



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal (video) 22nd February 2023

**Claimant:** Theodosios Theodosiou  
**Respondent:** Kindred (London) Limited

## Open preliminary hearing

**Before:** Judge M Aspinall (sitting alone as an Employment Judge)  
**Appearances:** Mr T Theodosiou (in person)  
Miss A Greenley (Counsel for the Respondent)

## JUDGMENT WITH REASONS

1. The Claimant's claims for detriment and dismissal due to protected disclosures (whistleblowing) under the Public Interest Disclosure Act 1998 (PIDA) are struck out under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 (the Rules). His claims for 'unhealthy gambling' are also struck out.
2. The Tribunal concluded that the claims have no reasonable prospect of success because the Claimant has failed for more than 12 months to properly particularise his claims, despite multiple opportunities and explicit instructions to do so.

### Reasons

3. The Claimant alleged that he made protected disclosures related to health & safety, bullying/harassment, and 'unhealthy gambling', and suffered detriments and ultimately dismissal as a result. His employment with the Respondent ran from 14 April 2020 to 10 January 2022. He would have had insufficient continuous service to bring a simple claim for unfair dismissal.
4. Having notified ACAS on 17 March 2022, the Early Conciliation period ran to 26 April 2022 and a certificate (R132575/22/13) was issued on that later date.
5. The Claimant lodged his claim with the Employment Tribunal on 28 April 2022.
6. Under the Employment Rights Act 1996, section 103A, dismissal is unfair if the reason, or principal reason, is that the worker made a protected disclosure. Detriments for making protected disclosures are prohibited by section 47B.
7. To be a protected disclosure, a disclosure must be a qualifying disclosure (section 43B),

and it must also be a protected disclosure (section 43C-43H). A qualifying disclosure is a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more types of failure (section 43B(1)). These include dangers to health and safety (section 43B(1)(d)) and breaches of legal obligations (section 43B(1)(b)).

8. The Claimant's allegations could potentially engage these provisions if they involve a breach of a legal obligation.
9. However, the Claimant has not provided enough detail to enable the Tribunal or the Respondent to understand what the alleged disclosures were, when they were made, to whom, and why the Claimant reasonably believed that they were in the public interest and tended to show a relevant failure.
10. The allegations of 'unhealthy gambling' are not sufficiently explained. It is unclear what is meant by this term, and why the Claimant believes that any disclosures he made about it would be protected.
11. On 24 October 2022 the Tribunal issued a strike out warning to the Claimant as he did not appear to have sufficient service to bring a claim for unfair dismissal and because his case, as pleaded, did not appear to exhibit any special reason for allowing the claim to continue. He was given until 21 November 2022 to provide reasons, in writing, explaining why his complaint should not be struck out.
12. On 4 November 2022 the Respondent asked the Claimant, in clear terms, to provide better and further particulars of his claims. That request was not limited to a single line but set out the detail that the Respondent required to answer the allegations.
13. On 20 November 2022 the Claimant, in response to the strike out warning, wrote a lengthy letter to the Tribunal in which he explained why his claims ought to be allowed to continue despite a lack of continuous service. He set out broad details of allegations of whistleblowing, bullying, harassment and matters to do with his personal health (related to a non-work injury). He described some issues around the promotion of gambling by the Respondent. He did not provide dates, times, locations, names of people involved or any indication of which legal obligations he said the Respondent had breached such as to entitle him to 'blow the whistle' or claim that any such disclosures were protected by the applicable law. Insofar as it was possible to discern any applicable dates, they were in early-mid 2021 or in ranges of time ('8-9 months'). It was not possible to realistically determine from this letter when any incidents were said to have occurred, whether there was a genuine pattern of behaviour which extended over a period or who was actually said to have done what, to/with whom and when.
14. An exchange of emails between the parties followed all this correspondence (pages 38-40 in the bundle prepared for the Open Preliminary Hearing before me). On 5 December 2022 at 11:20, the Respondent wrote to the Tribunal seeking a formal dismissal of any claim for ordinary unfair dismissal and for a preliminary hearing to obtain clarification of the claims made by the Claimant. In the same email the Respondent set out the steps they were said to have taken to obtain clarification directly from the Claimant without recourse to the Tribunal.

15. By an email in reply, sent at 22:08 on the same day, the Claimant objected to the application for a formal dismissal of the ordinary unfair dismissal claim and objected to the application for a preliminary hearing. He objected to the requests he had received from the Respondent for further information. He took issue with the format of their documents; that the use of the phrase 'IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL' was intended to convey the idea that the Tribunal had made an order (see pages 33-34 of the bundle). He set out his view that the Respondent did not need to have further particulars of his claim until nearer to the hearing date. He set out another view that his letter of 20 November 2022 (in response to the strike out warning) had provided sufficient additional information.
16. There was further correspondence between the parties, copied to or sent to the Tribunal, on 6 December 2022 where the Respondent acknowledged receipt of a notice of a preliminary hearing in July 2023 and the Claimant replied indicating that there was, therefore, plenty of time to prepare for that hearing and that both he and the Respondent ought to return to ACAS.
17. On 15 December 2022, on instructions from Employment Judge Dyal, the Tribunal wrote to the parties confirming that the ordinary unfair dismissal claim did not need further consideration, that the Claimant should answer the questions sent to him by the Respondent on 4 November 2022 (pages 33-34) and assuring him that the use of 'In the London South...' was not untoward. He was asked, clearly, in paragraph 2 of that letter to respond to the questions of 4 November (excluding question 6 which related to ordinary unfair dismissal) within 28 days.
18. By further correspondence on 15 December 2022, the Claimant wrote the Tribunal that:

*“As the Respondent is persistently putting pressure on me to urgently submit particulars, more than a year before the final hearing, I would like to submit the following to the Court:*

  - 1. I'm formally asking the Court to give me specific reasons why I'm asked to provide Particulars to the Respondent more than a year before the hearing and even with a 28-day notice.*
  - 2. I'm formally asking the court, why the Respondent doesn't have to provide particulars at the same time as I'm given a 28-day notice.*
  - 3. I'm asking the court to withdraw the 28-day notice given to me today 15 December 2022 on the basis that it's unfair and unjustified, considering that the Preliminary hearing is more than 8 months away, therefore the final hearing is at least 1 year away.*
  - 4. The Respondent has received all the information from my claim, as well as my response dated 20 November 2022. There is no justification for their aggressive demands for Particulars at this stage.*
  - 5. As long as I'm given a 28-day notice to provide Particulars to the Respondent, I'm asking the Court to order the Respondent to provide Particulars and Witness Statements by the 12th of January 2023.”*
19. As I explained to the Claimant at the Open Preliminary Hearing before me, the reason why he was required to provide particulars when he was is because he has an obligation to do so – so that the Respondent knows the case it must respond to, can identify witnesses, evidence and material and can, even before that, properly respond to the claims. It was also, as I explained, necessary, so that the Tribunal could understand the claims being

made in order to make appropriate decisions about how the matter would be tried, by whom, where, over how long etc. It was also necessary that the Tribunal could be satisfied that any claims were properly brought and had a legitimate legal basis, were in time, were properly pleaded and so forth.

20. I also explained, at length, that the Respondent could not properly respond – per his paragraph 5 – until they knew the case that they were responding to.
21. By a letter dated 13 January 2023, Employment Judge Krepski explained the obligations on parties and the reasons why it was necessary for the Claimant (and ultimately, also the Respondent) to comply with those obligations. In this case, he also reminded the Claimant that he was required to comply with the orders of the Tribunal which required him to provide “*further and better particulars (i.e. further details of the claim he is bringing).*”
22. By an email of the same date (at 14:21), the Claimant responded to the letter from EJ Krepski. In that response, rather than complying with the orders of two judges (EJ’s Dyal and Krepski) and providing the information as ordered, the Claimant again took issue with the orders themselves, continued his argument that he did not need to provide particulars of his claim to the Respondent so far ahead of the preliminary hearing (then set for July 2023) let alone the final hearing. He argued that the orders were ‘one-sided’ requiring him to provide particulars whilst not requiring the same of the Respondent.
23. He went on to challenge the impartiality of EJ Krepski on the basis that orders must be the same for both parties.
24. As I explained to him at the hearing before me, he was mistaken. It was necessary for the Respondent to have detailed particulars from him – both because the Rules and the law require it, because two judges had – by then – ordered it and, most importantly, because without them, the Respondent could not properly understand what the claims were, when and whom they related to, whether they were in time or whether there was any other defect. For many of the same reasons, the Tribunal also needed to know. In any event, a party is not entitled to simply disregard a judicial order which they do not consider it necessary, at some stage in proceedings, for them to comply with.
25. In the same email, on 13 January 2023 (14:51), the Claimant made a number of applications. He wanted the EJ Krepski’s order (of 13 January 2023) to be withdrawn as it was unequal. He wanted the Tribunal to order that no particulars needed to be provided until 6 weeks before the Preliminary Hearing (July 2023) and that any orders must require equal disclosure of particulars between the parties. He wanted the Respondent’s defence to be dismissed as it was blackmailing him and issuing ultimatums. He wanted the Tribunal to provide specific dates and times for the sharing of particulars between the parties. He wanted reasons why the Tribunal had not given specific responses to his letter of 15 December 2022, particularly his application that the Respondent should be ordered to provide their particulars too. He also asked the Tribunal to give him legal advice in respect of providing material to the Respondent on a ‘without prejudice’ basis; he continued his argument that if he had to provide particulars, so did the Respondent. He concluded with his hope that the Tribunal would not, this time, ignore his letter.
26. The Claimant had, properly, copied this email to the Respondent. They responded (14:43)

that "...We are simply trying to obtain outstanding information from the claimant so we may better understand his claim. We have explained that a response to question 6 is no longer required and this has also been explained to the claimant by us and the employment tribunal previously. We first asked for the information on 8th November 2022.". The reference to 8 November 2022 was, I found, a reference to their request dated 4 November 2022 (pages 33-34).

27. The Claimant responded (15:05) repeating his assertion that the Respondent was asking for particulars months before the preliminary hearing and many months before the final hearing. He recorded, again, that the Respondent was not offering to share the same nature of detail from their side. On the basis that it was 'for information' he offered to share more details with them on a 'without prejudice' basis.
28. On 7 February 2023, on instructions from Employment Judge D. Wright, a letter was sent to the parties to advise them that the Judge had ordered an open preliminary hearing to be listed to consider: "...
- i. *Whether or not to strike out the Claimant's claim under Rule 37(a) on the basis that it has no reasonable prospect of success.*
  - ii. *Whether or not to strike out the Claimant's claim under Rule 37(b) on the basis that the manner in which proceedings have been conducted by or on behalf of the Claimant has been scandalous, unreasonable or vexatious.*
  - iii. *Whether or not to strike out the Claimant's claim under Rule 37(d) on the basis that it not being actively pursued.*
  - iv. *What case management directions to make.*
  - v. *Can the hearing date be met or will it need to be vacated.*

*The Tribunal is minded to strike out the Claimant's claim due to their continued refusal to provide information required. Without the further particularisation required it is likely that a Tribunal will consider there to be no reasonable prospects.*

*The Claimant is reminded that the case is theirs to prove. If they do not provide the required information the respondent is unable to respond, to adequately prepare their defence or to consider appropriate settlement offers. The Tribunal rules require a front loading of information when compared to the hearing date to allow parties to properly prepare and to allow for negotiations. The Claimant's conduct is not only jeopardizing the trial date but is also putting the fairness of proceedings at risk where the respondent will be unable to properly present a defence in the time left.*

*The Claimant is further reminded that if the Tribunal finds they have acted in a scandalous, vexatious or unreasonable manner they may consider making a costs order against the Claimant."*

29. A notice of a preliminary hearing, on 22 February 2023, was also sent to the parties.
30. One might, reasonably, have expected a letter in such explicit and strident terms to have galvanised the Claimant into complying with the earlier request (4 November 2022) of the Respondent for better particulars and the subsequent orders, to like effect, from Judges of the Employment Tribunal. It did not.

31. By a lengthy letter, on 7 February 2023, the Claimant responded to the letter from EJ D Wright of the same day. He argued that the Open Preliminary Hearing was not requested by the Respondent and that the learned Judge had no business in listing one on their own initiative – arguing that this made it a matter between the Claimant and an Employment Judge. He argued that his letter of 13 January 2023 could not be read as raising questions about the prospects of success for his claims. He said that the same letter did not show that his manner had been scandalous, unreasonable or vexatious but that it highlighted that the Respondent had been demanding particulars of his claim from him months before the hearing(s) and asking for that information in too short a time ('7-day ultimatum').
32. He also noted that, in his view, his letter of 13 January 2023, could not demonstrate that he was not actively pursuing his case. He argued that as a preliminary hearing was already scheduled for 6 July 2023, there was no justification for the additional (Open Preliminary) hearing on 22 February 2023.
33. He set out what he had done in terms of sending better and further particulars to the Respondent. He also provided a copy of a 4-page document which he said he had sent to them on 20 January 2023.
34. He explained that he had sought answers from the Tribunal throughout and that he had not received responses from the Tribunal. He explained that he wanted things to change so that the Respondent could no longer put him under pressure (with ultimatums and demands for information) and that the Tribunal needed, simultaneously, to answer his questions.
35. Turning to the 4-page document which he provided (headed: "The following answers can be used only for the information of the Respondent and not as Particulars. The Finalized Particulars will be sent at the same time as the Respondent's Particulars."), on a fair reading, this document does not provide the information required and, in any event, is provided on a contingent basis – it is specifically headed as being "...only for the information of the Respondent and not as Particulars..."
36. On reviewing the document, I was not satisfied how any of the alleged incidents amounted to whistleblowing *in the public interest* as opposed to being statements of grievance about how he, the Claimant, had been treated personally. They may well have been in *his own* interest but did not, as far as I could see, amount to any acts that could be said to be compassed by Section 43B (see paragraph 7 above).
37. On each occasion when the Claimant was given a further opportunity to provide the necessary detail, he has failed to do so and instead argued reasons why he should not have to, or provided some detail with the equivalent of an embargo on it (i.e. that the information he provided could not be used in pleadings or be placed before the Tribunal).
38. At the hearing before me, I have the Claimant opportunities and time to consider how his allegations and claims fitted into the relevant legal provisions. I explained those provisions to him and allowed him to reflect. Having done so he opted instead to renew his argument about the fact that the hearing was taking place at all. He did not, or could not, particularise his claims in such a way as would have brought them properly within the ambit of the legislation on which he sought to rely.

39. His claims were brought on the basis that he had been unfairly dismissed as a detriment for making protected disclosures. Protected disclosures needed to be in the public interest. I could not see, and he could not satisfy me, that any of his allegations met the public (as opposed to personal) interest.
40. I was satisfied that the Claimant, an intelligent and articulate man, was deliberately refusing to tell the Respondent what his case was against them. This was despite having been ordered to do so by two separate Judges and warned, by a third, that an Open Preliminary Hearing was to be convened to consider striking his claims out because he had not done so.
41. I found that he had, wilfully and deliberately, misinterpreted requests for information from the Respondent, ignored or persistently challenged – without complying with – orders of the Tribunal. Having lodged his claim in April 2022 with very little information or detail, he simply considered that he did not have to tell anyone anything else until the final hearing (or the Preliminary Hearing in July 2023). Nothing that anyone did could disabuse him of the wrongfulness of his view.
42. The Claimant's case as pleaded disclosed no reasonable prospect of success and was struck out under Rule 37(1)(a) of the Rules.
43. The Claimant's behaviour in this case is in clear breach of Rule 8 of the Rules, which requires a claimant to include in his or her claim form the grounds for bringing the claim.
44. In accordance with the authority set down in *Anyanwu and Another v South Bank Student Union* (2001) UKHL 14, the Tribunal should only strike out a claim if it is "plain and obvious" that it has no realistic prospect of success. The Tribunal is satisfied that this high threshold has been met in the present case.
45. For the above reasons, all the Claimant's claims were struck out.

**Judge M Aspinall**  
**13 May 2023**