



EMPLOYMENT TRIBUNALS

Claimant: Mr J Alom

Respondent: (1) Ms A Shaukat
(2) The Financial Conduct Authority

PRELIMINARY HEARING (CLOSED)

At: East London Hearing Centre (via CVP)

On: 20 February 2023

Representation:

Claimant: In person
Respondent: Ms R Thomas, Counsel

REASON FOR JUDGMENT AND DECISION FOLLOWING RECONSIDERATION

1. In an email dated 27 March 2023 the Claimant requests written reasons for my judgment sent to the parties on 24 March 2023 with a minor correction in the spelling of the First Respondent's name contained in a Notice of Correction of the same date.
2. The Claimant has also, without waiting for the receipt of these reasons, applied for a reconsideration of that part of my Judgment which deals with his application to amend his Claim. The relevant part of the Judgment is at paragraph 5.2. The Claimant does not indicate that he challenges the successful application to amend his claim which is determined in my judgment at paragraph 5.1. He does not ask for reconsideration of the decision to strike out his original claims of direct sex discrimination, harassment based on his protected characteristic of sex and harassment based on race. (Some matters had already been struck out on their merits as the 18 October 2022 Order records). A clear reason has been given for that strike out decision which is that the Claimant, by his own admission, has not paid the deposit, or any part of it, which was ordered by Employment Judge M Martin on 18 October 2022.
3. The reasons for the deposit order were sent to the parties on 11 November 2022. I decline, as the Claimant now invites me to do, to undertake again the enquiries made by EJ M Martin as to the Claimant's ability to pay a deposit order. The Claimant did

not ask for a reconsideration by EJ M Martin and I understand that her decision is under appeal to the Employment Appeal Tribunal.

4. In the circumstances I have therefore set out below my reasons for the refusal to grant the Claimant's application dated 1 August 2022 supplemented by further submissions on 11 December 2022 to amend his Claim by the late addition of new post-employment complaints relating to alleged acts of direct race discrimination, alternatively harassment based on race, and victimisation.
5. The Claimant made a claim for unfair dismissal and sex discrimination including victimisation on 26 March 2021 in case number 3200936/21. He has withdrawn claims relating to detriment on the ground of making protected disclosures under section 47B Employment Rights Act 1996 and he no longer pursues any claim that he was automatically unfairly dismissed for making protected disclosures (whistleblowing).
6. The Claimant made further claims in a second ET1 lodged with the tribunal on 26 April 2021 under case number 3202620/21 against both Respondents for sex discrimination including harassment consisting of unwanted conduct of a sexual nature under section 26 (2) (a) Equality Act 2010. These claims have been struck out as in my Judgment of 20 February 2023 when oral reasons were also given.
7. The two claims have been ordered to be heard together.
8. The Claimant was permitted by way of a successful amendment application to add claims of race discrimination including harassment by order of Employment Judge Frazer on 20 May 2022. Those claims have now been struck out as a result of the failure to pay the deposit ordered by Employment Judge M Martin.
9. The Claimant made a further application to amend his consolidated claims on 1 August 2022. In that application he says that, immediately after his success in having additional claims accepted on 20 May 2022, the Second Respondent published his sensitive personal data online via a website called 'whatdotheyknow.com' where the Claimant had originally submitted information relating to his requests for an internal review of FOI applications made by him to the Second Respondent. It is the Claimant's contention that this breach of data protection ((which he terms 'doxing' in order to emphasise the deliberate nature of the breach), and two other more limited breaches in correspondence with others, were acts of unlawful race discrimination, harassment related to his race and/or victimisation where the protected act is the making of his two employment tribunal claims. The Second Respondent has acknowledged the data breach and referred itself to the Information Commissioner's Office (ICO). The ICO has confirmed that it will take no action against the Second Respondent. The information was posted for less than 48 hours before being removed. The Second Respondent is certain that much of the information about the conflict between it and the Claimant had already been placed in the public domain by the Claimant via LinkedIn and I have seen a screenshot of a comment posted by him describing the nature of the '*false, malicious and vexatious*' complaints which he alleges were made against him by the Second Respondent during his employment.
10. I do not accept that the Second Respondent acted improperly in sending me, at my invitation, a screenshot of that LinkedIn post to demonstrate the information which the Claimant was already displaying via a public media outlet. This was an

unexceptional exchange of information and not bias on my part towards the Second Respondent. The Claimant saw the screenshot in question. The complaint about this in paragraph 8 of the Claimant's application for reconsideration dated 7 April 2023 is therefore not upheld by me.

11. The Second Respondent, whilst admitting the sensitive data breach, robustly denies that any of its actions in this regard amount to race discrimination including victimisation. In particular it relies on the fact that the information published on 23 May 2022 on the 'what do they know' website was prepared, signed and dated on 19 May 2022, the day before the hearing with Employment Judge Frazer.
12. The application before me for this amendment was made on 1 August 2022 two and half months after the brief publication of the Claimant's data. When the parties received a letter from Employment Judge Jones on 7 July 2022 confirming that the claims are deemed to be '*as outlined in the list of issues which the respondent sent to the claimant for agreement incorporating the amendments agreed by EJ Frazer and not including the whistleblowing complaints*' the Claimant did not immediately write to her or to the Respondents to assert that he had new post-employment complaints arising from the publication of his sensitive personal data on 23 May 2022.
13. His application for this amendment was renewed on 11 December 2022 after the deposit order was made by Employment Judge M Martin on 18 October 2022 when presumably the Claimant realised that his sex and race discrimination claims could not proceed unless he paid the deposit ordered. There was no time at the 18 October 2022 hearing to specifically consider the post -employment amendments now sought.
14. I am satisfied that the amendments the Claimant seeks relate to entirely different areas of inquiry to his existing claims which, even before the strike out, related to the period of his employment with the Second Respondent, his fractured working relationships with his colleagues including the First Respondent, his alleged experience of unwanted conduct of a sexual nature and sexual harassment, and his ultimate dismissal for misconduct. There is an excellent summary of the complaints in paragraphs 1-5 of the Preliminary Hearing conducted by EJ Lewis on 18 November 2021. He now wishes a tribunal to examine the actions of a different department of the Second Respondent, namely the Cyber and Information Resilience department in which he was not employed, which will involve statements from new and different witnesses and the disclosure and examination of many additional documents. This is likely to cause significant prejudice to the Respondent given that the full hearing is listed to commence on 16 May 2023.
15. The First Respondent is not involved in the events which are the subject of this amendment. There can be no successful claim against her about this potentially amended claim.
16. The Claimant will not experience the same prejudice. He has been able to pursue a complaint through the ICO and has received a response via the Second Respondent's self-referral. He can bring a separate employment tribunal claim albeit out of time to seek a remedy in relation to these post-employment matters. I am convinced that he has a very limited prospect of success in showing that a separate department of the Second Respondent took this apparently mistaken and unfortunate action 'because of' his race or that it was unwanted conduct 'related to' his race.

Similarly, I consider his claim to be weak insofar as he will be required to demonstrate evidence of a causal link between the making of his employment tribunal claims and the apparently inadvertent publication of letters containing some of his sensitive personal data on a public website which he chose to use as the forum for submitting his requests for internal FOI review by the Second Respondent.

17. I am unconvinced that the Claimant's post-employment allegations which are the subject of these amendments are the latest act in a long running campaign against him comprising race discrimination, harassment and victimisation occurring during his employment. These are separate and different incidents not involving the First Respondent and concerning the errors of different personnel of the Second Respondent including its Risk and Compliance team assisted by independent data protection advisers from an external firm of solicitors. The nature of the amendments is a substantial departure from the original claims and, as stated above, involves very different areas of enquiry and disclosure with different witnesses.
18. In all the circumstances and for the reasons stated above the application to amend is refused.

**APPLICATION FOR RECONSIDERATION
Rules 70 -73 Employment Tribunals (Constitution and Rules of Procedure)
Regulations 2013**

The Claimant's application for reconsideration of my judgment dated 20 February 2023 is refused and the original decision is confirmed. I consider that there is no reasonable prospect of the original decision being varied or revoked.

**Employment Judge B Elgot
Dated: 19 April 2023**