



EMPLOYMENT TRIBUNALS

Claimant: Ms N Tahri Hassani

Respondents: (1) Bank Of Africa United Kingdom Plc
(2) Mr Houssam El Hak Morssi Barakat
(3) Mr Ralph Snedden

JUDGMENT

The respondent's application dated **11 April 2023** for reconsideration of the judgment sent to the parties on **6 April 2023** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the reasons set out below.

1. The application for reconsideration is on one ground: that the Tribunal erred in adding to the judgment matters contained within the private and confidential 'Ocreus report'.
2. The issue of the Ocreus report was extensively addressed at the outset and at different times during the hearing. The reason: the claimant sought its disclosure; the 1st respondent refused to disclose the report, stating with force in its submissions that the report's contents were irrelevant to the issues, also that it is a report whose contents were and remain strictly private and confidential. The issues raised at the time are, apart from the issues of relevance, reiterated within the respondents' reconsideration application.
3. The Tribunal considered the issue of confidentiality of the Ocreus report at different points on days 1-7 of the Hearing. To reiterate - the respondents' position was that the Ocreus report's contents were not relevant to the issues within the claim. They also argued that that to disclose the report voluntarily would be a regulatory and criminal offence. They argued that to read the report would mean that Tribunal would disqualify itself from hearing the case, a position subsequently resiled from. It was agreed that the Tribunal could read the Ocreus report to consider its relevance.

4. The Tribunal considered whether only part of the report should be disclosed to the claimant and to the Tribunal. The respondents' position was that if an order for disclosure was made, it would prefer the whole of the report to be disclosed.
5. On reading the report to consider its relevance, the Tribunal took the view that some of the Ocreus report was relevant: firstly, a potential correlation between the issues the claimant had been raising and those within the report, relevant to the issue of public interest, the respondent's position was that the claimant had no genuine or reasonable belief that the issues she as raising were in the public interest. Secondly the pleaded detriment alleging that the respondents unreasonably criticised the claimant to Ocreus.
6. The Tribunal accepted that given the strictly confidential nature of the report it was not in the interests of justice for this report to be disclosed to the public during the hearing. It was placed in a private hearing bundle and evidence on the report was heard in private.
7. The Tribunal does not accept that it indicated to the parties that there would be no mention of the contents of the Ocreus report in the judgment. The Tribunal's notes of evidence state the Tribunal made an "order in terms of paragraph 34" of the Respondent's Skeleton Argument. We are satisfied that the judgment paragraph 36 (1), (2), (3) & (5) capture what was ordered.
8. The Tribunal accepts that EJ Emery indicated the judgment may include its findings in relation to the Ocreus report in a confidential annex; the Tribunal does not accept that he stated it would do so (paragraph 36 Judgment).
9. A significant issue in the case was the respondents' contentions that the claimant did not have reasonable or genuine beliefs she was raising issues in the public interest, for example PID 3 (paragraph 215), PID 4 (225), PID 8 (237), PID 10 (247-53), PID 12 (264-6), PID 13 (274-6). There was extensive cross-examination of the claimant and a focus in submissions on these issues.
10. The respondents argued, to summarise, that the issues the claimant was raising at the time were not serious, and/or were in-hand, and/or they demonstrated the claimant's poor conduct and ability; the claimant's beliefs were not genuine, reasonable, or serious. The respondents also argued that the criticisms of the claimant made in the Ocreus report were valid and justified, but they were not made by the 2nd and 3rd respondents.
11. It was in this context that the Tribunal considered the Ocreus report in our deliberations. We noted that during the Tribunal hearing the PRA did not appear to object to the report being disclosed to the parties or to the Tribunal. We understand that its concern was that the report and its contents should be addressed in private.
12. We did not hear directly from the PRA. We asked the respondents to seek the PRA's views in writing, this information was not provided. We were not told whether the PRA was unable or unwilling to do provide this information in writing.
13. We concluded from the Ocreus report that there was a correlation between the claimant's concerns raised in several of her disclosures and the criticisms made of the 1st and 2nd respondent by Ocreus.
14. We also concluded that, despite having denied doing so in their evidence, the 2nd and 3rd respondents made serious criticisms of the claimant to Ocreus; this is

Case No: 2206185/2021 & 2206436/2021 «case_no_year»
based on what is said in the Ocreus report. we concluded also that there were contradictions between the Ocreus report's conclusions and the 2nd respondent's evidence.

15. For example, on detriment 6, it was the respondents' case that none of the respondents made any criticism of the claimant to Ocreus. The respondents also raised a positive case about Ocreus, saying that Ocreus's negative conclusions of the claimant were valid and the product of its own research, and not from information provided by the 2nd and 3rd respondents, that this validated the respondents' own conclusions of the claimant.
16. We concluded that the respondents were not being truthful in their evidence on this issue. We concluded that it would be impossible to do properly describe the issue within a public judgment – the criticisms of the claimant and HR team contained in the Ocreus report, who raised these issues with Ocreus – unless we were able to describe what the report says.
17. We therefore determined that there was a significant public interest in including in the judgment limited parts of the Ocreus report, as these parts related to the issues. We concluded that the public interest in setting out our conclusions outweighed the private and confidential nature of the report.
18. We concluded that it was in the public interest to show that the respondents' told Ocreus partial and misleading information about the claimant, that this amounted to a whistleblowing detriment. And that in their evidence, the 2nd and 3rd respondents denied doing so.
19. We concluded that there was a significant public interest in this information being set out in the judgment rather than redacted and hidden in an appendix.
20. It is for these reasons that we set out at paragraph 163 of the judgment our rationale for including these parts of the Ocreus report in our judgment. We upheld the allegation that Ocreus were misled about the claimant, we found the 2nd and 3rd respondents were not truthful about their interactions with Ocreus.
21. We concluded that the principle of open justice in this information being available outweighs the confidential nature of the report.

Employment Judge **Emery**

Date 11 September 2023

JUDGMENT SENT TO THE PARTIES ON

19/09/2023

FOR THE TRIBUNAL OFFICE