



EMPLOYMENT TRIBUNALS

Claimant: Professor T Ahmed

Respondent: United Lincolnshire Hospitals NHS Trust

Heard at: Midlands East via CVP on the papers

On: 18 November 2022

Before: Employment Judge Victoria Butler

Members: Ms L Lowe
Mr K P Chester

JUDGMENT

1. The unanimous judgment of the Tribunal is that Ms Ayre's application for an anonymity order is refused.

REASONS

Background to the Application

1. The case came before us between 21 March 2022 and 1 April 2022 to hear the Claimant's claim of race discrimination and unfair dismissal. We reserved our decision and determined that the Claimant's claim of direct race discrimination, victimisation and unfair dismissal succeeded. His claim of harassment failed.
2. The judgment was sent to the parties on 30 June 2022 and was published thereafter on the government website for Employment Tribunal decisions. The decision gained publicity.
3. Ms Ayre was not a party to, nor a witness at, the proceedings before us. However, it was her grievance against the Claimant which prompted disciplinary proceedings against him and his consequent dismissal.

4. On 19 July 2022, Ms Ayre emailed the Tribunal expressing her concern that the judgment included reference to her name and personal details as well as incorrect information about her performance. She asked for passages of the judgment which referred to her to be redacted or that she be anonymised. We treated her email as an application for an anonymity order and invited submissions from the Claimant and the Respondent.
5. The Respondent confirmed it had no objection to the application. The Claimant objected and filed written submissions. Ms Ayre was given opportunity to provide comments on the Respondent's submissions and the parties consented to the application being heard on the papers.

Ms Ayre's Application

6. Ms Ayre submitted that the findings in the judgment and resulting news articles are significantly damaging to her personal and professional reputation and that her current role could be at risk as a result. Furthermore, they have the potential to impact upon her career moving forward.
7. Her concerns were namely:
 - 7.1. That significant information contained within the judgment was the Claimant's personal opinion.
 - 7.2. That by association she was being tarnished as having discriminated against the Claimant on the grounds of race when she was not given opportunity to challenge such suggestion.
 - 7.3. The Tribunal appears to have made comment or judgment on the veracity of her grievance without hearing evidence from her and others.
 - 7.4. She was not notified or invited to comment or give evidence at the hearing.
 - 7.5. That her right to a fair trial had been breached.
 - 7.6. That her right to a private and family life had been breached in that her personal details had been included in a public judgment, including significant information about her grievance which was raised in relation to her employment. The information has been widely shared and picked up by the local and national media and she had not provided consent for such publication.
 - 7.7. That her data protection rights had been breached because she had not given consent for her personal information to be released.
 - 7.8. Her right to confidentiality had been breached.
8. In her further submissions, the Claimant set out these concerns in more detail. She expressed her view that the vast majority of the public would be unable to differentiate between arguments advanced before us by the Claimant and our

findings.

9. She went on to explain that it is increasingly common practice for potential employers, and others, to Google individuals of interest to them and they too would struggle to make the same differentiation. This could be significantly damaging to her personal and professional reputation.
10. She was further concerned that the judgment contained serious allegations against her which she says are deeply unfounded. She also refuted the Claimant's statement that she was being performance managed.
11. However, she acknowledges that the Tribunal's judgment is unrelated to her personal and professional conduct and relates only to whether the Respondent appropriately or otherwise managed the investigation relating to the Claimant.

The Claimant's Objections

12. The Claimant objected to the application. He submitted that the Tribunal did not make any specific criticism of Ms Ayre in terms of her motivation for making her complaint, in relation to her conduct whilst employment by the Respondent or following her resignation.
13. Ms Ayre does not identify which parts of the judgment are said to be the Claimant's personal opinion, but the Tribunal rightly set out the parties' respective cases before setting out detailed and reasoned findings of fact.
14. Importantly, the judgment does not make any adverse findings against Ms Ayre in relation to race discrimination.
15. Ms Ayre did not take any active steps to become involved in the proceedings.
16. Article 6 (the right to a fair trial) is not engaged and her complaint that her Article 8 right (the right to private and family life) had been breached should be rejected. Article 8 specifically provides that interference with the right is permitted and in accordance with the law and where necessary in a democratic society for the protection of the rights and freedoms of others. The Claimant had the right not to be unfairly dismissed or subjected to unlawful discrimination. Ms Ayre's rights must be balanced against the Claimant's, the principle of open justice and Article 10 (freedom of expression).
17. The judgment does not include sensitive or personal information beyond that which was disclosed by Ms Ayre herself in connection with her grievance which is intrinsically linked with the issues that the Tribunal had to consider.
18. In respect of an alleged data breach, Ms Ayre has not specified any details of the same. Further, the Tribunal did not need to seek Ms Ayre's consent to use her grievance in the Tribunal proceedings.
19. Ms Ayre's request to redact parts of the judgment should be resisted and,

furthermore, if her name was removed from the judgment then it follows that others may make similar applications which would render the judgment opaque if the Tribunal were to adopt a consistent approach to Rule 50 and impose similar orders.

20. The Claimant submits that the information is already in the public domain and the *“genie cannot not now be placed back in the bottle”*.
21. In summary, it says that the principal of open justice must prevail unless there are very good reasons not to and her application fails to identify any significant public policy reasons that would justify a departure from the principal of open justice and would open the door to other applications from the other individuals named in the judgment.

The law

22. Rule 50 of the Employment Tribunals Constitutional and Rules of Procedure Regulations 2013 provides:

“An Employment Tribunal may make an order to prevent or restrict disclosure of any aspect of proceedings so far as necessary in the interests of justice. Paragraph (3) lists examples of orders which may be made under this rule. Any person with a legitimate interest may, if he or she did not have opportunity to make representations before the order was made, apply for such an order to be revoked or discharged”.

23. Article 6 of the European Convention on Human Rights (“ECHR”) provides:

“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial Tribunal established by law. Judgment shall be pronounced publicly but the Press and Public may be excluded from all or part of the Trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice”.

24. Article 8 of ECHR provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of his rights except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the Country, for the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedom of others”.

25. Article 10 of ECHR provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. *The exercise of these freedoms, since it carries with it duties and responsibility, maybe subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention or disorder or crime, for the protection of health or morals, for the protection of reputational rights of others, for the preventing the disclosure of information received in confidence, or forming, maintaining the authority and impartiality of the judiciary”*

26. Whilst neither party referred us to case law, we had regard to the following principles:
27. There is a public interest in hearings being conducted so the press can report names of those involved, even if the court could have done its job without the named being named, because in a strict sense the identities of the persons involved are not relevant to the issues in dispute. If the lack of relevance, in that sense, of the names of the persons involved was sufficient to grant anonymity, it would be granted in nearly all cases – ***Frewer v Google UK Ltd [2022] EAT34***.
28. The principal of open justice is of paramount importance and derogations from it can only be justified when strictly necessary in the interests of justice – ***BBC v Rodan [2015] ICR985 EAT***.
29. Clear and cogent evidence is required to establish a basis for derogating from the principal of open justice (***BBC v Rodan***).
30. The Tribunal must give full weight to the principal open justice and the rights to freedom of expression under Article 10 ECHR.
31. The mere publication of embarrassing or damaging material is not a good reason for restricting the reporting of a judgment – (***BBC v Rodan***).

Conclusions

32. We start from the point that clear and cogent evidence is required to establish a basis for derogating from the principal of open justice.
33. We have had regard to Ms Ayre’s submissions that the judgment and resulting news articles are significantly damaging to her personal and professional reputation and her current role could potentially be at risk as a result. She also says that they have the potential to impact upon her career moving forward.
34. However, the judgment has been in the public domain since July 2022 and Ms Ayre has not provided any evidence to suggest that her concerns are more than simply that. We have also borne in mind that:
- We made no adverse finding against Ms Ayre, nor do we make any specific criticism of her:
 - We made no finding that she personally discriminated against the Claimant or that she was associated with the Respondent’s discrimination.

- The judgment does not comment on the veracity of her grievance or otherwise:
- The case did not focus on her performance other than by reference to the Claimant's assertions within the disciplinary process. We made no findings in respect of them, and they played no part in our deliberations: and
- No sensitive personal information about her appears in the judgment.

35. Article 8 can be engaged if Ms Ayre has a reasonable expectation of privacy. We are not satisfied that she had a reasonable expectation of privacy considering her agreement to act as a management witness at the Claimant's disciplinary hearing which arose out of her grievance. Accordingly, we are not satisfied in the first instance that Article 8 is engaged.

36. Even if it were, the Claimant would not have persuaded us that exceptional circumstances apply justifying a derogation from the principle of open justice. In this regard we must undertake a balancing exercise and the burden of establishing any derogation lies on Ms Ayre. The onus is on her to provide clear and cogent evidence that the derogation is required, and we do not have this from her.

37. Regardless, in balancing her rights against the Claimant's right not to be unfairly dismissed or subjected to unlawful discrimination, we are satisfied that the Claimant's rights prevail. This is more so given she is not criticised in the judgment (as we set out above) and reference to her merely forms part of the factual background,

38. Furthermore, we are not persuaded that the public would be unable to differentiate between our findings of fact and our ultimate judgment in the matter. Even if this were a risk, the possibility of the public drawing unjustified inferences is not a reason for granting anonymity, particularly given that the allegations made by the Claimant about her are not serious and relate to his view on management matters arising out during their day-to-day employment relationship.

39. In respect of Article 6, Ms Ayre was not a party to the proceedings, nor did we make any judgment about her, so this right is not engaged. We are also satisfied that there has not been any data breach.

40. We are satisfied that Ms Ayre does not raise anything close to outweighing the principles of open justice and the freedom of expression and, therefore, her application fails.

Employment Judge Victoria Butler

Date: 14 December 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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