EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4102125/2022 & 3305445/2022 (V)

Held at Aberdeen on 20 February 2023

Employment Judge N M Hosie

Mr Abdul Azim Ali	**Claimant** **In Person**
Capgemini UK Plc	**Respondent** **Represented by** **Ms K Stein,** **Advocate** **Instructed by** **Ms L Townley,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that all claims are struck out in terms of Rules 37(1)(a), (b), (c) and (e) in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

E.T. Z4 (WR)

REASONS

Introduction

1. The claimant brought claims of discrimination, in respect of the protected characteristics of race and religion or belief; for a redundancy payment; and for unfair dismissal. The claims were denied in their entirety by the respondent. After various, lengthy procedures, the respondent's solicitor applied for the claims to be struck out in terms of Rules 37(1)(a), (b), (c) and (e) in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules of Procedure"). I fixed a Preliminary Hearing to consider that application. The Hearing was conducted by video conference, using the Cloud Video Platform ("CVP").

2. It was not necessary to hear any evidence at the Hearing, as for the purposes of considering the application, I took the claimant's averments at their highest value: I accepted he would be able to prove the material facts he alleged. At the Hearing, I heard submissions on behalf of the parties. Prior to the Hearing, a Joint Bundle of documentary productions was submitted ("P").

History of the claim

3. The claimant is a Muslim. He was born in the UK of Sudanese parents and spent a number of years living in Sudan. He was employed by the respondent Company as a "Cyber Security Analyst" from 24 May 2021 to 1 March 2022. The respondent admitted that it had dismissed the claimant but maintained that the reason was conduct ("failing to meet his contractual obligations") which, as I understand it, related to a failure to relocate to Inverness, and that the dismissal was fair.

4. The claimant submitted two claim forms. The first was presented on 14 April 2022 to the Central Office of Employment Tribunals, Scotland (P.6-17). The

second was presented to the Employment Tribunal Services in Watford, England, on 11 May 2022 (P.46-47). After various e-mail exchanges, and with the agreement of Regional Judge Foxwell who was responsible for the Watford case, it was decided that the cases would be combined and administered in Aberdeen (P.104 and 105, for example).

5. On 30 September 2022, I conducted a Preliminary Hearing to consider case management. The Note which I issued following that Hearing is referred to for its terms (P.96-102). In my Note, I confirmed that the cases would proceed in Aberdeen. An Order that the cases be considered together was issued on 24 October 2022 (P. 108).

Unfair dismissal claim

6. As the claimant did not have the required two years' continuous service with the respondent to bring a "standard" unfair dismissal claim, on 5 October 2022 I issued a Judgment dismissing that claim "for want of jurisdiction" (P.94).

Claimant's further and better particulars

7. Mindful of the fact that the claimant was not represented and had no experience of Employment Tribunal procedures, I explained to him at the case management Preliminary Hearing on 30 September the requirement to provide "fair notice" of his claims to the respondent (P.98). I also issued Orders requiring him to provide further and better particulars of his claims of race discrimination and discrimination on the ground of religion or belief (P.99-100).

8. The claimant submitted his further and better particulars along with a Schedule of Loss by e-mail on 26 October 2022 (P.109-115).

Respondent's response

9. In her response to the claimant's further and better particulars, the respondent's solicitor applied for the remaining claims to be struck out and, in the alternative, for an "Unless Order" to be issued (P.121-125).

10. I decided, in all the circumstances, and having regard to the "overriding objective" in the Rules of Procedure, to fix a Preliminary Hearing to consider and determine the respondent's application.

Relevant Rules of Procedure

"**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.

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 Tribunal."

11. The respondent's application was under the striking out provisions in Rule 37 of the Rules of Procedure:-

"***37. Striking Out***

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal make strike out all or part of a claim or response on any of the following grounds –

(a) 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 may be as if no response had been presented, as set out in Rule 21 above."

Respondent's submissions

12. Counsel used the respondent's response to the claimant's further and better particulars as a basis for her submissions (P.121-125). The following is a brief summary.

Rule 37(1)(a)

13. Counsel submitted that the remaining claims should be struck out as having, *"no reasonable prospect of success",* in terms of Rule 37(1)(a).

14. So far as the discrimination claims were concerned, she referred to the following cases:-

Madarassy v. Nomura International Plc [2007] EWCA Civ 32
Ayodele v. Citylink Ltd & Another [2018] ICR 748.

15. She submitted that there were no facts alleged by the claimant which could give rise to discrimination.

16. She submitted that the claimant only makes reference to "discrimination" in two parts of his written pleadings. The first reference is in his further and better particulars in the third last paragraph at P.111**.** However, even if what he alleges were to amount to discrimination (and this is denied), it was by the "Met Police" and not by the respondent.

17. The second reference to discrimination is also in his further and better particulars and is to be found in the third paragraph at P.114, where he alleges *"religion discrimination".* However, this occurred, allegedly, *after* his dismissal and there is no indication of any connection with the claimant when he was an employee. Further, it is not alleged that he incurred any loss and *"it would be futile to pursue it."*

18. Counsel submitted that these averments do not provide a basis for a discrimination claim.

19. Counsel also submitted that the claimant used the term discrimination, *"loosely and liberally".* She referred to his e-mails of 27 July to the Tribunal (P.81/82) and of 14 February 2023 (P.150) accusing the Tribunal of discrimination. She submitted that his use of the term *"discrimination",* was not used *"in the legal sense".*

Rule 37(1)(b)

20. Counsel submitted that the manner in which the proceedings had been conducted by the claimant was *"unreasonable"* and that the claim should also be struck out for that reason.

21. The Tribunal had foreshadowed the possibility of strike-out in e-mails to the claimant on 26 and 27 October 2022 (P.118/119).

22. The claimant had submitted two claim forms, one in Scotland and one in England but he had advised the Aberdeen Tribunal that he did not intend withdrawing either case (P.76). However, even after the cases had been combined and it had been decided that the case would proceed in Scotland, the claimant continued to request that it be transferred to England: on 24 October, 2022 (P.105); on 26 October 2022 (P.119); and on 30 January 2023 (P.153).

23. He was not prepared to accept the Tribunal's decision and the Tribunal had to direct him to desist from asking for the case to be transferred.

24. Further, although he had received a copy of the Judgment dismissing his unfair dismissal claim, he continued in correspondence, to repeat this claim: on 10 November 2022 (P.126); and on 18 January 2023 (P.149).

25. Also, although he had been advised repeatedly of the requirement to send the respondent copies of any communications to the Tribunal, in terms of Rule 92, he continued to flout this Rule.

26. Counsel also submitted, with reference to Rule 37(1)(b), that the manner in which the claimant had conducted the proceedings had not only been unreasonable but also "vexatious". She submitted that he had brought the claims *"without any reasonable grounds".*

Rule 37(1)(c)

27. Counsel submitted that the claimant had also failed to comply with the Tribunal's Order dated 4 October 2022 to provide Further and Better Particulars of his claims (P.99/100). She submitted that he had failed to aver a *prima facie* case of discrimination.

Rule 37(1)(e)

28. Counsel also submitted that it was, *"no longer possible to have a fair hearing in respect of the claim"* and that it should also be struck out for that reason. In support of her submission in this regard, she referred to the recent case, ***Smith v. Tesco Stores Ltd*** [2023] EAT 11.

29. She referred, in particular, to para. 45 of the Judgment in that case. She submitted that not only had the claimant failed to clarify his claims, but also that his conduct had been such that a fair trial was now impossible. She also submitted that, *"fair means fair to both parties".*

30. The Tribunal had recommended to the claimant that he get legal advice but he had not done so and Counsel submitted that both the Tribunal and the respondent, "*had done all that was reasonable for the claimant*".

31. She submitted that the claimant's own conduct, his failure to comply with rules and orders, was such that if the claims were allowed to proceed they, *"would just go round in circles".*

32. Counsel also referred to recent e-mail exchanges which were not in the Joint Bundle when the claimant advised that he had received a *"suspicious package"* which he considered to be *"toxic".* The *"package"* was the Joint Bundle of documents which had been sent to him by the respondent's solicitor, as ordered by the Tribunal.

Claimant's submissions

33. The claimant explained that he found the *"package"* containing the Joint Bundle *"suspicious"* as it didn't have the sender's address on it and it was *"sealed"*. He said that the package was still in his property. He said that he did not trust the respondent.

34. So far as his allegation of discrimination in his further and better particulars was concerned (P.111), he said that the respondent, *"works for the Police and the Metropolitan Police Service ("MPS") is one of its clients"*.

35. He claimed that the respondent's Counsel had ignored the point that Alistair Armstrong had refused to give him a chance to go to the probationary meeting and *"to get clearance"* (P.111/112).

36. He also referred to his allegation in the claim form that the respondent "*didn't put my name correctly in their system.*" They had recorded his name as *"Azim Azim"* and ignored his request to record his correct name (P.11).

37. He also referred to his allegations concerning the *"decision"* to *"relocate"* him to Inverness which are to be found in the final paragraph of P.112 and on

page 113. He submitted that, "*his team ignored his work"* and that his *"failure was all fabricated*".

38. So far as his allegation of discrimination in the third paragraph of P.113, to which the respondent's Counsel referred, was concerned, he accepted that this was after his dismissal. However, he maintained that this demonstrated that the respondent *"did not respect his religion".*

39. So far as his repeated request to transfer the case to England was concerned, he said that he disagreed with the decision that the case be conducted in Scotland rather than England.

40. He alleged that, the Tribunal was, *"using the same techniques as the respondent to take attention to other issues not connected with the case".*

41. He said that he was, *"offering them (the respondent) to answer my points. What the manager's did to me and to review their rules. I wanted the court to tell the respondent to take this seriously. The respondent works for many security organisations. Why am I not allowed to work?. They are racist. It's not acceptable to do this to me".*

42. So far as the issue of his failure to copy correspondence to the Tribunal to the respondent, in terms of Rule 92, was concerned, he said that he was, *"worried about sending e-mails to the respondent as I would be threatened by the Police".* He also said that he forgot *"many times"* to copy the respondent.

43. So far as taking advice was concerned, he explained that he had contacted a number of lawyers but their costs were too high and he couldn't afford it.

Discussion and Decision

Redundancy claim

44. It was clear that this claim was entirely without merit. There was no redundancy situation. There was nothing averred to even suggest the possibility of redundancy. The claim has no reasonable prospect of success and is struck out in terms of Rule 37(1)(a) in the Rules of Procedure.

Discrimination claims

Prospects of the claims succeeding
Rule 37(1)(a)

Burden of proof

45. Each of the discrimination claims requires a claimant first to establish facts that amount to a *prima facie* case. S.136 of the Equality Act 2010 ("the 2010 Act") provides that, once there are facts from which an Employment Tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to the respondent to prove a non-discriminatory explanation.

46. ***Igen Ltd v. Wong*** [2005] IRLR 258 remains one of the leading cases in this area. In that case, the Court of Appeal established that the correct approach for an Employment Tribunal to take to the burden of proof entails a two-stage analysis. At the first stage, the claimant has to prove facts from which the Tribunal could infer that discrimination has taken place. Only if such facts have been made out to the Tribunal's satisfaction (i.e. on the balance of probabilities) is the second stage engaged, whereby the burden then shifts to the respondent to prove – again on the balance of probabilities – that the treatment in question was "*in no sense whatsoever*" on the protected ground.

47. The Court of Appeal in ***Igen*** explicitly endorsed guidelines previously set down by the EAT in ***Barton v. Investec Henderson Crosthwaite Securities Ltd*** [2003] ICR 1205. Although these cases concerned the application of s.63A of the Sex Discrimination Act 1976, the guidelines are equally applicable to complaints of race discrimination and discrimination on the ground of religion and belief. Indeed, they apply to all forms of discrimination. They can be summarised as follows:-

- It is for the claimant to prove, on the balance of probabilities, facts from which the Employment Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
- In deciding whether the claimant has proved such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In many cases the discrimination will not be intentional but merely based on the assumption that "he or she would not have fitted in".
- The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.
- The Tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination – it merely has to decide what inferences could be drawn.
- In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
- Those inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information.
- Inferences may also be drawn from any failure to comply with a relevant Code of Practice.
- When the claimant has proved facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent.

- It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act.
- To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected grounds.
- Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment.
- Since the respondent would generally be in possession of the facts necessary to provide an explanation, the Tribunal would normally expect cogent evidence to discharge that burden – in particular, the Tribunal will need to examine carefully explanations for his failure to deal with the questionnaire procedure and/or any Code of Practice.

48. The guidelines in ***Barton*** and other cases clearly require the claimant to establish more than simply the *possibility* of discrimination having occurred before the burden will shift to the employer.

49. In ***Ayodele,*** to which I was referred, the Court of Appeal explained that in a discrimination case, before a tribunal can start making an assessment, the claimant has to start the case, otherwise there is nothing for the respondent to address and nothing for the tribunal to assess. The Court could see no reason why a respondent should have to discharge a burden of proof unless and until the claimant has shown a *prima facie* case of discrimination that needs to be answered.

50. Further, in ***Bahl v. The Law Society & Others*** [2004] IRLR 799, the Court of Appeal upheld the reasoning of the EAT and emphasised that unreasonable treatment of a claimant cannot in itself lead to an inference of discrimination, even if there is nothing else to explain it. Although that proceeded under legislation prior to changes made to the burden of proof, the

principle is still valid. In other words, unreasonable treatment is not sufficient in itself to raise a *prima facie* case requiring an answer. As the EAT said in ***Bahl*** at para. 89: *"….. merely to identify detrimental conduct tells us nothing at all about whether it was a result of discriminatory conduct*."

51. That point was further emphasised by LJ Mummery, giving the Judgment of the Court of Appeal in ***Madarassy***, to which I was referred by the respondent's Counsel,:-

"*For a prima facie case to be established it will not be enough for a claimant simply to prove facts from which the Tribunal could conclude that the respondent could have committed an act of discrimination. Such facts would only indicate a possibility of discrimination, nothing more. So the bare facts of a difference in his status and the difference in treatment – for example, in a direct discrimination claim evidence that a female claimant had been treated less favourably than a male comparator – would not be sufficient material from which a Tribunal could conclude that, on the balance of probabilities, discrimination had occurred. In order to get to that stage, the claimant would also have to adduce evidence of the reason for the treatment complained of.*"

The present case

52. For the purposes of determining the issues with which I was concerned at the Preliminary Hearing, I took the claimant's averments in his claim form (P. 6-18) and his Further and Better Particulars (P. 111-115), at their "highest value". This means examining the claimant's material pleaded facts and, for the purposes of strike out consideration, assuming that they are correct. I also remained mindful that the claimant is unrepresented and has no experience of Employment Tribunal proceedings. However, he is still required to: "*set out with the utmost clarity the primary facts on which an inference of discrimination is drawn*"; and: "*it is the act complained of and no other that the Tribunal must consider and rule upon*" (***Bahl***).

53. I am bound to say that I had no difficulty deciding that even if the claimant was able to prove all the facts he alleges he would still not be able to establish a *prima facie* case, as he was required to do. At best, his allegations amount to unreasonable treatment and that cannot lead to an inference of discrimination (***Bahl***).

54. Nor were there any averments to establish a causal link between the way he alleged he had been treated and the protected characteristics relied upon, namely race and religion or belief.

55. As Counsel submitted, there are only two references to discrimination in the claimant's pleadings and the facts in support of these allegations cannot establish a *prima facie* case of discrimination.

56. The claimant also alleged that the respondent had refused to use his correct name (P11). While this may have irritated him, absent any averments of a discriminatory motive by the respondent, the claimant cannot establish a *prima facie* case. The respondent's position is that this was an *"administrative error"* on their part which they corrected as soon as it was brought to their attention (P. 35, para 7 in the respondent's ET3 response form). .

57. In my view, Counsel's submissions in this regard are well - founded.

58. Even if he proves all the facts he alleges, the claimant cannot establish a *prima facie* case of discrimination, as he is required to do, in order to satisfy stage one of the burden of proof provisions in s. 136 of the Equality Act 2010. Accordingly, the discrimination claims have *"no reasonable prospect of success"* and they are struck out in terms of Rule 37(1)(a) in the Rules of Procedure.

59. It has been observed that the power of strike out is a draconian one and should only be exercised in rare circumstances. The effect of a successful strike out application would be to prevent a party proceeding to a hearing and

leading evidence in relation to the merits of their claim. (**Balls v Downham Market High School & College** [2011] IRLR 217 EAT). I was mindful of this in arriving at my decision.

60. I was also aware of the "fact sensitive" nature of discrimination claims and the guidance in the case law in such cases as ***Anyanwu v. Southbank Students Union & Southbank University*** [2001] IRLR 305, HL, that strike-outs should only be ordered: "*in the most obvious and clearest cases*". In my view, this was one of these cases.

61. I also considered whether the claimant, as a litigant in person, should perhaps be afforded even further lee way and an opportunity to provide the necessary specification of his claims. However, any such procedure would take time and involve the respondent in further expense and they must already have incurred significant expense defending these claims which are without merit. I was satisfied that the claimant had been afforded a more than reasonable opportunity of doing so, it having been explained to him the requirement to provide "fair notice" of his claims (P.95, for example) and he had singularly failed to do so. On the basis of his written pleadings and his submissions at the Preliminary Hearing, I was satisfied that there was no prospect of him being able to aver facts which would amount to a *prima facie* case. The "overriding objective" in the Rules of Procedure, requires an Employment Tribunal to be fair to both parties.

Vexatious ?

62. For the purposes of Rule 37(1)(a) a vexatious claim has been described as one that is not pursued with the expectation of success but to harass the other side out of some improper motive. Vexatious proceedings are those that have little or no basis in law and where the intention of the proceedings or their effect is to subject the respondent to inconvenience, harassment or expense

out of all proportion to any likely gain. Such behaviour involves an abuse of process (***Attorney General v Barker*** [2000] 1 FLR 759).

63. For the sake of completeness, I wish to record that, while, in my view, the claims have no basis in law, I was not persuaded that the claimant's motive in bringing them was improper. The discrimination claims were not vexatious, therefore. However, I am bound to say that as it is clear that the claims are without merit and, having regard to the claimant's conduct throughout the case, I only reached this decision with considerable hesitation.

64. Although I have decided to strike-out the, discrimination claims claim as having no reasonable prospect of success , I also wish to record that I am satisfied that the submissions by the respondent's Counsel regarding Rules 37(1)(b), (c) and (e) are also well-founded and that the discrimination claims should also be struck out on those grounds.

Unreasonable conduct

65. So far as Rule 37(1)(b) is concerned, I am satisfied that the manner in which the claimant has conducted these proceedings has been *"unreasonable".* He repeatedly requested that the case be transferred to England, despite having been advised, after being afforded the opportunity of making representations, that it had been decided, judicially, that the Scottish and English cases should be combined and that the case should proceed in Scotland (P. 97). His repeated requests were such that even after being directed to desist, he continued to raise the issue of a transfer to England and it was necessary to advise him that the Tribunal would not engage in further correspondence about the matter. By e-mail on 26 October 2022 he was directed to desist and that I was becoming, *"increasingly concerned"* about the way he was conducting the case, and that his*, "repeated challenges, failure to comply with the Rules and wild accusations border on unreasonable conduct"* (P. 116).

66. He also failed repeatedly to comply with Rule 92 by intimating any correspondence with the Tribunal to the respondent. Despite having been reminded on a number of occasions of this requirement (P.101, for example), he continued to flout the Rule. He also continued to complain that he had been unfairly dismissed after a Judgment had been issued dismissing this claim as he did not have the necessary two years' continuous service.

67. Further, on more than one occasion, he accused the Tribunal of being discriminatory: on 27 February 2022 (P.81/82); on 30 January 2023 (P. 153); and on 14 February 2023 (P. 150). He also complained, without any justification, about the conduct of the strike out Preliminary Hearing and claimed that his case "*was not given proper consideration",* although I made it clear to him at the Hearing that I was mindful that he was not represented, and had no experience of Employment Tribunal proceedings and would make appropriate allowances, and made every effort to create a "level playing field" between the parties.

68. In arriving at the view that the claim should also be struck out for this reason, I was satisfied, with reference to ***Bolch v. Chipman*** [2004] IRLR 140 and ***Smith v. Tesco Stores Ltd***, to which I was referred, that a fair hearing, consistent with the "overriding objective", would not be possible and that strike out is a proportionate response to the conduct in question. I was also mindful, as Sedley LJ stated in ***Blockbuster Entertainment Ltd v. James*** [2006] EWCA Civ 684, that, *"courts and tribunals are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably".* I have dealt with the issue of a fair hearing in more detail below in relation to Rule 37(1)(d).

Failure to comply with Tribunal Orders

69. So far as Rule 37(1)(c) is concerned, the claimant failed to comply with Tribunal Orders. It was explained to him, in the clearest of terms, the requirement to provide fair notice of his discrimination claims (P. 98) but he

failed to do so. I rather think that this was because there were no facts in existence which would enable him to establish a *prima facie* case.

Fair hearing

70. Finally, so far as Rule 37(1)(d) is concerned, I am satisfied that it would not be possible, having regard to the history of this case, the claimant's conduct throughout and the state of the claimant's pleadings, to have a fair hearing, consistent with the overriding objective. I refer in this connection to the claimant's unreasonable conduct of the case, bordering on the bizarre at times, such as his refusal to open the parcel containing the Joint Bundle for the Preliminary Hearing. This was sent to him by the respondent's solicitor, as ordered by the Tribunal. He was aware of the Order but refused to open the parcel as he thought it was *"suspicious"* and *"toxic".* Without the Joint Bundle to refer to he would not have been able to participate in the Preliminary Hearing. That would have been prejudicial to him. Fortunately, he had also received the Joint Bundle by e-mail which enabled him to participate.

71. He had also alleged, in correspondence, that the Tribunal had discriminated against him.

72. Further, without any justification, he also complained about the manner in which the strike out Preliminary Hearing had been conducted. Although, I had made allowances for the fact that he was not represented, took great care to explain the procedure and the issues to him and afforded him ample opportunity to make submissions, he complained that, *"the case I presented was not given proper consideration",* which was patently untrue. Were I to allow the case to proceed to a Final Hearing, in all probability the claimant would behave in the same unreasonable manner as he had done repeatedly throughout the case; there would be further accusations of discrimination by the Tribunal, no doubt; difficulties preparing for the Hearing such as he exhibited on receipt of the Joint Bundle for the Preliminary Hearing; further

complaints; and he would complain about the conduct of that Hearing. This would involve the respondent in further unnecessary expense and would be time consuming. In any event, it would not be possible for the case to proceed to a Final Hearing on the basis of the pleadings as they stand at present as the discrimination claims are bound to fail.

73. For all these reasons, therefore, the claim is struck out in terms of Rules 37(1)(a), (b), (c), and (e). I am also satisfied that my decision is consistent with the "overriding objective" in the Rules of Procedure.

Employment Judge: Hosie
Date of Judgement: 6 March 2023
Date sent to Parties: 6 March 2023