



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Nomahn Riaz Khan**

**v**

**Shoemiths LLP**

**Heard at:** Watford

**On:** 22 August 2022

**Before:** Employment Judge Gumbiti-Zimuto

**Appearances:**

**For the Claimant:** Mr Frater, solicitor

**For the Respondent:** M Edge, counsel

**JUDGMENT** having been sent to the parties on 8 September 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. This case was originally listed to begin a five-day hearing today, however it became clear that the case was not ready for hearing and Employment Judge Tobin listed this case for an Open Preliminary Hearing to take place today to consider a number of matters which are set out at paragraph 7 of his Case Management Order and record of a Preliminary hearing on 9 August in front of Judge Tobin.
2. In the intervening period the respondent became aware of evidence that tended to suggest that the claimant's disability impact statement contained falsehoods or errors. Mr Edge has called them lies. There is not a lot of evidence on this point but what there is, is simple to state and clear to illustrate.
3. Firstly Mr Edge, on behalf of the respondent, points out that the claimant in his disability impact statement has explained how his mental impairment has affected his ability to carry out normal day to day activities and in illustrating that he has pointed out how it has impacted on his ability to socialize, to travel and to participate in sporting activities.
4. One of the sporting activities that the claimant would participate in is cricket. The claimant says in his Disability Impact Statement that his condition meant that he was not able to participate in cricket at all and that he avoids travel and he avoids socializing. These matters can be found in paragraphs 46, 47, 48 and 49 of the claimant's written statements and in paragraph 53

of the claimant's Disability Impact Statement from the witness statement the claimant states:

"I take no joy in the activities that formerly made me happy. I lack motivation to accomplish daily tasks. I was a very active person and used to play a lot of cricket and football and go to the gym on a daily basis. I have stopped playing and participating in any sports and totally stopped exercising. I used to play cricket over the summer but haven't done so. This is because I know I will have to see my friends and I would have to make conversation and socialize I just don't feel like doing any of that anymore."

5. He says in paragraph 58:

"I have been suffering from anxiety and depression for nearly a year now and I feel like I am not improving at all."

6. The witness statement is signed on 29 June 2021, just over a year ago, by the claimant. That date is significant for a number of reasons.
7. The claimant says that although the drafting of the statement is in the present tense, he was not talking about 2021 or describing 2021 in his witness statement, he was describing what had happened in the year 2020. The claimant goes on to say that this is something that he had in fact spotted, had not yet corrected but intended to correct when providing his witness statement.
8. Part of Mr Frater's answer to the respondent's submission, as I understood it, was that I should not attach too much significance to the error because it was not contained in a "sworn statement of evidence", it was merely set out in "a statement". I may not have properly understood the point that is being made but it seems to me that whether it was in a sworn statement or not is of little significance. I bear in mind the seriousness with which a false statement is taken in civil proceedings. In the CPR it was pointed out by Mr Edge that CPR 32.14, which refers to any document prepared for proceedings which contains falsehoods, could be the subject of contempt proceedings.
9. What I have to decide is whether I accept the claimant's explanation or am I satisfied that the evidence that is before me shows that this was indeed a deliberate falsehood on the part of the claimant and I should reject his explanation put forward today.
10. The information which the respondent found out is that contrary to what is said in the claimant's disability impact statement the claimant did play cricket in 2021. That is not disputed by the claimant.
11. The submissions made on behalf of the claimant were made on the basis that he was playing cricket in 2021. It is significant that he was playing cricket before and after 29 June, in fact he played cricket on a number of occasions in June 2021.
12. The oral evidence that the claimant gave was brief. He stated that it was a simple error and what he was referring in the impact statement to the year 2020 and not 2021. I have considered the way that the impact statement

has been drafted. This explanation in my view is difficult to square with the way that the impact statement was written. It would have been a simple thing to express the fact that this was a reference to the year before the statement was signed, rather than a reference to his position at the time that the statement was signed. It would have been a simple thing to express what was the historic position in contrast to what was the current position.

13. In a disability impact statement the point in time being described is often of the most fundamental importance to determining whether the definition of disability under the Equality Act 2010 has been met. The Act requires a close scrutiny of the period of time that a person is adversely affected by physical or mental impairment.
14. The impact statement on my reading is clear and it simply does not bear the construction that the claimant suggests it should have.
15. In any event the claimant says that he saw that there was an error and it was his intention to correct the error. That evidence I find surprising. The explanation was provided for the first time during the course of questioning by the respondent in a case where the claimant was aware that the hearing today was concerned with the question as to whether this specific point about the claimant's disability statement was correct or incorrect.
16. The claimant could simply have pointed out before this hearing that the witness statement contained an error. It is significant in my view that the witness statement was signed on 29 June 2021 just over a year ago and there has been no indication whatsoever that the statement contained any sort of error.
17. The second feature is the role of Mr Khan. The respondent has relied on the relationship between Mr Khan, the claimant's solicitor employs Mr Khan. The claimant and Mr Khan play for the same cricket team and in 2021 they both played cricket together on several occasions. The respondent points out that Mr Khan reviewed the claimant's medical records before they were provided to the respondent. The fact that Mr Khan reviewed the medical records is a matter in contention between the parties. There was a request by the respondent for unredacted versions of the claimant's medical records. Mr Khan, will either have reviewed the claimant's medical records without having read the disability impact statement or, notwithstanding what he knew to be the truth, allowed the disability impact statement to be presented as evidence in support of the claimant's case when he would have known that it contained statements that were not correct.
18. I have heard no evidence from Mr Khan, although he is available to give evidence to explain what his role was or how his review of the claimant's medical records came about or whether he considered the claimant's impact statement before it was presented. In my view I is likely he was aware of the contents of the claimant's statement. For Mr Khan to carry out a meaningful review of the medical records to ensure that relevant matters were being presented to the respondent he must have considered the contents of the disability impact statement.

19. I do not accept the explanation which was put forward by the claimant. I am not satisfied that the claimant's explanation is a satisfactory explanation for the way the content of the impact statement. There was an error in it which was clear and blatant. There was no effort to clarify it to the respondent. Mr Khan was involved in the review of the claimant's medical records and he would have known, if he had reviewed the claimant's statement, that the statement was incorrect.
20. This was not any technical point which might be misunderstood or difficult to express, it was the simple point that "I don't play cricket anymore because of my disability", and it simply was not true. The true statement would have been "I didn't play cricket last year and I'm only playing for one of the two cricket teams that I used to play for now".
21. I am satisfied on the balance of probabilities that the claimant's statement about cricket was incorrect. That the claimant must have known that it was incorrect and took no actions whatsoever to correct that error until being questioned in the course of this hearing, where the very purpose of the hearing was to examine the question whether or not the statement was correct. I have asked myself whether that was unreasonable conduct and I am satisfied that it was. I have then gone on to consider whether that is a matter that is sufficiently serious as to make the further conduct of these proceedings no longer fair and if so whether it would be proportionate to take the step requested by the respondent and strike out the claim.
22. I have come to the conclusion that this was conduct that is of a serious nature. It seems to me that it was a deliberate attempt to mislead in a material matter and it is a matter that infects the veracity of the claimant's entire case because he is shown to be willing to deliberately mislead. I do not see any action lesser than a strike out would allow it to be still possible to have a fair hearing. The claimant is a person who is capable of putting before the court evidence which is knowingly untruthful alternatively although he is aware of the fact that it is wrong is careless as to whether or not the court relies upon it.
23. In those circumstances I do not consider that it would be proportionate and fair for the respondent to have to defend the case against a party who has behaved in that way.
24. For those reasons I accede to the request to strike out the claim on the grounds which have been put before me by Mr Edge on behalf of the respondent.

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Employment Judge Gumbiti-Zimuto

Date: 25 October 2022

Judgment sent to the parties on

2 November 2022

For the Tribunal office