EMPLOYMENT TRIBUNALS

Claimant: **Mr G Daley**

Respondent: **Royal Mail Group Ltd**

Heard at: **Cardiff and by video**

Before: **Employment Judge S Moore**

Representation:
Claimant: **In person**
Respondent: **Ms R Cairney, Solicitor**

JUDGMENT

1. The claimant's remaining claims of unfair dismissal, wrongful dismissal and direct sex discrimination are struck out.

REASONS

1. This judgment should be read in conjunction with the corrected judgment sent to the parties on 9 January 2023.

2. On 10 October 2022, the respondent applied to strike out the claimant's remaining claims on the basis that the Claimant's manner in pursuing the claims has been scandalous, unreasonable and vexatious.

3. The claimant was directed to comment on the application by 11 November 2022 (paragraph 19 of the case management order dated 1 November 2022). No comments were received.

4. On 28 November 2022 the respondent informed the Tribunal that the claimant had been given a three month custodial sentence the preceding week. The Tribunal received a letter on 7 December 2022 from the claimant also dated 28 November 2022 which stated as follows:

"I appeared at Cardiff Crown Court on 21st November for trial where two counts of theft I was found not guilty of wilful delay of mail.
Yet found guilty of wilful delay of mail. I request the case be stayed until I can litigate my case on release from prison".

5. On 9 January 2023 the parties were informed that the final hearing listed to start on 13 March 2023 was postponed and a public preliminary hearing was listed for 13 March 2023 to hear the respondent's application for strike out. This was posted to the claimant's address.

6. A revised notice of hearing was posted to the claimant on 21 January 2023.

7. On 15 February 2023 the Tribunal received a letter from the claimant advising of a change of address and email. A further copy of the notice of preliminary hearing dated 21 January 2023 was sent to the claimant at his new address and email on 1 March 2023.

8. On 4 March 2023 the claimant sent 4 emails attaching a witness statement. At this stage it appears the claimant thought the hearing on 13 March 2023 was still his final hearing. On 7 March 2023 the claimant sent an email in which he appears to have realised the final hearing had been converted to a preliminary hearing. The claimant told the Tribunal today he had not received any of the Tribunal correspondence referred to above in paragraphs 5, 6 and 7.

9. The claimant had written a letter on 13 December 2022 in which he advised what he had previously stated about his conviction "seemed to be incorrect" and he was "only sent to prison for contempt of court and not the wilful delay of mail". The claimant sought a wasted costs order against the Respondent for their "utter contempt" in proceedings and "denial of over 90 documents." He also sought to add "detriments in the crown" to coincide with his protected acts. He alleged that a member of HMCTS staff had impersonated Judge Moore and Judge Sharp but it was unclear when this was alleged to have taken place or what the details of the alleged impersonation were.

10. Further repeated allegations have been received since the preliminary hearing that Judge Sharp is impersonating Judge Moore.

Preliminary Hearing 13 March 2023

11. I set out the events of the preliminary hearing as they are relevant to my decision to strike out the claimant's claims.

12. The claimant was in person and the respondent's representative, Ms Cairney appeared by video link.

13. The claimant had prepared a bundle intended for use at the final hearing which he brought with him. This was despite what had been discussed at the last preliminary hearing on 20 October 2022. The claimant had stated in a letter dated 28 August 2022 that he would produce his own bundle. This was contrary to previous orders made for the provision of an agreed joint bundle. The claimant was warned at paragraph 6 of the order that any bundle produced solely by the claimant and in breach of the orders for a

joint bundle would not be considered or admitted as evidence and may be grounds to strike out the whole claim due to unreasonable conduct or rendering a fair hearing impossible.

14. The claimant had been sent, but not brought to the hearing, a preliminary hearing bundle prepared by the respondent. A copy of this bundle was printed and provided to the claimant by the clerk.

15. Throughout the hearing, but worsening at the end the claimant was argumentative, rude to the level of abusiveness, constantly interrupted and argued with Judge Moore. He also sought to insist that Judge Moore answer his questions. Judge Moore asked the claimant to display the courtesy of listening to Ms Cairney and Judge Moore and he would have the opportunity to speak and make his submissions but the claimant was unable to do so. Eventually, as had happened at the last preliminary hearing, the level of disruptive, abusive and rude behaviour from the claimant reached a level where it was no longer possible or appropriate to continue and the decision was reserved.

16. There were numerous incidences of rude and abusive behaviour by the claimant as follows:

a) The claimant insisted he would start again with his submissions as Judge Moore "was not grasping it" after I sought to clarify which preliminary hearing he was referencing.

b) The claimant alleged that Judge Moore "had already made up her mind" and he was not worried if the claim is struck out as he has "other plans" and "there is more than one way to skin a cat". I found these comments to be of a threatening nature.

c) He had not been disruptive as recorded by Judge Sharp at a previous hearing.

d) Said to Judge Moore "What are you on about" when he had been asked a question and said on a number of times "you are unbelievable".

e) Constantly interrupted and spoke over Judge Moore and would not listen to what was attempted to be explained to the claimant.

f) Alleged that Judge Moore is implicit in interfering with the sending and receiving of the claimant's letters.

g) Regarding the table of victimisation claims that Judge Moore had recorded after the last preliminary hearing, the claimant agreed he had stated Judge Moore had "cherry picked from the initial ET1 claim form" and chosen a smaller table dated 6 July 2022 to narrow his claims.

h) Lastly, shouted at Judge Moore "you are an embarrassment". It was at this point the hearing was brought to a premature close as the claimant had been asked numerous times to calm down and behave in a courteous and respectful manner befitting a court hearing.

17. I also refer to other statements made by the claimant at the hearing that I consider to be relevant to the issue of whether to strike out the claimant's claim as follows:

a) A letter in the preliminary hearing bundle from a police constable was fabricated.

b) The respondent and the Tribunal are moving words around in his letters then adding them back in and are gas lighting the claimant;

c) Persons unknown are interfering with his letters and changing them also deleting sections. In particular the letter dated 7 September 2022 (which is relied upon in part by the respondent for the strike out, see below); the claimant firstly asserted he had not written the letter then denied he had said this directly after making the statement. His final position was that there were three or four versions of the letter after being interfered with.

Basis of application for strike out

18. The respondent's application was made on 10 October 2022. The grounds were as follows:

a) It is documented in the case management order of Employment Judge Sharp (18 March 2022) at paragraph 18 that the Claimant's conduct within the preliminary hearing had been 'disruptive and inappropriate towards the Judge' (Judge Sharp) and that he had to be 'warned on more than one occasion that if he persisted in such conduct, the hearing may be terminated';

b) The Claimant has referred numerous times to a recording, which he says he wants to play at the final hearing, No such recording has ever been disclosed to the respondent, despite numerous requests for the Claimant to do so. (The claimant confirmed today that he would continue to refuse to release the recording, yet seek to rely on it at a final hearing).

c) In a letter dated 7 September 2022 the Claimant has engaged in scandalous behaviour towards the judiciary, and in particular, Judge Moore. For example, the letter alleges that:

d) The Tribunal has attempted to assist the Respondent to dismiss the claim (page 1);

e) The Tribunal has not been transparent nor impartial (pages 2 and 8, 9);

f) 'The employment judge is cherry picking from the initial ET claim form' (page 2);

g) The table Judge Moore had drafted (table of protected acts and detriments for the victimisation claim) is 'to be frank an embarrassment on Judge Moore's part' (page 3) and 'not worth the paper it is written on' (page 10);

h) Judge Moore was 'lying' and the whole purpose of the previous preliminary hearing was to strike out elements of his claim (page 8);

i) The Tribunal had attempted to confuse him with 'trickery' (page 8);

j) The Tribunal had attempted to deflect the attention away from any wrong doing on the Tribunal's part (page 9);

k) The Judge is 'unbelievable' and his right to bring a claim is being 'abused by a member of the judiciary without merit' (pages 10-11);

l) 'Clarity and transparency does not seem to be the Judges strong point instead seems very contradictive and unsure' (page 12);

m) Judge Moore's reading of the Claimant's correspondence sent to the Respondent and Tribunal 'throws doubt on the Judge's impartiality' (page 12);

n) Because someone called Mark Stadden had at least 10 years left in wages that could be possibly earned through employment, this made 'the judge's view and opinion futile and clueless' (page 12);

o) The 'Judge's ability to hear my case is a very real danger of allowing the integrity of the Tribunal to be questioned' (page 12);

p) The Judge has conducted 'many wrongs' and questions how many wrongs does a judge have to be part of 'before they are removed for abuse of position' (page 14);

q) The Trial is a 'stain on the judiciary' (page 16);

r) 'The Employment judge I have more than good reason to believe that she is dubiously covering for an absent employment judge' (page 22);

s) 'The process is against the employee, the transparent and impartiality is at best enforced occasionally' (page 23).

19. It was submitted that the above accusations levelled at the Tribunal and judiciary amounted to conduct of the proceedings was scandalous, unreasonable and vexatious as set out in Rule 37 (1) (b) and as such all of the claims should be struck out.

<u>The Law</u>

20. Rule 2 of the Employment Tribunal Rules of Procedures 2013 sets out the following:

(2) Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) **ensuring that the parties are on an equal footing;**

(b) **dealing with cases in ways which are proportionate to the complexity and importance of the issues;**

(c) **avoiding unnecessary formality and seeking flexibility in the proceedings;**

(d) **avoiding delay, so far as compatible with proper consideration of the issues; and**

(e) **saving expense.**

21. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the

22. Rule 37 of Sch 1 of the Employment Tribunal Constitution (Rules and Procedure) Regulations 2013 provides:

"Striking out
37.—(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—
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;
(d) that it has not been actively pursued;
(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in r 21 above."

23. Striking out a claim has the utmost of serious consequences and should only be taken in the clearest of cases (**Malik v Birmingham City Council UKEAT/0027/19).**

24. In **Bennett v London Borough of Southward [2022] IRLR 407**, Lord Justice Sedley set out the meaning of the word "scandalous" as follows:

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. Each meaning has lexicographical and legal support, the first in the principal OED definitions of 'scandal' and 'scandalous', which have to do with harm and discredit; the second in 'scandalising the court', a historical form of contempt; and both in Daniel's entry in Byrne's Dictionary of English Law cited in his judgment by Ward LJ. These considerations are not of course exhaustive, but they are enough to make it plain that 'scandalous' in the rule is not a synonym for 'shocking'. It is a word, like its sibling 'frivolous', with unfortunate colloquial overtones which distract from its legal purpose:

see the remarks of Lord Bingham CJ in R v Mildenhall Magistrates Court, ex parte Forest Heath DC (The Times, 16 May 1997) .

In **Abegaze v. Shrewsbury College of Arts & Technology [2010] IRLR 238** the Court of Appeal considered a strike out under the former provisions in the 2004 Rules (under 18 (7) (b) where it is no longer possible to have a fair hearing). This is relevant to the issue of whether strike out is proportionate. The Tribunal must engage on a proper analysis of why a fair trial is no longer possible and ensure there is a factual basis for such a conclusion.

25. In **Blockbuster v James [2006] IRLR 630** the Court of Appeal held as follows (regards proportionality) :

"It is not only by reason of the Convention right to a fair hearing vouchsafed by art 6 that striking out, even if otherwise warranted, must be a proportionate response. The common law, as Mr James has reminded us, has for a long time taken a similar stance: see Re Jokai Tea Holdings [1992] 1 WLR 1196, especially at 1202E-H. What the jurisprudence of the European Court of Human Rights has contributed to the principle is the need for a structured examination. The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact – if it is a fact – that the tribunal is ready to try the claims; or – as the case may be – that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist. If a straightforward refusal to admit late material or applications will enable the hearing to go ahead, or if, albeit late, they can be accommodated without unfairness, it can only be in a wholly exceptional case that a history of unreasonable conduct which has not until that point caused the claim to be struck out will now justify its summary termination. Proportionality, in other words, is not simply a corollary or function of the existence of the other conditions for striking out. It is an important check, in the overall interests of justice, upon their consequences."

26. The Employment Appeal Tribunal recently considered the power to strike out under Rule 37 in **Emuemukoro v Croma Vigilant (Scotland) Ltd and another UKEAT/0014/20/**

27. In this case the Tribunal had struck out the response on the first day of a five day hearing on the basis that the Respondent's failures to comply with the case management orders meant it was impossible for the trial to proceed within the five day window. Choudhury J reviewed the authorities and rejected the proposition that the power to strike out can only be triggered where a fair trial is rendered impossible in an absolute sense. (This case was about a strike out under Rule 37 (1) (b)). The factors relevant to a fair trial (set out by the Court of Appeal in Arrow Nominees) include the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court.

Conclusions

28. There have been five preliminary hearings in this case, three of which were to try and clarify the claimant's claims.

29. At the hearing before Judge Sharp the order records the claimant was disruptive and inappropriate towards the Judge.

30. At the preliminary hearings before me on 20 October 2022 and 13 March 2023, the hearings had to be brought to an end and a decision sent in writing as the claimant's behaviour made it impossible to continue with the hearing.

31. The Tribunal often deals with litigants in person. In doing so we are assisted by the overriding objective and the guidance in the Equal Treatment bench book. The Tribunal, within the parameters of the overriding objective seeks to assists parties particularly those who are unrepresented in order to ensure a fair hearing of the claims and is experienced in managing hearings where individuals are finding the process frustrating, stressful and in some cases challenging.

32. However it is only possible to operate within the Rules and have a fair hearing for both parties where a party is able to conduct themselves in a manner befitting a hearing. The Tribunal must be able to expect a minimum level of acceptable behaviour appropriate in a hearing which means being prepared to listen when the Judge or other party is speaking, waiting turn to speak and not interrupt and to refrain from being rude, abusive and displaying aggressive and threatening behaviour. The Tribunal has the power to control a party's conduct within the Rules of Procedure. It is very rare to bring a hearing to a premature conclusion due to disruptive behaviour of a party. In this case that has happened twice and been considered a third time by a different judge.

33. I consider that the manner in which the claimant has conducted the proceedings has been scandalous and unreasonable. Both the claimant's behaviour during hearings and his written correspondence amounts to a gratuitous insult to the court.

34. I do not see any prospect of the claimant cooperating with the respondent or the Tribunal or be able to conduct himself appropriately at future hearings, or comply with orders to ensure the claim will be ready for a final hearing. This was evident by the claimant's actions in bringing his own final bundle to the preliminary hearing despite being repeatedly directed to cooperate to prepare a joint bundle (see paragraph 12 above). Further, the claimant stated that he would continue to refuse to disclose an audio recording but would be playing it at the final hearing.

35. I consider that striking out the claimant's claim is the only response open to me and is proportionate. I do not consider there to be any lesser sanction that could be imposed.

Case No: 1600721/2021

Employment Judge S Moore
31 March 2023

JUDGMENT SENT TO THE PARTIES ON 4 April 2023

FOR THE TRIBUNAL OFFICE Mr N Roche