle of documents prepared by the respondents (165 pages); (3) a separate bundle of documents prepared by the claimant (131 pages); (4) a chronology; (5) a costs application on behalf of the respondents; and (6) the respondents' costs application. Unless otherwise apparent, references to documents in square brackets below are references to page numbers in the respondents' bundle. References to the claimant's bundle are preceded by the letter "C".

5. The Tribunal did not immediately have a copy of the claimant's bundle, although Dr Mapara was able to rely upon the documents that he wished to draw to the Tribunal's attention during the hearing. The Tribunal staff scanned the bundle and provided an electronic of the bundle to the judge later on the day of the hearing and after the hearing had concluded. The judge satisfied himself that there was no disadvantage to the claimant, as there was considerable overlap between the bundles; it was clear to what documents the Tribunal was being referred by Dr Mapara; and the Tribunal cross-checked those documents when preparing its written judgment on the afternoon of the hearing.

The respondents' application

6. The respondents' counsel submitted that the claimant was employed by the 1st respondent (BUPA) until 3 January 2019. She was dismissed with notice on grounds of capability. Following a period of ACAS early conciliation, the claimant brought a claim in the Leeds Employment Tribunal (Case No. 1801079/2019) against BUPA and two named individuals, Jane Madden and Dawn Murphy (Claim 1) [103]. Ms Madden is also a named respondent in the current claim. The case was heard by a Tribunal (EJ Sheppard sitting with members) on 2-5 September 2019. All claims were dismissed in a unanimous decision [145-161].

7. The Claimant sought to appeal unsuccessfully against that decision to the Employment Appeal Tribunal (EAT) [162-163] and the Court of Appeal [164]. In refusing permission to appeal, the Court of Appeal recorded that "The wild allegations of conspiracy made by Dr [Mapara] against everyone so far involved in this litigation are wholly without merit and an abuse of the process of the court".

8. The claimant lodged a further claim against the 1st respondent (and four named individuals) at the Manchester Employment Tribunal on 29 December 2021 (Claim 2). The claimant sought unsuccessfully to add an additional ten named individuals as respondents, including the solicitor who had had conduct of Claim 1 and the barrister who had represented the respondents in Claim 1 [66-67]. No explanation has been given by the claimant as to why proceedings were instituted in the Manchester Employment Tribunal and not in the Leeds Tribunal [70]. (The Tribunal notes that it is possible that this is because the claimant identified the 1st respondent by its Salford address). In its response to Claim 2, the respondents maintained that the proceedings were an abuse of process and indicated that they would seek costs [64-65].

9. On 16 February 2022, the Manchester Tribunal (Regional Employment Judge Franey) raised concerns that the case may be an abuse of process. He directed the claimant to make an application for reconsideration of the decision in Claim 1 if relying on new evidence. Judge Franey indicated that the question of whether the claim should be struck out as an abuse of process would be considered at this preliminary hearing on 4 July 2022 [66] [C21-22] The hearing had already been listed to consider whether Claim 2 had been brought out of time [19]. No such application for reconsideration has been made and no new evidence has been seen by the respondents.

10. On 16 and 18 February 2022, the claimant's representative, Dr Mapara, wrote to the Tribunal raising various allegations of, among other things, abuse of process, fabrication of evidence, fraud, dishonesty, corruption, racism, forgery and deception against the respondent and named individuals working for the 1st respondent, those representing the respondents and the Tribunal. The respondents do not understand the allegations Dr Mapara makes and they are not in a position meaningfully to respond to those allegations.

11. The respondents maintain that the proceedings in Claim 2 should be struck out on any and all of the following grounds.

    (1) Estoppel/abuse. (a) The claimant is estopped from raising causes of action which have been dealt with in earlier proceedings involving the same parties (cause of action estoppel). (b) The claimant is estopped from reopening issues which have been decided in earlier proceedings involving the same parties (issue estoppel). (c) The claimant is precluded from raising in subsequent proceedings matters which were not, but could and should have been, raised in the earlier ones (abuse of process) (*Henderson v Henderson* [1843] 3 Hare 100, ChD). The crucial question is whether, taking into account all the circumstances, the party is abusing the process of the court by seeking to raise a matter that it should have raised before. Estoppel (both cause of action and issue estoppel) applies to judgments of the Tribunal within the meaning of rule 1(3)(b) of the 2013 Procedure Rules (namely a decision made at any stage of the proceedings which finally determines a claim etc). That clearly includes the final determination in Claim 1. The underlying public interest in respect of all three arguments is the same – there should be finality in litigation and a party should not be "vexed" twice in the same matter (*Johnson v Gore Wood and Co* [2002] 2 AC 1 HL at 31A).

(2) Lack of jurisdiction. In Claim 1, the claimant appears to raise complaints about the process that followed the decision in Claim 1, both at the EAT and in the Court of Appeal. This Tribunal has no jurisdiction to consider the merits of the decisions made by either the EAT or the Court of Appeal.

(3) Time points. Any arguments about matters which occurred during the claimant's employment are significantly out of time. Despite what the claimant now asserts, her employment terminated on 3 January 2019 [106]. That is the date asserted by her in the ET1 for Claim 1 [106] and the date of termination found by the Tribunal in Claim 1 [151-152]. No grounds have been identified by the claimant to justify an extension of time either on reasonably practicable or just and equitable grounds.

12. By way of conclusion, and in all the circumstances, the Tribunal is invited to strike out Claim 2 in its entirety. The respondents make a costs application in the terms set out in the written application for costs dated 1 July 2022.

The claimant's reply to the application

13. Dr Mapara submitted that Claim 1 was presented on 18 March 2019. It contained complaints of unfair dismissal, disability discrimination and race discrimination. He asserts that neither he nor the claimant received the respondents' ET3 response to Claim 1.

14. It is alleged that the claimant's was "dismissed" based on a forged occupational health report. However, it is also his case that the claimant has not actually been dismissed by BUPA. He refers to evidence of Dawn Murphy and Jane Burden, employees of BUPA. The claimant's case is that Dawn Murphy purported to dismiss her. Dr Mapara also asserts that there is no occupational health report on her personnel file. Dr Mapara submits that, following correspondence with BUPA, the claimant is in fact still on its books and thus is still employed by it. He suggests that BUPA simply does not know what is alleged to have happened to the claimant and her employment. Instead, he alleges fraud on the part of Dawn Murphy and Jane Burden.

15. Dr Mapara then turned to the Claim 1 tribunal process. It is asserted that Leeds Tribunal did not send any ET3 response to that claim (or that no such ET3 was received). Leeds Tribunal listed the matter for a preliminary hearing. The matter was first dealt with by Employment Judge Shulman at a preliminary hearing on 8 May 2019 [C50-55]. Dr Mapara alleges that Judge Shulman accepted that the respondents were liable for unfair dismissal and race discrimination, and that he listed the matter for a remedy hearing.

16. Dr Mapara refers also to a letter sent on the instruction of Employment Judge Smith on 30 May 2019 [C56]. It is Dr Mapara's position that if there was an ET3 in Claim 1 then it was presented out of time. If I have understood him correctly, his submission is that the respondents had been barred from defending Claim 1 and that the claimant was entitled to a default judgment as to liability, with a hearing as to remedy only to follow.

17. Taking that to its logical conclusion, Dr Mapara then refers to a hearing on 2 September 2019. He believed that there had been a default judgment. The claimant and Dr Mapara attended for what they believed was to be a remedy hearing. Judge Sheppard, however, disagreed and said that the hearing was a final hearing (that is, a full merits hearing).

18. Dr Mapara submits that Jane Burden's account of the matter was exposed under cross-examination. That she turned red and that she shouted at Dawn Murphy, seeking to pin the blame upon her.

19. Judge Sheppard reserved judgment. When his reserved judgment was produced, Dr Mapara disagreed with its contents. The judgment was placed online, but the claimant had to ask for a copy of it. An application for reconsideration was refused [C60-61].

20. The claimant appealed to the EAT. There was delay in accepting the appeal. It was suggested at first that the appeal was out of time. The appeal was then accepted. It was sifted by Her Honour Judge Tucker. The appeal was dismissed [C88-89]. This was despite the claimant still being on the BUPA payroll. The claimant then applied under rule 3(10). That application was heard by Deputy High Court Judge Sheldon QC at a hearing. The appeal was again dismissed [C61-71].

21. The claimant then sought to appeal to the Court of Appeal. Permission to appeal was refused [C71].

22. Solicitors for the respondents wrote to say that there was an occupational health report and a dismissal letter, but neither document was produced. Dr Mapara also submits that there continued to be no ET3. The claimant made a subject access request [C24-25, C30] and for disclosure of documents [C26-27]. Dr Mapara also went to Leeds to make enquiries of the occupational health services provider (Virgin Pulse) and of the occupational health practitioner (Dr Batman) [C35-36, C40-43] and BUPA headquarters (Patricia Ramsden). As a result, Dr Mapara believes that he has uncovered dishonesty and forgery [C24]. He asserts that the documents on which the respondents rely do not exist. He also makes allegations against solicitors acting for the respondents, suggesting that they were acting without instructions [C29].

23. Dr Mapara read from several documents in the claimant's bundle. He referred to correspondence with the General Medical Council [C31-32] and to his contact with the police to make complaints of forgery of documents. He also wrote by way of complaint to the President of the ET (Judge Clarke), the President of the EAT (Mr Justice Choudhury) and to the Court of Appeal.

Discussion and conclusion

24. I will approach the claimant's case taking it at its highest. I have assumed for present purposes, but without so deciding, that what he says is in general terms correct or that he might be able to establish the accuracy of what he says if evidence were to be given on oath or tested at a hearing. However, in my judgement, that does not assist Dr Mapara or the claimant.

25. First, I have no power to revisit the judgment of Judge Shepherd in Claim 1 in the Leeds Employment Tribunal. Unless there are exceptional circumstances (which do not arise here), only Judge Shepherd is empowered to review or reconsider his judgment in Claim 1. That would require a fresh application to be made to him. The basis of such an application would have to be that it is in the interests of justice for his judgment to be reconsidered, for example, because there is fresh evidence.

26. Second, I have no power to revisit the decisions of Judge Tucker or Judge Sheldon QC in the EAT; or of Lord Justice Bean in the Court of Appeal. They might be asked to review their decisions by the claimant, in accordance with the procedural rules of those courts, if possible, but that cannot be done via the Employment Tribunal or by means of a fresh Employment Tribunal claim, such as Claim 2.

27. Third, the process of challenging one Employment Tribunal claim (Claim 1) is not by the means of issuing a second Employment Tribunal claim (Claim 2) on substantially the same grounds or particulars, essentially based upon the same cause of action or factual allegations. A fresh application for reconsideration of Claim 1 made to Judge Shepherd in the Leeds Tribunal is the only permitted procedure (or a further appeal).

28. Fourth, an Employment Tribunal claim (Claim 2) against respondents alleged to have been involved in forgery or dishonesty in the original Employment Tribunal proceedings (Claim 1) is not the medium by which these allegations can be tested. The Employment Tribunal has no jurisdiction in respect of such allegations.

29. The EAT through Judge Tucker and Judge Sheldon QC, and the Court of Appeal through Lord Justice Bean, were unanimous in their view of the merits of the allegations that Dr Mapara has advanced on behalf of the claimant in his challenge to the judgment of Judge Shepherd in Claim 1. Lord Justice Bean, in particular, could leave no doubt when he recorded that the “wild allegations of conspiracy” made by Dr Mapara “are wholly without merit and an abuse of the process of the court”. I agree. There is nothing in the documents that Dr Mapara has put before this Tribunal that would cause me to consider otherwise. In places he misreads or misinterprets documents in his bundle on which he places greatest reliance and nothing therein in establishes the premises that he seeks to advance in defence of Claim 2.

30. I conclude (and I agree with the respondents’ submissions as to the relevant legal principles, which are not in dispute) that Claim 2 is an abuse of process. It is the subject of cause of action estoppel and issue estoppel. It falls foul of the principle in *Henderson v Henderson*. Claim 1 has been determined to finality, subject only to any further application for reconsideration or appeal (although on what conceivable basis, I am unsure). It is a blatant abuse of process to seek to challenge the judgment in Claim 1, and to seek to go behind the decisions of the EAT and the Court of Appeal, by issuing fresh proceedings in almost identical terms before this Tribunal. The principle of finality in litigation must be upheld. Claim 2 is a vexatious claim. It also has no reasonable prospect of success. It is also beyond the jurisdiction of the Tribunal in some respects. It is out of time and is without any indication of a basis upon which

time might be extended, even if it was otherwise permissible to entertain the claim, which it is not. It is an abuse of process.

31. The claim is struck out accordingly.

Costs

32. Directions have been given in relation to the respondents' application for costs. The determination of that application is not the subject of the present judgment and written reasons.

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Judge Brian Doyle

DATE: 1 August 2022

JUDGMENT AND WRITTEN REASONS
SENT TO THE PARTIES ON

4 August 2022

FOR THE TRIBUNAL OFFICE

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