EMPLOYMENT TRIBUNALS

Claimant: **Mr Adrian Gheorghe Badita**

Respondents: **(1) Mo Sys Engineering Limited**
(2) Safestay Plc
(3) Zachary Daniels Limited
(4) Robert Dyas (Holdings) Limited
(5) Delice De France (UK) Limited

Heard at: **East London Hearing Centre (by CVP)**

On: **28 November 2022**

Before: **Employment Judge Crosfill**

Representation

Claimant: In person

Respondents: (1) Ruth Butt a Solicitor from Irwin Mitchell
(2) Will Haines a consultant
(3) David Jones of Counsel instructed by DTM Legal LLP
(4) Ruaraidh Fitzpatrick of Counsel instructed by Ince Gordon Dodd LLP
(5) Robert Cater a consultant with Peninsula Group Limited

JUDGMENT

1. The Claimant's claims against each respondent are struck out pursuant to rule 37 of Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 on the basis that the Claimant has conducted the proceedings unreasonably and/or that the claims have no reasonable prospects of success.

REASONS

1. The Claimant presented his claims against all five Respondents using a common claim form. His claim was presented to the employment tribunal on 20 June 2022. The Claimant's claim form gave very scant details of his claims against each Respondent but it was reasonably apparent that the Claimant was alleging that he had been discriminated against and/or victimised when he had applied for junior accounting roles. As is usual practice in this region the matter was listed for a preliminary hearing for the purposes of case management.

2. Under cover of an email sent on 26 July 2022 the Claimant wrote to the tribunal amongst the matters raised he said this (emphasis added):

'The claimant has brought over 100 similar claims in various regions. The claimant brought 100 similar claims for victimisation (the protected act for the victimisation is for bringing proceedings under the Equality Act 2010 section 27(2)(a) against DHL (1305765/2018) and direct race discrimination. Each employer uses a no Romanians policy, because and the claimant was a blacklisted Romanian. The claimant will prove everyone, the differences between the Romanians and all other people from the United Kingdom, putting everyone in strict proof about the inferior people. As for professional skills, Paul Dyer (former CEO of DHL Supply Chain UK/Ireland) is a mentally retarded individual compared to the claimant. John Gilbert (former CEO of DHL Supply Chain Global) has also resigned on 1 October 2019. The claimant avers that he is always the first option for any job application in this country.

DHL admitted in writing to blacklisting the claimant, therefore, each respondent is now exposed and unable to defend its case. DHL has already lost its case (1305765/2018), but the HM Courts & Tribunals Service is intimidated by the UK government. DHL lost even its case in the High Court (F90BM256), failing to respond to a £1.000.000.000 claim for non-compliance with the GDPR. For moment all these cases are unlawfully delayed by the UK government. Theresa May and Boris Johnson unlawfully postponed all these cases, because are future Remedy Hearings. Frank Appel, the CEO of Deutsche Post DHL Group, bribed the European Commission and the UK, German, Romanian governments for restraining all civil rights of the claimant.

Each defendant is invited to not file any defence, because for the pathetic lies written there, everyone will be charged for perjury in the Magistrates' Court. If someone refuses to comply with this request, then must explain why considers that its defence does not contain false statements.

Additionally, each defendant must disclose within 7 days, all the personal information held about claimant. The claimant will enclose what information are held about him. This request is made under Rule 31. If within 7 days, the defendant fails to disclose all the personal information held about claimant, then its defence is automatically struck out and charged for perjury…….

The claimant will enclose similar cases struck out after the respondents bribed those judges. This is only another strict proof that your cases are future Remedy Hearings, because these are the most obvious and plainest cases…..

3. The Claimant's claim to have succeeded in his case against DHL in Case No: 1305765/2018 was untrue. Those claims were dismissed for 'want of jurisdiction'. I assume because of issues of limitation. However the Judge went on to say that the substantive claims had no reasonable prospects of success and had been conducted in a scandalous, unreasonable and vexatious manner.

4. The Claimant went on in his e-mail to seek a reference to the Court of Justice of the European Union. He described the referral as being compulsory.

5. By an e-mail sent on 25 August 2022 the Claimant said:

'Dear Sir/Madam,

I request that my right to work be restored within one week. Currently, I have over 100 unsuccessful job applications that I will lodge as new claims. If within one week, my right to work is not restored, then for each new unsuccessful application I will lodge a new claim until my right to work will be restored.

I look forward to hearing from you if this tribunal is minded or not to restore my right to work in the UK.'

6. On 13 September 2022 Employment Judge Jones caused a letter to be written to the Claimant. She ordered that the Claimant was to refrain from making threats in this litigation such as that contained in his letter of 25 August 2022. She directed the Claimant to provide further information about his claims by 1 October 2022. She directed that the preliminary hearing listed for 28 November 2020 to be converted to an open preliminary hearing to consider applications made by each respondent in its ET3 that the cases be struck out pursuant to rule 37 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (hereafter 'the rules').

7. The Claimant's response to those orders was to send an email in the following terms:

'This crook, EJ Jones, must refrain from entering any correspondence whatsoever. The claimant has three pending applications and REJ Taylor must deal with these applications immediately.

The first request is to order the requested disclosure pursuant rule 31, the second one is to refer this case for preliminary ruling to the CJEU pursuant rule 100 and the third one is to restore the claimant's right to work in the UK. For the avoidance of doubt, the respondents have no pending applications before any court and the claimant will apply in due course for highlighting these issues.

The claimant also requests for these cases to be forwarded these cases to the National Crime Agency and Crown Prosecution Service as they involve criminal issues'.

8. On 12 August 2022 a trainee solicitor employed by Ince Gordon Dodd LLP sent a letter to the President of the Employment Tribunal's inviting him to take steps to deal with the Claimant as a vexatious litigant. In her correspondence she said that *'the Claimant is clearly of unsound mind and is continuing to make spurious and wild allegations…'.*

9. On 8 November 2022 the Claimant sent an email to the Tribunal and the Respondents in the following terms (with emphasis added):

'The Tribunal has failed to follow the most basic rules of procedure, ignoring all claimant's applications and breaking the law seriously.

Moreover, this Tribunal has no longer jurisdiction to hear these cases following the request for preliminary ruling pursuant Rule 100.

The claimant needs more time to make applications in writing against each respondent. If the Tribunal fails to comply with all claimant's outstanding applications by tomorrow, then the Preliminary Hearing will be automatically converted into a Remedy Hearing. In this case, the claimant will apply in due course for such a request.

For all reasons set out above, the claimant hereby requests to postpone the hearing listed on 28 November 2022.

This postponement cannot be refused because it has been made with more than 7 days before the hearing.'

This Tribunal and the entire HM Courts & Tribunals Service are not fit for a fair trial as the UK government has already instructed corrupt judges to strike out all these cases.

10. By a letter sent on 15 November 2022 the Claimant said (with emphasis added):

'On 26 July 2022, the claimant submitted an application in writing putting everyone in strict proof everyone about his claims of victimization and race discrimination, asking each respondent to clarify its position and disclose the requested information. Everyone failed to reply, fully admitting the claims therefore the cases are over since 3 August 2022.

After submitting a DSAR, the fourth respondent failed to respond lawfully, fully admitting again the claims against.

These cases have never been listed for a preliminary hearing to strike out claims as the claimant had successfully varied that tribunal order. This Tribunal also lacks jurisdiction to hear these cases. These cases must be referred for preliminary rulings to the CJEU, this referral being compulsory pursuant Rule 100.

DHL being backed by the German and UK governments, operates an unlawful blacklist on the claimant. All other employers back this unlawful blacklist whilst they also use a no-Romanian policy. Moreover, the HM Courts & Tribunals Service backs this unlawful blacklist.

The claimant is the first option on this island for most senior positions but inferior people falsely claimed he is not fit for basic finance jobs. Paul Dyer, former CEO of DHL SC UK/Ireland, is a mentally retarded individual compared to the claimant. The claimant competing for jobs on this island against everyone is looking like an educated English competing against illiterate Gypsies from Romania, so huge is the difference. His IQ is simply indecent for this island. The reason is simple, the highest IQs from this island are only medium IQs in Romania. These legal proceedings like all previous ones are showing the obvious inferiority of the respondents and their legal representatives. The claimant can provide everyone with training.

Moreover, the ET3s of all respondents cannot be accepted as they totally failed to comply with the minimum requirement mentioned on the ET1 for being accepted. The ET3s had to contain the report about the Romanian employees for finance positions but none of them contained such a report. As a consequence, all ET3s are automatically rejected and all cases must be listed as cases with no response received. Once again, all cases are over at this stage.

Additionally, all ET3s do not match the claims in part or at all. On these ET3s, these stupid crooks they are describing other facts, failing to respond lawfully to the claims made against. Once again, all cases are over at this stage. All ET3s contain exclusively false statements. Below, each respondent will receive a particularized response to their ET3s.

The claimant has put everyone in strict proof how this criminal network led by the German government tried to strike out over 100 default judgments from HM Courts & Tribunals Service but these stupid crooks lied that the claimant is a serial litigant for having his cases struck out and blocked in the Court of Appeal.

For the avoidance of doubt, these default judgments are half way between the Employment Tribunal and Court of Justice of the European Union since 7 February 2020, never being struck out.

On his CV, the claimant informed everyone that he was victim of an unlawful blacklisting but these crooks complained about gaps in employment history. Nobody is interested in the pathetic lies regarding its silly recruitment process. These idiots falsely claimed that the claimant is not fit for a basic finance job when the claimant is a trained accountant since he was 18 years old, his last position in Romania being Finance Director.

On 26 July 2022, the claimant had submitted an application in writing putting everyone in strict proof everyone about his claims of victimisation and race discrimination, asking each respondent to clarify its position and disclose the requested information. Everyone failed to reply, fully admitting the claims but now these stupid beggars lied that the claimant failed to particularise the claims. These mentally retarded beggars are dumb and incoherent.

On 14 November 2022, the claimant has received a bizarre correspondence from a mentally retarded slut from Ince Gordon Dadds LLP. This mentally retarded slut named Holly Freuchen made hilarious and funny claims that the claimant is of "unsound mind". That is funny, because nobody never claimed that in any legal proceedings. The claimant has humiliated DHL in six different courts and tribunals within the corrupt HM Courts & Tribunals Service and also over 100 respondents, but DHL used its last line of the defence, the German government, for preventing the claimant to have justice.

Moreover, after submitting false statements in the ET and committing in this was a criminal offence, she submitted fake complaints to the President of the Employment Tribunals. This stupid slut made bizarre and hilarious requests but neither the President of the Employment Tribunals nor the ET have such powers to deal with such requests. The claimant can provide this stupid slut with legal advice and training for dealing with such requests. In Romania, this mentally retarded slut would be fit only for working in a brothel or agriculture never as lawyer. She is beautiful like a Halloween mask but still young and hopefully a disabled and dirty Gypsy male would pay some change for having oral sex with her. If this stupid slut wants better particulars, she should try to insult again the claimant.

All other respondents fully supported that silly letter. By the way, ask that crook, the President of the Employment Tribunals to respond to the claimant's requests as he has powers to deal with such complaints regarding the misconducts of the employment judges. Only the HM Courts & Tribunals wastes the time of the claimant, the claimant simply requested to be referred all his cases for preliminary rulings to the CJEU as HM Courts & Tribunals Service is not fit for a fair trial. These beggars are scared about this referral because their silly lies will be rejected there.

11. The Claimant's application for a postponement was refused by Acting Regional Employment Judge Burgher on 16 November 2022.

12. On 24 November 2022 the solicitor for the fourth Respondent sent the Claimant, the other parties and the Tribunal a copy of the written submissions of Mr Fitzpatrick. A few hours later the Claimant sent an e-mail to various members of Mr Fitzpatrick's chambers saying:

'Please find the attached correspondence. If you refuse to withdraw the false statements filed in the Employment Tribunal, you accept the liability to pay £50M compensation for breaching the data protection law. You have one day to withdraw your pathetic lies filed in the Employment Tribunal.

This email will be used as evidence for your liability to pay £50M.'

13. I was allocated this case only on the morning of 28 November 2022. I have had no dealings whatsoever with this file and until I read the file and documents prepared for the hearing I knew nothing about the case.

14. At 11:11 on 28 November 2022 the Claimant sent an e-mail to the Tribunal saying:

'The preliminary hearing has been converted last week to a remedy hearing, therefore there is no preliminary hearing scheduled for 2pm today.

Moreover, there is no hearing at all today before this tribunal following the request for preliminary ruling to the Court of Justice of the European Union, this referral being compulsory.

The tribunal must confirm only the cases have been referred to the CJEU as requested pursuant Rule 100.'

15. I was concerned that the Claimant might not attend the hearing. Quite clearly the hearing had not been converted to a remedy hearing and no postponement had been granted. A request for a preliminary ruling by the CJEU would not of itself mean the hearing was postponed. That request had never been granted. I asked the administration to send the Claimant an email informing him that the hearing was to proceed and would deal with the Respondents' applications for orders under rule 37 and or rule 39 of the rules. The Claimant responded in the following terms (with emphasis added):

'There is no preliminary hearing and EJ Crosfill is the corrupt judge instructed by the UK government to strike out these default judgments.

The claimant hereby request to be rejected this corrupt judge and from now on he must stay away from these cases. EJ Crosfill can no longer take any action and the tribunal must respond to the claimant's request to refer these cases for preliminary rulings to the CJEU.'

16. At the outset of the hearing I introduced myself and identified the representatives of each party. The Claimant attended in person. I outlined the purposes of the hearing which was to determine the applications under rules 37 and 39 of the rules. The Claimant objected to me taking that course of action. He told me that I had been dismissed by him and could not conduct the hearing. I informed the Claimant that there was no basis for asserting that I could not conduct the hearing but I have assumed that the Claimant was making an application that I should recuse myself. I indicated that I would refuse that application and have set out my reasons below.

17. Before I dealt with the substantive applications I was anxious to ensure that the Claimant's behaviour (which I thought from his correspondence and dealings with the tribunal was unusual) was not due to some underlying medical reason. I asked the Claimant whether there was any underlying medical condition that he wished me to

take into account in determining the applications. The Claimant never gave me an answer to my enquiries. It appears that his stance is that he was insulted by any suggestion that he had any mental health difficulties. Had the Claimant given such an indication then I would have made all appropriate allowances both in the process that I followed and in the substantive decision is that I made. In the absence of any indication by the Claimant that there was any medical reason for his behaviour I have no evidential basis that his behaviour has any medical explanation.

18. The Claimant then complained that the tribunal had not made a reference under rule 100 of the rules to the CJEU. I informed the Claimant that the tribunal had not had a power to do so since 11 PM on 31 December 2020. The Claimant told me I was wrong. He said, quite rightly, that the United Kingdom had left the European Union pursuant to an agreement. He maintained that that agreement provided that some matters could still be referred to the CJEU. If the Claimant was referring to powers of the Employment Tribunal he is wrong about that. I asked him to identify any aspect of the withdrawal treaty that he relied upon but he was unable to assist me.

19. The position in respect of references to the CJEU by an Employment Tribunal is entirely clear. Section 6(1) of the European Union (Withdrawal) Act 2018 provides that:

'6 Interpretation of retained EU law

(1) A court or tribunal—

(a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court, and

(b) cannot refer any matter to the European Court on or after exit day.'

20. The Claimant sought to suggest that rule 100 of the rules remained in force. He suggested that I look it up on the government website. I did not do so during the hearing as I did not want to delay matters but I was confident that the Claimant was wrong. He was. He was clearly looking at the 2013 rules in their original form and not as subsequently amended by the Employment Rights (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/535), reg. 1(1), Sch. 1 para. 14(b) (with Sch. 1 para. 22); 2020 c. 1, Sch. 5 para. 1(1) which revoked rule 100.

21. For the avoidance of doubt, even if the ability to refer a case to the CJEU had not been revoked, I could only have referred a case in order to seek clarification on some aspect of EU law. Contrary to what the Claimant seems to believe the CJEU is not a court of first instance where it would be appropriate to hold a trial. It is a matter of some concern that the Claimant has persisted with this point. In other proceedings he has raised the same point and been given the same answer.

22. I explained to the Claimant that I was going to proceed to hear the applications of the Respondents. The Claimant constantly interrupted me and declined to follow my guidance. He suggested that he had a right to interrupt the Respondents if he felt that they were making false statements. I explained to him that he would have an opportunity to address me once the Respondents had made their submissions. On some occasions I had to resort to muting the Claimant in order to make the point that he should only speak at appropriate junctures. The Claimant persisted in asking me questions which were inappropriate. In particular he objected to the fact that he had made applications which had not been listed for hearing. Whilst that was correct I intended to deal firstly with the Respondents applications before turning to any applications that the Claimant had made in addition to his point that the matters could be/had been referred to the CJEU.

23. When I muted the Claimant he started to use the chat room function in order to address me. I asked the Claimant not to do this on 2 to 3 occasions. He refused to obey my instructions. I have taken a screenshot of the messages typed by the Claimant and attach them as a schedule to this judgment and reasons. The disparaging references were not directed at me but towards counsel and solicitors instructed on behalf of the Respondents.

24. At numerous stages throughout the proceedings the Claimant suggested that I had already decided to strike out his claims because I had been instructed to do so by some unknown person within the British government. He did not hesitate from asserting this despite my assurances to him that this was not the case.

25. I ascertained that the Respondents were all relying upon the same arguments as set out by Mr Fitzpatrick in his written submissions and might only wish to take some supplementary points in addition. I therefore invited Mr Fitzpatrick to make his submissions first.

26. I shall not set out the entirety of the Respondents submissions as I deal with those within my discussions and conclusions below. I can briefly summarise those submissions as follows:

    26.1. it was suggested that the Claimant had neither pleaded nor identified any evidence sufficient that the Tribunal could infer that the actions of the Respondent were because the Claimant had done a protected act or were because of his race. As such it was suggested the claims had no reasonable prospect success and that they should be struck out pursuant to rule 37(1)(a).

    26.2. In the alternative it was suggested that the Claimant's conduct of the proceedings was scandalous, unreasonable or vexatious and that the claims could and should be struck out pursuant to rule 37(1)(b).

    26.3. Mr Fitzpatrick argued that if the tribunal was satisfied that the had been intentional or contumacious conduct it was unnecessary for the tribunal to

reach any conclusion about whether a fair trial was still possible. His alternative argument was that even if the tribunal was required to examine whether a fair trial was possible the evidence showed that the Claimant was not going to moderate his behaviour which would mean that a fair trial could not take place.

27. Having heard from the Respondents I asked the Claimant to address me. The first matter where I sought his assistance was with the question of whether the conduct the Respondents had complained about was accepted. The Claimant accepted that he was the author of the letter where he had referred to a trainee solicitor as 'a slut'. He sought to justify that because she had suggested that he was in poor mental health. I went on to ask the Claimant whether it was appropriate for him to have referred to Roma people in the derogatory terms that he had done (both in the letter I have quoted above and in other correspondence where he had referred to the tribunal as a 'gypsy court'). The Claimant was somewhat evasive. He suggested that his references to Roma people (a phrase he declined to use) was irrelevant. When I explained that it might be relevant to look at whether he had used and might continue to use racist language in correspondence with the tribunal and/or parties he told me that if I was interested in Roma people the UK could have them as they were not welcome in Romania. I find that this was a further racist and offensive remark.

28. My purposes in asking these questions, which I explained to the Claimant at the time, was to ascertain whether there was any insight into the manner in which the Claimant had expressed himself and whether there was any risk that the Claimant would continue to act this way in the future. I find as a fact that the Claimant was wholly unrepentant about his approach to this litigation. I find as a fact that there is a high probability or certainty that the Claimant will continue to behave in the same way in the future.

29. I then gave the Claimant an opportunity to address me on the Respondents applications. His essential point was that I should not deal with those applications unless I dealt with his applications particularly an application for disclosure.

30. He explained that his claims were claims for victimisation and direct race discrimination. The way he put his victimisation claim was that he had brought a claim against DHL following his dismissal. He said that that amounted to a protected act for the purposes of section 27 of the Equality Act 2010. He then said that he had been blacklisted by DHL. The Claimant suggested that this had been admitted by DHL. He referred to correspondence but struggled to identify the relevant documents. With the assistance of advocates for the Respondents we identified the Claimant was referring to documents included within a core bundle apparently submitted in proceedings in the High Court of Justice in a case between the Claimant and DHL Services Ltd. I have carefully read correspondence between the Claimant and an individual called Oliver Greasby who is the Senior Legal Counsel for Employment within DHL Global Business Service. Contrary to what the Claimant told me there are no admissions about blacklisting whatsoever in that correspondence. On the contrary the allegation is expressly denied.

31. The Claimant then referred to a further document which he could not identify in the bundle but then sent me by e-mail. That was an e-mail sent by a Mr Gary Howling

the Managing Director of Public Practice Recruitment on 13 August 2018 instructing his staff not to put the Claimant forward for any positions.

32. When I asked the Claimant what documents he sought in his application for disclosure he said that he wanted copies of references or communications that any of the named Respondents had with DHL. I asked each of the Respondent's representatives if they were aware of any such communications and was told that they were not. The Claimant did not identify any evidence which he had or might be able to obtain which would support his belief that DHL had communicated with these employers.

33. As I have indicated above the Claimant has brought a number of claims in other tribunals. The parties referred me to:

    33.1. Mr Badita v Roofoods Limited & others Case No 2201016/2022. In that case (and a linked case) the Claimant's claims of direct discrimination and victimisation were struck out on the basis that they had no reasonable prospects of success and were totally without merit; and

    33.2. Mr Badita v C.T. Group recruitments Limited & 46 other respondents Case number 1305494/2018 and others heard by EJ Gaskell who concluded that all claims were scandalous, unreasonable or vexatious and had no reasonable prospects of success and should be struck out.

    33.3. Mr Badita v Hays PLC and 11 others Case No 2200287/2019 and others heard by EJ Segall KC where all claims were struck out as having no reasonable prospects of success.

    33.4. Mr Badita and Wheatcroft Sims Associates Ltd case No 2600395/2019 where the claimant is recorded as claiming he had won his case against DHL which he had not and where the claims were struck out as having no reasonable prospects of success and being unreasonable and vexatious.

    33.5. Mr Badita v Merrow Language Recruitment Case No 3312385/2019 where EJ Alliott struck out the claim as having no reasonable prospect of success.

    33.6. Mr Badita v D R Newitt Recruitment Case No 4100905/2019 where the Claimant's claim was struck out when he failed to respond to a letter requiring him to show cause why the claims should not be struck out on the basis that they had no reasonable prospects of success and/or had been conducted vexatiously or unreasonably.

34. The submissions from the parties took until 15:30. I had intended to give an oral judgment but needed time to consider my reasons. Mr Fitzpatrick indicated that he would be in personal difficulties if the Tribunal sat late. I indicated that I would reserve my decision.

<u>The legal test(s) – Rule 37</u>

35. The power to strike out a claim at a preliminary stage before a final hearing is found in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

(hereafter "the employment tribunal rules") and in particular in rule 37 the material parts of which read as follows:

"(1) At any stage of the proceedings, either on its own initiative or on the application of the party, a Tribunal may strike out all or part of the 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 or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;……"

No reasonable prospects of success

36. The power to strike out a claim under Rule 37(1)(a) on the ground that it has no reasonable prospect of success should only be exercised in rare circumstances ***Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly*** **[2012] IRLR 755**, at para 30. In discrimination claims where findings of fact can depend upon whether or not it is appropriate to draw inferences of discrimination from primary facts particular care needs to be taken before striking out a claim ***Anyanwu v South Bank Students' Union*** **[2001] IRLR 305, HL.** The same cautious approach should be applied in a claim brought under S47B ERA 1996 ***North Glamorgan NHS Trust v Ezsias*** **[2007] IRLR 603**.

37. It will generally not be appropriate to strike out a claim where the central facts necessary to prove the case are in dispute. It is not the function of a tribunal such an application to conduct a mini trial. The proper approach is to take the Claimant's case at its highest as it appears from their ET1 unless there are exceptional circumstances ***North Glamorgan NHS Trust v Ezsias***. Such exceptional circumstances could include the fact that the Claimant's case is contradicted by undisputed contemporaneous documents or some other means of demonstrating that 'it is instantly demonstrable that the central facts in the claim are untrue' ***Tayside***.

38. In ***Balls v Downham Market High School*** **[2011] IRLR 217** Lady Smith reminded tribunals that the test is not whether the claim is likely to fail but whether there are no reasonable prospects of success. That however is not the same thing as there being no prospects of success at all - see ***North Glamorgan NHS Trust v Ezsias*** at para 25 citing ***Ballamoody v Central Nursing Council*** **[2002] IRLR 288**. Another way of putting the test is that the prospects are real as opposed to fanciful see ***North Glamorgan NHS Trust v Ezsias*** para 26.

39. ***QDOS Consulting Ltd and others v Swanson*** **UKEAT/0495/11/RN** provides authority the proposition that orders under rule 37 should be made only in the most obvious and plain cases and not in cases where there is a need for prolonged and extensive study of documents and witness statements. Those propositions may also

be found in the authorities above. HHJ Serota QC prior to stating those propositions drew attention to the similar position under the Civil Procedure Rules. He said (at para 45):

[45] It may be instructive to compare the position of striking out under the Employment Tribunal Rules with striking out as provided for in the Civil Procedure Rules. I note that there is a close affinity between striking out under CPR 34.2(a) [sic –there is a typo in the report], which enables the court to strike out the whole or part of a statement of case that discloses no reasonable grounds for bringing or defending a claim overlaps with Pt 24, on summary Judgment. Rule 24(2) entitles a court to give summary Judgment against a Claimant or Defendant on a claim or issue where there is no real prospect of succeeding on the claim or issue, or successfully defending the issue. The notes to CPR 24 in the White Book make this clear:

> *"In order to defeat the application for summary Judgment, it is sufficient for the Respondent to show some prospect; ie some chance of success. That prospect must be real; ie the court will disregard prospects that are false, fanciful or imaginary. The inclusion of the word 'real' means the Respondent has to have a case which is better than merely arguable. The Respondent is not required to show their case will probably succeed at trial; a case may be held to have a real prospect of success even if it is improbable. However, in such a case the court is likely to make a conditional order."*

40. Care needs to be taken when assessing whether a case has no reasonable prospects of success to avoid focussing only on individual factual disputes. A case may have some reasonable prospects when regard is had to the overall picture and all allegations taken together see ***Qureshi v Victoria University of Manchester*** **[2001] ICR 863**

41. The statements of principle derived from the cases referred to above do not in any way fetter the discretion of a tribunal to strike out a case where it is appropriate to do so ***Jaffrey v Department of the Environment, Transport and the Regions*** **[2002] IRLR 688 at para 41**.

42. In ***Chandhok & Anor v Tirkey*** **UKEAT/0190/14/KN** Mr Justice Langstaff made the following comments (with emphasis added):

"20. This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867):

"…only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Or claims may have been brought so repetitively concerning the same essential circumstances that a further claim (or response) is an abuse. There may well be other examples, too: but the general approach remains that the exercise of a discretion to strike-out a claim should be sparing and cautious. Nor is this general position affected by hearing some evidence, as is often the case when deciding a preliminary issue, unless a Tribunal can be confident that no further evidence advanced at a later hearing, which is within the scope of the issues raised by the pleadings, would affect the decision."

43. ***ED & F Man Liquid Products Ltd v Patel and another*** **[2003] EWCA Civ 472** concerned an application to set aside a default judgment. The Defendant contended that the test was the same as that for summary judgment made under Part 24 of the Civil Procedure Rules. The test to be applied under that rule is whether a claim or defence has "no real prospect of succeeding". There is no material distinction between this test and the test under Rule 37 of the ET procedure rules. The Court of Appeal explain what is meant by the requirement to take a case at its highest. Potter LJ giving the judgment of the Court said, at para 10 (with emphasis added):

"…..where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini-trial: see per Lord Woolf MR in Swain v Hillman [2001] 1 All ER 91 at 95 in relation to CPR 24. However, that does not mean that the court has to accept without analysis everything said by a party in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents. If so, issues which are dependent upon those factual assertions may be susceptible of disposal at an early stage so as to save the cost and delay of trying an issue the outcome of which is inevitable.."

44. Mr Fitzpatrick relied upon ***Ahir v British Airways plc*** **2017 EWCA Civ 1392** for the proposition that, where there is an ostensibly innocent explanation for the conduct complained of, the Claimant needs to say what reason they have for saying that that is not the real reason. It is necessary for that explanation to be plausible. I accept that ***Ahir*** is authority for those propositions which are consistent with the authorities I have cited above.

45. In assessing whether the claims have no reasonable prospects of success I remind myself of the effect of Section 136 of the Equality Act 2010. That says:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

46. Accordingly, where a claimant establishes facts from which discrimination could be inferred (a prima facie case), then the burden of proving that the treatment was in no sense whatsoever unlawful passes to the respondent. The proper approach to the shifting burden of proof has been explained in ***Igen v Wong*** **[2005] ICR 9311** which approved, with some modification, the earlier decision of the EAT in ***Barton v Investec Henderson Crosthwaite Securities Ltd*** **[2003] IRLR 332**. Most recently in ***Base Childrenswear Limited v Otshudi*** **[2019] EWCA Civ 1648** Lord Justice Underhill reviewed the case law and said:

17. Section 136 implements EU Directives 2000/78 (article 10) and 2006/54 (article 19), which themselves derive from the so-called Burden of Proof Directive (1997/80). Its proper application, and that of the equivalent provisions in the pre-2010 discrimination legislation, has given rise to a great deal of difficulty and has generated considerable case-law. That is not perhaps surprising, given the problems of imposing a two-stage structure on what is naturally an undifferentiated process of fact-finding. The continuing problems, including in particular the application of the principles identified in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] ICR 93, led to this Court in Madarassy v Nomura International plc [2007] EWCA Civ 33, [2007] ICR 867, attempting to authoritatively re-state the correct approach. The only substantial judgment is that of Mummery LJ: it was subsequently approved by the Supreme Court in Hewage v Grampian Health Board [2012] UKSC 37, [2012] ICR 1054. In Efobi v Royal Mail Group Ltd [2017] UKEAT 0203/16, [2018] ICR 359, the EAT held that differences in the language of section 136 as compared with its predecessors required a different approach from that set out in Madarassy; but that decision was overturned by this Court in Ayodele v Citylink Ltd [2017] EWCA Civ 1913, [2018] ICR 748, and Madarassy remains authoritative.
18. It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in Madarassy. He explained the two stages of the process required by the statute as follows:
(1) At the first stage the claimant must prove "a prima facie case". That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving "facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):

> *"56. … The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*
> *57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. …"*

(2) If the claimant proves a prima facie case the burden shifts to the respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues:

> *"He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."*

He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.

47. Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' see ***Chapman v Simon*** **[1994] IRLR 124** see per Balcombe LJ at para. 33 or from 'thin air' see ***Chief Constable of the Royal Ulster Constabulary*** **[2003] ICR 337**.

48. Discrimination cannot be inferred only from unfair or unreasonable conduct **Glasgow *City Council v Zafar* [1998] ICR 120**. That may not be the case if the conduct is unexplained ***Anya v University of Oxford*** **[2001] IRLR 377, CA.**

49. Whilst inferences of discrimination cannot be drawn merely from the fact that the Claimant establishes a difference in status and a difference treatment see ***Madarassy v Nomura International plc*** **[2007] ICR 867** 'without more'.

50. The something more *"need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred"* see ***Deman v Commission for Equality and Human Rights*** **[2010] EWCA Civ 1279** per Sedley LJ at para 19.

Conduct

51. In ***Bolch v Chipman*** **[2004] IRLR 140, EAT** It was suggested that the ordinary approach to the question of whether a claim should be struck out is to address the following questions:

    51.1. whether there has been scandalous, unreasonable or vexatious conduct of the proceedings: and

    51.2. whether a fair trial is no longer possible: and

    51.3. whether strike out would be a proportionate response to the conduct in question: and

    51.4. what further consequences might follow.

52. In ***Bennett v London Borough of Southwark*** **[2002] EWCA Civ 223** Sedley LJ said (para 27):

    'there may be less to the word 'scandalous' than meets the eye. In its colloquial sense it signifies something that shocks the speaker. …. The trinity of epithets 'scandalous, frivolous or vexatious' has a very long history which has not been examined in this appeal, but I am confident that the relevant meaning is not the colloquial one. Without seeking to be prescriptive, the word 'scandalous' in its present context seems to me to embrace two somewhat narrower meanings: one is the misuse of the privilege of

legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process.'

53. Sedley LJ has given the valuable reminders that**:**

53.1. *'the courts and tribunals of this country are open to the difficult as well as the compliant, so long as they do not conduct their case unreasonably'* ***Blockbuster Entertainment Ltd v James*** **[2006] EWCA Civ 684**

53.2. *'Courts and tribunals do need to have broad backs…'* ***Bennett*** [para 19]

54. Where the conduct complained of is willful or contumacious then that may entitle a tribunal to strike out a claim even if a fair trial remains possible – ***National Grid Co Limited v Virdee*** **[1992] IRLR 555 EAT**

55. Even where one of the tests permitting a tribunal to strike out a claim is met there is a separate question to be asked as to whether the Tribunal should exercise its discretion to strike out the claim see ***Hasan v Tesco Stores Limited*** **UKEAT/0098/16** in support of those propositions.

Recusal

56. In ***Bubbles & Wine Ltd -v- Lusha*** **[2018] EWCA Civ 468**, Leggatt LJ summarised the applicable principles:

[17] The legal test for apparent bias is very well-established. Mr Faure reminded us of the famous statements of Lord Hewart CJ in R -v- Sussex Justices ex parte McCarthy [1924] 1 KB 256 at 259 that 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done;' and that 'nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.' These principles remain as salutary and important as ever, but the way in which they are to be applied has been made more precise by the modern authorities. These establish that the test for apparent bias involves a two stage process. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased: see Porter -v- Magill [2002] 2 AC 357 [102]-[103]. Bias means a prejudice against one party or its case for reasons unconnected with the legal or factual merits of the case: see Flaherty -v- National Greyhound Racing Club Ltd [2005] EWCA Civ 1117 [28]; Secretary of State for the Home Department -v- AF (No2) [2008] 1 WLR 2528 [53].

[18] Further points distilled from the case law by Sir Terence Etherton in Resolution Chemicals Ltd -v- H Lundbeck A/S [2014] 1 WLR 1943 [35], are the following:

(1) The fair-minded and informed observer is not unduly sensitive or suspicious, but neither is he or she complacent: Lawal -v- Northern Spirit Ltd [2003] ICR 856 [14] (Lord Steyn).

(2) The facts and context are critical, with each case turning on 'an intense focus on the essential facts of the case': Helow -v- Secretary of State for the Home Department [2008] 1 WLR 2416, [2] (Lord Hope).

(3) If the test of apparent bias is satisfied, the judge is automatically disqualified from hearing the case and considerations of inconvenience, cost and delay are irrelevant: Man O' War Station Ltd -v- Auckland City Council (formerly Waiheke County Council) [2002] UKPC 28 [11] (Lord Steyn).

[19] In Helow, Lord Hope observed that the fair-minded and informed observer is not to be confused with the person raising the complaint of apparent bias and that the test ensures that there is this measure of detachment: [2]; and see also Almazeedi -v- Penner [2018] UKPC 3 [20]. In the Resolution Chemicals case Sir Terence Etherton also pointed out that, if the legal test is not satisfied, then the objection to the judge must fail, even if that leaves the applicant dissatisfied and bearing a sense that justice will not or may not be done: [2014] 1 WLR 1943

Discussion and conclusions

57. The first matter I need to deal with is Mr Badita's suggestion that he had *'dismissed me'* as a judge. I have treated that as an application to recuse myself. The basis of that application is an assertion that I am corrupt. It is suggested that I had been instructed by the UK government to strike out these claims. The assertion that I was corrupt was made prior to the hearing and before I had any dealings with Mr Badita.

58. I would accept that if I had been instructed to strike out the claims at the behest of the UK Government, the German Government or DHL (or any of the Respondents) that would be grounds for removing myself from the case. I received no such instructions. If I had, the fact that I have sworn an oath to perform my duties as a judge without fear or favour would have compelled me not only to have ignored those instructions but to have drawn them to the attention of the parties. There is no basis upon which it can be said that I have any actual bias against the Claimant.

59. The remaining question is whether a fair-minded observer might conclude that there is a risk of bias. Prior to the hearing there was no basis upon which a fair-minded observer could have reached that conclusion. The same is true during the hearing. I did point out a number of flaws with arguments presented by the Claimant (the CJEU point for example). I did place the Claimant on mute on a number of occasions – a step which I did not take with any other advocate. However, a fair-minded observer would have recognised I did so in order to maintain the dignity of the proceedings and to prevent Mr Badita's constant interruptions of myself and of the other parties. The fact that I have ultimately acceded to the Respondents' applications does not demonstrate any bias. It is evidence of me undertaking my role as a judge.

Strike out - conduct

60. I shall deal with the application made on the basis that the Claimant has conducted the proceedings in a manner which is scandalous vexatious or unreasonable before I turn to the issue of whether the claims have no reasonable prospects of success.

61. I have set out above examples of how the Claimant has conducted the proceedings. I am of the view that correspondence between the parties and between the parties

and the tribunal amounts to conduct of the proceedings. I do not consider that I am entitled to have any regard to how the Claimant has conducted himself before other judges or in other proceedings no matter how closely related they may be.

62. The Claimant has on a number of occasions in these proceedings referred to Roma people in racist language. The Claimant appears to believe that references to Roma is a synonym for unworthy people. He is prepared to make such statements in correspondence regardless of whether it is offensive to the reader. Whilst I have indicated that I will look only at the conduct of these proceedings I note that the Claimant was instructed in proceedings in the Midlands region that it was unacceptable to write to the Tribunal in these terms. The fact that the Claimant has been informed of the boundaries of acceptable behaviour in other proceedings is relevant to the gravity of his conduct in these proceedings.

63. In the course of the hearing before me the Claimant made his views about Roma people very clear. I had made it plain that my purposes of asking the Claimant about this aspect of his correspondence was to explore whether he had any insight into his behaviour in order to assess the risk of repetition. The irony of the Claimant's racist views in the context of the claims he has brought is not lost on me but is not a matter I have had any regard to in reaching the conclusions below.

64. A tribunal must have a broad back but there are limits to what a tribunal and the parties should be expected to put up with. When correspondence is sent it is read. It is read by members of the administration and by the parties as well as an employment judge. Members of the administration should not have to read unpleasant racist communications nor should the parties.

65. I find that this conduct is the Claimant conducting the proceedings and is unreasonable.

66. I then turn to the Claimant's reference to a trainee solicitor being *'a slut'*. I have set out the relevant passages above. I start by saying that I believe that the trainee solicitor was wrong to state in correspondence that the Claimant suffered from mental illness. Whilst the Claimant's conduct is most certainly bizarre and he holds bizarre beliefs it was a lazy assumption to ascribe this to mental illness. Had the Claimant made a proportionate response I do not think he could have been criticised.

67. The Claimant's response was very far from proportionate. His language is totally unacceptable, racist and misogynistic. It would be astonishing if deep offence was not caused by what was said.

68. I find that this conduct was unreasonable and was conduct of these proceedings.

69. The Claimant has written to the Tribunal demanding that the Tribunal restore his *'right to work'*. It appears that the Claimant believes that it is within the gift of the Tribunal to do this. The Tribunal is limited to determining his claims and, if appropriate, making recommendations and awarding compensation. It can make no general order about a *'right to work'*. The Claimant may well not know this and he cannot be criticised for asking. Where he can be criticised is where he suggests that if he does not get what he wants he will issue claims until the Tribunal does as he asks. That is a threat to behave unreasonably. A claim should only be instigated where there is a reasonable basis for doing so and not for any collateral purpose.

70. I consider that this threat was unreasonable conduct of the proceedings. That finding does not depend on whether it was actually carried out.

71. I then turn to the manner in which the Claimant has referred to members of the judiciary. He has suggested that judges who have dealt with this claim are *'crooks'* and are *'corrupt'*. Judges are expected to and generally do have broad backs. Many disappointed litigants suggest that judges are biased. In order for such language to amount to unreasonable conduct it would need to be in extreme terms and/or persistent. I find that the Claimant has used such language with no reasonable basis towards EJ Jones and towards myself in the course of these proceedings. Whilst I am sure that we both have thick skins it is wearisome to be accused of being biased and corrupt without any reasonable foundation. In isolation I would have ignored this behaviour but together with everything else I find that the Claimant has conducted the proceedings unreasonably by insulting members of the judiciary within these proceedings.

72. Finally I turn to the Claimant's behaviour before me. The Claimant's assertions in e-mail correspondence that the Respondents' responses were struck out and that a reference to the CJEU was mandatory and therefore the hearing would proceed as a remedy hearing were misconceived. I shall assume in the Claimant's favour that these very bad points were made, not from malice, but from ignorance.

73. The Claimant's presentation during the hearing was exceptional. I note that other judges have commented upon this but I do not take this into account other than to say that the Claimant has previously had the boundaries explained to him. The Claimant would insist on talking and interrupt me and others. He challenged anything I said in a rude manner. In the time since the Tribunal has used CVP I have used the mute function on a handful of occasions. The Claimant's behaviour required me to mute and unmute him constantly.

74. When muted the Claimant flagrantly disobeyed my order that he desist from using the chat room function. When the Respondent's representatives made short, and in all cases moderate, submissions the Claimant used the chat room function to insult them.

75. I consider that the Claimant conducted the hearing in a wholly unreasonable manner. He was rude and aggressive throughout. I have very broad shoulders. I have dealt with many litigants who are upset or angry. I give the Claimant a generous margin of appreciation but have still concluded that his conduct was wholly unreasonable.

76. In assessing whether to strike the claim out I have had regard to the totality of the Claimant's conduct. This was not just one spontaneous outburst. The Claimant has behaved in an unreasonable manner throughout the proceedings to date. Using language as moderate as I can I find that the Claimant has behaved in a way which is wholly unacceptable.

77. I have concluded that the Claimant has conducted the proceedings unreasonably in his behavior in the hearing.

78. At the outset of the hearing I made enquiries as to whether there was any medical explanation for the Claimant's behaviour. The Claimant did not say that there was. I should make no assumptions about mental illness. In circumstances where the

Claimant expressly declined to rely on any health issue I have respected that and proceed on the basis that any behaviour is an aspect of the Claimant's personality.

79. Whilst would have concluded that the Claimant's conduct listed above was willful it is not necessary for me to grapple with the issue of whether I can omit any consideration of whether a fair trial is possible. I have concluded that a fair trial is not possible for the reasons set out below.

80. A fair trial can only take place if the parties are able to properly prepare for and attend a hearing. Where a party subjects the opposing party to abuse that makes it very difficult to prepare for a hearing and if perpetuated at the hearing itself, as it was before me, would make attendance at a hearing intolerable.

81. If I have got the slightest impression that the Claimant recognised his excessive behaviour and was prepared to rein himself in I would have considered whether, with robust case management, I could have managed his behaviour in a way that would have allowed the parties to properly prepare for and attend a hearing. There was no sign at all that the Claimant was prepared to moderate his behaviour. He flagrantly resisted my attempts to get him to behave in a civil manner.

82. In Badita v Roofoods Limited EJ Burns sets out his experience of dealing with the Claimant during a CVP hearing and he records comments that the Claimant has made about other parties and members of the judiciary. I am entitled to have regard to this evidence, not for the purpose of establishing unreasonable conduct of these proceedings, but to the question of whether there is any realistic possibility that the Claimant will change his behaviour if the matter is allowed to proceed. The fact that he had seen EJ Burns' judgment and reasons and then conducted himself in a similar way before me demonstrates that reminding the Claimant of how he ought to behave does not reduce his misbehavior. It inflames it.

83. I have asked myself whether the Claimant would behave in the same way at a final hearing. I have concluded that he would. Put as moderately as I can I find that the Claimant would attempt to bully the Tribunal and other parties by refusing to accept any of the ordinary controls on behaviour. I would accept that the Tribunal has the power to eject a party who behaves in an unacceptable manner or sending them outside to reflect on their behaviour.

84. Looking at matters in the round I find that the Claimant will not moderate his conduct in any way. If the matter proceeds, the respondents and the tribunal will be faced with abuse and any final hearing will be disrupted by the manner in which the Claimant behaves. I find that a fair trial is impossible.

85. I have considered whether it is proportionate to strike out the claims. I find that it is. Whilst as LJ Sedley reminds me the courts are open to the difficult people as well as others the system falls into disrepute if it permits litigants to persistently abuse their opponents and the tribunal itself. Such behaviour can, in cases as extreme as this, justify what is a draconian order.

86. For the reasons set out above I strike out the claims on the basis that the Claimant has conducted the proceedings in a wholly unreasonable manner, a fair trial is impossible and that it is a proportionate response to do so.

No reasonable prospects of success

87. In assessing whether the Claimant's claims have no reasonable prospects of success I am required to take the claims 'at the highest'. That does not mean that I must accept a theory of the case that is entirely speculative, fantastic or inherently implausible.

88. The Claimant says that he applied for a job with each respondent (that was only disputed by the Second Respondent who appears to put the Claimant to proof). None of his applications were taken further. The Claimant says that his CV mentioned his nationality. The CV in the bundle of documents included an assertion by the Claimant that he had been blacklisted by DHL and that this was discriminatory. The Claimant says that this was a protected act. For the present purposes I accept those assertions.

89. The Claimant says that he is by far the best candidate available in the UK. The roles the Claimant applied for were all entry level roles. Assuming in the Claimant's favour that he was vastly overqualified for the roles he applied for this is at best a neutral factor neither supporting nor undermining his case that the ostensible reasons why he was not appointed were the totality of the reasons. Many employers would regard being vastly overqualified as being a factor pointing away from suitability for a junior role.

90. The Claimant points to what he suggests is a general antipathy towards Romanians in the UK. I accept that as the last of the EU accession states there was a period where Romanians were treated in immigration law less favourably than other EU citizens. I accept that the accession of Romania was the subject of some adverse comment in certain sectors of the media. However, I take judicial notice of the fact that many Romanians have settled and found work in the UK since then including the Claimant. In their ET3s several of the Respondents say that they have Romanian people in their workforce. I do not consider that the mere fact that the Claimant is a Romanian looking for work in the UK would, of itself, provide that 'something more' from which a tribunal could infer race discrimination.

91. The response of the Second Respondent says that they had filled the position the Claimant says that he applied for by the time the Claimant says that he applied. The Claimant does not suggest that he has any basis to dispute that suggestion.

92. The principal way in which the Claimant put his case was that he had been blacklisted by DHL and, with the assistance of the German and UK governments the Claimant was prevented from working. The Respondents referred to this as a conspiracy theory.

93. In support of this aspect of his case the Claimant says that DHL had admitted blacklisting him. I have found that there is no evidence of that at all. The documents the Claimant had produced do demonstrate that DHL would not re-employ the Claimant. That is of little note given that he was dismissed where there were allegations of sexual harassment. The Claimant has also produced documents that show that one recruitment agency will no longer put him forward for work. That evidence even taken at its highest is insufficient to establish that the Claimant has been blacklisted.

94. The Claimant has not indicated any potential source of evidence that would demonstrate that the five Respondent's in this case had been influenced by DHL or for the purposes of his victimisation claim knew that he had ever done any protected act.

95. I consider that the Claimant's theory of the wide power of DHL to influence others is exactly the sort of matter that is an exception to the requirement to take the Claimant's account at the highest. I am not required to accept a theory of the case that is speculative or fantastical. The Claimant has not been able to point to any potential source of evidence to support his claims. His suggestion that governments and HMCTS are part of a plan to deprive him of work are so inherently implausible that I can safely say the Claimant has no reasonable prospects of establishing that theory of the case.

96. I recognise that I am assessing the case at an early stage. When I asked the Claimant what documents he thought should be provided by the Respondents he indicated that he wanted the references provided by DHL. He has no basis for a belief that such documents exist and the Respondents say that they do not.

97. The Claimant has brought a large number of claims. I am concerned with just the five before me. I find that the Claimant has not disclosed any reasonable basis for bringing the claims. He has applied for jobs but not been offered an interview. Each Respondent has given an ostensibly plausible reason for that. The only basis the Claimant has for displacing those ostensible reasons is his nationality and the theory that DHL have the power to influence others. That latter theory is utterly implausible. The former is not of itself sufficient that a tribunal properly directed could, in the absence of an explanation from the Respondent, could draw an inference that the Claimant's race or prior claims played any part in him not being interviewed for each position. The Claimant has been unable to point to any source of evidence that would provide the 'something more' necessary to support a prima facia case of race discrimination or victimisation.

98. I have considered whether in the exercise of my discretion I ought to take the serious step of striking out these claims. I am of the view that the evidential picture will not change. There is no good reason for these claims to go to a full hearing. I have therefore decided that for these additional reasons they should be struck out. They have no reasonable prospects of success.

99. Accordingly for these additional reasons the Claimant's claims are struck out.

Costs Applications

100. The fact that I reserved my decision means that I have not dealt with any applications for costs that at least the first and fourth Respondent indicated that wished to make. If any party wishes to pursue such an application they may do so by applying in writing within the time limits imposed by the rules of procedure. They must include a schedule of costs and set out the basis of their application in plain language. If they refer to previously decided cases of the higher courts they must identify the passages relied upon and provide a copy for the Claimant. They should indicate whether they seek a hearing. If any application for costs is made the Claimant should say whether he wants the matter dealt with on paper or at a hearing. He should do so within 7

days of any application for costs being made. Each Respondent may wish to reflect on the proportionality of further litigation.

Employment Judge Crosfill
Date: 6 December 2022

Messages placed in the chat room during the hearing

ADRIAN BADITA
Don't put me on mute
I have the right to use the chat if you muted me
2:13 PM
Respond to my question
Why the tribunal refuses to restore my right to work?
Respond to my question
I don't allow to those crooks to submit false statements
2:16 PM
And you got it
Stupid crook I responded
2:26 PM
Respond to my questions
Stop lying
Unmute me
This crook is submitting false statements
Your response has been struck out
Stop lying

2:29 PM

Stupid joker
I am blacklisted
This crook didn't mention the victimisation
It's enough for this crook
Nothing has been struck out

2:33 PM

You have already agreed before the hearing

2:35 PM

His submissions do no match the claims

2:37 PM

What a joker
I replied
I will send it again
he's lying
I have sent it to everyone
Another joker
You disobeyed everything

2:41 PM

For which jobs?
Where is the victimisation
I am the first option for any job on this island
You're lying

2:43 PM

There is already no fair trial
It's enough for this crook
Speculative are only your lies