



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Addison

v

Ministry of Defence

Heard at: London Central

On: 24 October 2022

Before: Employment Judge Glennie

Representation:

Claimant:

In person

Respondent:

Ms J Gray (Counsel)

REASONS

1. These are the reasons for the judgment on preliminary hearing previously sent to the parties.
2. By his claim form, which was presented to the Tribunal on 22 March 2022, the Claimant made various complaints. Some of these invoked heads of claim within the Tribunal's jurisdiction (for example, direct discrimination, victimisation, harassment and detriment for making protected disclosures). Others raised claims over which the Tribunal does not have jurisdiction (for example, defamation, corruption and breach of rights).
3. At the same time as presenting a response, the Respondent applied to strike out the claim, or for a deposit order, on the grounds that the claim had no or little reasonable prospect of success. At a preliminary hearing on 13 June 2022 Employment Judge Elliott made an order for the Claimant to provide further information about his claim by 4 July 2022. EJ Elliott specified 7 groups of questions that were to be answered and stated that the information was required in order for the claim to be understood. EJ Elliott further observed that the Respondent should then make a decision as to whether to renew the strike out / deposit order application in the light of the further information given.

4. The Claimant produced a document dated 4 July 2022, headed “further particulars”, which did not comply with EJ Elliott’s order as it was in narrative form and did not directly answer the questions posed in the order. The Respondent then applied on 15 July 2022 to strike out the claim on the grounds that the Claimant had failed to comply with EJ Elliott’s order; that the claims were scandalous and vexatious; and that the claims had no reasonable prospect of success.
5. That application came before me on 17 August 2022. I gave a judgment striking out the complaints over which the Tribunal did not have jurisdiction. I also decided to give the Claimant a further opportunity to produce a document that complied with EJ Elliott’s order with regard to the complaints that are within the Tribunal’s jurisdiction, and gave an extension of the time for compliance with that order. I observed that the Claimant should provide answers to the factual questions asked about his case.
6. The Claimant produced a further document dated 21 September 2022 headed “further particulars” in which, as I find, he made a clearer effort to address the relevant questions. He identified complaints of detriments for making protected disclosures (“whistleblowing”) contrary to section 47B of the Employment Rights Act 1996; victimisation contrary to section 27 of the Equality Act 2010; harassment contrary to section 26 of the Equality Act; and direct discrimination by association with a disabled person contrary to section 13 of the Equality Act.
7. The Respondent continued with its application to strike out the remaining complaints in the claim. Ms Gray’s primary argument was that the complaints had no reasonable prospect of success, while also arguing that the latest document did not comply with the Tribunal’s orders and that the Claimant’s approach to the litigation was scandalous and vexatious.
8. The essential factual basis of the Claimant’s complaints is relatively straightforward. He says that he was the assisting officer for a colleague in relation to her case against the Respondent. In the course of so acting, he made complaints on 13 February 2020 of misuse of regimental funds, and on 19 March 2022 of security and data breaches in a letter to the colleague. The Claimant states that he was subjected to detriments, broadly in terms of people lying about him and treating him unfairly in relation to his own complaint.
9. The Tribunal’s power to strike out a claim or part of a claim is contained in the following provisions of rule 37 of the Rules of Procedure:
 - (1) *At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds:*
 - (a) *That it is scandalous or vexatious or has no reasonable prospect of success;*

- (b) That the manner in which the proceedings have been conducted by or on behalf of the claimant.....has been scandalous, unreasonable or vexatious;*
- (c) For non-compliance.....with an order of the Tribunal.*
- (d)*
- (e)*

10. I had in mind the following principles concerning the exercise of the power to strike out a claim:

10.1 The Claimant's case should be taken at its highest, so far as the factual allegations in it are concerned. Other than in exceptional circumstances, (which do not arise here), the Tribunal should assume that the Claimant will establish the facts on which he relies.

10.2 Discrimination or whistleblowing complaints should not lightly be struck out. Nonetheless, the Tribunal should not refrain from striking out a claim if it is appropriate to do so.

10.3 The test of "no reasonable prospect of success" means just that. It does not mean, at one extreme, absolutely no prospect of success whatever, nor at the other, that the claim is more likely to fail than to succeed.

10.4 If the test of no reasonable prospect of success is satisfied, the Tribunal is not bound as a matter of course to strike out the claim: there is a discretion to be exercised as to whether to do so or not.

11. I then considered the heads of claim relied on by the Claimant.

12. Section 27 of the Equality Act includes the following provisions about 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;*
- (b) Giving evidence or information in connection with proceedings under this Act;*
- (c) Doing any other thing for the purposes of or in connection with this Act;*
- (d) Making an allegation (whether or not express) that A or another person has contravened this Act.*

13. I refer again to the factual basis of the claim as set out above, and the nature of the complaints relied on by the Claimant as leading to the treatment of which he complains. Neither a complaint about the misuse of funds nor a complaint about security or data breaches has any connection with the Equality Act. Such a connection is essential under section 27(2). The Claimant has not put forward anything that could amount to a protected act within section 27, and the complaint of victimisation therefore has no reasonable prospect of success.
14. Section 26 of the Equality Act contains the following provisions about harassment:
 - (1) *A person (A) harasses another (B) if –*
 - (a) *A engages in unwanted conduct related to a relevant protected characteristic and, and*
 - (b) *The conduct has the purpose or effect of*
 - (i) *Violating B’s dignity, or*
 - (ii) *Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
15. For a complaint of harassment to be made out, the unwanted conduct must be related to a relevant protected characteristic. In his further particulars, the Claimant identified the relevant protected characteristic as disability, and wrote: “as I was off work for longer than 12 months due to these personnel causing my mental health to deteriorate”. He also stated that his health was deteriorating because of being victimised, meaning that his health was damaged by the detriments that he identified. This was broadly consistent with what the Claimant wrote in paragraph 1(c) of the attachment to his claim form, where he stated that: “My health has taken a serious setback due to work related stress brought on by being victimised bullied and harassed due to me doing the right thing supporting colleagues.....”
16. Ms Gray submitted that the Claimant was saying that alleged harassment had caused a deterioration in his mental health, such that if there was a disability, the complaint was that this had been caused by the harassment, meaning that in colloquial terms the complaint was the wrong way around. Essentially, the submission was that the harassment cannot have been related to disability if the disability arose as a consequence of the harassment. In relation to this point, the Claimant said that he had looked on line and believed that he understood what was being argued, adding that he might have got it the wrong way around, but that he was only “Joe Public”.
17. I concluded that the Claimant’s factual case was that he had suffered damage to his health as a result of the detriments (unwanted conduct under section 26) that he says were done to him because he made the relevant complaints. If that is the case, and assuming in the Claimant’s favour that the damage to his health gave rise to disability within the Equality Act definition, the detriments cannot have been “related to” the disability as

required by section 26. The disability, if it was such, post-dated the unwanted conduct. The complaint of harassment therefore has no reasonable prospect of success.

18. The final head of claim relied on in the Claimant's further particulars was a complaint of direct discrimination by association. Section 13 of the Equality Act includes the following provision:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

19. The Claimant relied on essentially the same detriments as relied on in relation to the other heads of claim, saying that he was directly discriminated against by association with the colleague he was representing, who is stated to be disabled. The Claimant also wrote that the comparator relied on was "Mr Tapping v MOD 1402660/2019", without explaining the significance of this, and that he was relying on direct discrimination by association with his colleague "due to her case against the MOD."

20. Ms Gray submitted, among other matters, that no basis for such a complaint had been pleaded in the claim form, and that the Claimant would therefore need to apply for permission to amend the claim in order to raise it. The Claimant did not address this aspect in his submissions, nor did I press him about it. I assumed in his favour that he had done sufficient to plead the basis of such a complaint in his claim form. For example, in paragraph 2(b) of the attachment, the Claimant stated that people were colluding with those bullying, harassing and victimising his colleague, causing her more distress and ill health.

21. If I am wrong about this, the reasons I shall give for finding that this complaint has no reasonable prospect of success would also apply to any application to amend the claim to plead it, and would lead me to refuse permission to amend for that reason.

22. The complaint of discrimination by association would involve asserting that at least part of the reason why the Claimant was treated in the way that he complains of was that his colleague was disabled. I assume, without making any finding, that she was disabled at the relevant time. The Claimant has not, however, in his claim form or in the two versions of his further particulars, put forward any basis on which the Tribunal could find that her disability was a reason for the Claimant being subjected to less favourable treatment. The concept of "less favourable treatment" involves a comparison. I consider that the relevant comparison in the present case would be with an assisting officer who gave the same help to a colleague and who made the same complaints as the Claimant did, but with the difference that the colleague was not disabled. For the complaint to succeed, the Tribunal would have to find that the hypothetical assisting (and complaining) officer whose colleague was not disabled would not have

suffered the treatment about which the Claimant complains. I find that there is no reasonable prospect of such a finding being made because:

- 22.1 It is inherently implausible.
 - 22.2 It is inconsistent with the fundamental basis of the Claimant's case, which is that he was treated as he was because he made the complaints about the misuse of regimental funds and the security / data breaches in the letter to his colleague.
 - 22.3 The Claimant has not advanced any facts from which a Tribunal could conclude that a disability on the part of his colleague influenced the way in which he was treated.
23. I therefore found that there was no reasonable prospect of the complaint of direct discrimination by association succeeding.
24. I reached a different conclusion about the whistleblowing complaints. These complaints require the making of a qualifying disclosure within section 43B of the Employment Rights Act, the relevant parts of which provide as follows:
- (1).....a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*
- (a) That a criminal offence has been committed, is being committed or is likely to be committed.*
 - (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject....*
25. Taking the Claimant's case at its highest, I find that he has identified disclosures of information which could, in his reasonable belief, tend to show that a criminal offence had been committed (fraudulent use of funds) and/or that a person had failed to comply with a legal obligation (proper use of funds and data protection). A Tribunal could find that the Claimant had a reasonable belief that such disclosures were made in the public interest. The Claimant has pleaded a causal connection between the disclosures and the treatment of which he complains. I am not at this stage of the proceedings making any finding about whether or not the complaint is well-founded, but I do not find it to be inherently implausible in the way that I have found the complaint of discrimination by association to be.
26. I therefore find that it is not the case that the whistleblowing complaint has no reasonable prospect of success. Little was said in the hearing about the making of a deposit order. The test for such an order is that of little reasonable prospect of success. I find that the prospects of success are above that threshold, essentially for the same reasons as given in relation to the issue as to no reasonable prospect of success.

27. Having made these determinations as to the threshold condition of there being no reasonable prospect of success, I have to consider whether to strike out the complaints of victimisation, harassment and direct discrimination by association, as a matter of discretion. I have decided that I should do so, because:
- 27.1 Although the factual basis for all of the complaints is essentially the same, there would be no purpose in allowing the case to be complicated by the continuation of legal formulations which have no reasonable prospect of success, with the inevitable increase in the length and cost of the final hearing.
- 27.2 The Claimant is not deprived of all opportunity to have his claim heard. He remains able to put forward his whistleblowing complaint, in which he is able to canvass most, if not all, of his factual complaints.
- 27.3 There is no compelling reason why they should not be struck out.
28. I referred earlier in these reasons to the alternative grounds relied on by the Respondent for contending that the whole claim should be struck out. It is true that, in his first response to EJ Elliott's order, the Claimant did not comply with what he had been ordered to do, and that, to a minor degree, in the second document he did what he had been asked not to do, by purporting to rely on other documents.
29. It is also the case that some of the Claimant's conduct at the hearing was of concern. He was at times reluctant to engage with the relevant legal provisions, (although he was clearly aware of them as he quoted them in his further particulars), preferring to put forward wide-ranging complaints about the Respondent. He also asserted, before I had given my oral judgment and reasons, that the same thing was happening to his case as had happened to his colleague's claim (it was struck out).
30. I did not, however, consider that these matters reached the threshold where I would consider striking out the claim. I am satisfied that a fair trial remains possible and that it would be excessive to strike out the remaining complaints because of these.
31. Finally, the colleague whom the Claimant was assisting at the time of the events he complains of accompanied him at this hearing and at the hearing on 17 August 2022. She intervened on occasions with comments about her claim and her view of the Tribunal process in general. I said that she was not helping the Claimant by doing so.
32. I should also record that, although the colleague's name appears frequently in the documents prepared by the Claimant, she stated that she did not consent to her name being mentioned in the Tribunal's documents that may be available online. I have refrained from using her name in these reasons as I have not heard any evidence or made any findings of fact, and I do not consider that it is necessary for her name to be included. So as to avoid

any misunderstanding, however, I should say that the fact that I have done so does not mean that I have decided that the colleague's name should never be used in any future judgments or reasons: I have simply decided not to do so in this document.

Employment Judge Glennie

Dated:29 November 2022.....

Judgment sent to the parties on:

29/11/2022

For the Tribunal Office