



EMPLOYMENT TRIBUNALS

OPEN PRELIMINARY HEARING

Claimant Dr S Renwick

Represented by In person

Respondent 1 The Royal Free London NHS
Foundation Trust
2 Ms S Wylie

Represented by Mr J Jupp of Counsel

Employment Judge Ms A Stewart (sitting alone)

Held at: London Central by CVP **on:** 12 October 2023

JUDGEMENT

1 The Respondent’s application to strike out all of the detriments alleged in paragraph 46 of the Claimant’s second claim, save for the following sub-paragraphs: Roman numerals; xxxix.m, xxxix.n, xl, xlii, xliii, xliv, xlv, xlvi and xlvii amended to read “effective continuing exclusion ... after 6 December 2022”, because they are an abuse of process, is granted.

2 The Respondent’s application to strike out all of the alleged protected disclosures set out in paragraph 38 of the Claimant’s second claim from Roman numerals i to xxi inclusive, because they constitute an abuse of process, is granted, save for number viii, which will not be struck out.

3 The Respondent’s application, under Rule 37(1)(a) of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, to have the Claimant’s alleged protected disclosures struck out because she has no reasonable prospect of showing that she made a disclosure qualifying for protection, within the meaning of section 43B(1)(b) of the Employment Rights Act 1996, is refused save

that the following: (i) that dated 23 November 2018 in her first claim (on page 21 of today's hearing Bundle) and (ii) that dated 6 January 2023, Paragraph 38 xxii in her second claim; both of which shall be struck out as disclosing no information.

4 The Claimant's wages act claim under section 13 of the Employment Rights Act 1996, brought in her second claim, presented to the Tribunal on 16 June 2023, is struck out under Rule 37(1)(a) because she has no reasonable prospect of succeeding in convincing a Tribunal that it was not reasonably practicable for her to have presented her claim within the primary 3 month time limit (section 23(4) Employment Rights Act 1996).

5 The Claimant's application to amend her pleadings by the addition of 3 further alleged protected disclosures and 5 further alleged detriments, is allowed.

Reasons

1 Abuse of Process: The Respondent made application for the majority of the Claimant's second claim (presented on 16 June 2023) to be struck out under **Rule 37(1)(a)** on the grounds that the claims and alleged protected disclosures are repeats of those alleged in her first claim (presented on 6 December 2022) and/or that the alleged detriments happened before the first claim was presented and should therefore have been included in that first claim. This is contended to be an abuse of process and/or in breach of the rule in **Henderson v Henderson 1843 3 Hare 100, PC**.

2 The Claimant is a litigant in person and was unaware of these rules underlying the public interest in finality in litigation and that a Respondent should not be troubled more than once on the same matter. She accepted that there was much repetition in her second claim and said that she had regarded the second claim as an opportunity to provide further particulars, again, as well as to raise complaints which have arisen since her first claim was presented.

3 It was therefore very largely a matter of agreement between the parties as to which alleged protected disclosures and detriments should be struck out from the second claim. Paragraphs 1 and 2 of the above Judgment reflects this position.

4 No reasonable prospect of success: The Respondent also sought to have all of the alleged protected disclosures struck out on the grounds that the Claimant had no reasonable prospect of succeeding in establishing that they 'disclose information which, in the reasonable belief of the Claimant, is made in the public interest and tends to show ...that the Respondent has failed, is

failing or will fail to comply with any legal obligation' (section 43(1)(b) Employment Rights Act 1996).

5 The Claimant contended that context was everything and that those to whom she had been speaking well understood her disclosures, without it being explicitly set out in the pattern of the statute.

6 The Tribunal concluded that 2 of the alleged disclosures did not disclose anything which could amount to information, and therefore these should be struck out as having no reasonable prospect of success.

7 However, in relation to the remainder, the Tribunal declined to strike them out because:

(i) there was, at the very least, an allegation of breach of contract, which is capable of amounting to a failure to comply with a legal obligation.

(ii) in the context of communications among senior employees in a professional medical workplace, the words used are capable of conveying a mutually understood meaning.

(iii) the Tribunal was not satisfied that there was no reasonable prospect of the Claimant succeeding in convincing a Tribunal, on a balance of probabilities, that at the time of making her disclosures, she entertained a reasonable belief, made in the public interest, that she was flagging up a failure to comply with a legal obligation.

(iv) Strike out is a draconian step, which in this case would deprive the Claimant of her entire claim. It is a step which should only be taken, at this stage and without benefit of hearing the evidence, in the very clearest of cases.

(v) The Tribunal concluded that this case was not sufficiently clear and that the case should be determined on all the evidence by a full merits Tribunal.

8 The wages act claim (section 13 Employment Rights Act 1996): The Respondent sought to have this claim, brought for the first time in the second claim on 16 June 2023, struck out on the grounds that the Claimant has no reasonable prospect of satisfying a Tribunal that it was not reasonably practicable for her to have presented her claim within the primary 3 month time limit from the date of the deduction from her wages in November 2020.

9 The Claimant accepted that she had not brought this claim in her first ET1 because she believed, at that time, that it was out of time. However, she contended that the Respondent had acknowledged that some wages were owing to her in January 2023 and that this meant that time had started to run again.

10 The Respondent contended that the Claimant's right to wages springs from her contract and not from the finding of a subsequent body examining her grievance. The Tribunal also noted that there was a very wide discrepancy indeed between the amount the Claimant claims and the acknowledgment by the Respondent that some money is owed – a factor of almost 13 times greater is claimed than is admitted. The Claimant cannot

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therefore be relying on this recent acknowledgment for the full amount of her wages claimed.

11 The Tribunal concluded that there is no reasonable prospect of the Claimant succeeding in extending time for a wages act claim nearly 3 years after the deduction in question and accordingly struck out this claim.

12 Amendments: The Claimant sought to amend her claims by adding 3 further alleged protected disclosures and 5 further alleged detriments to her existing claims and post-dating them. The Respondent resisted this application, although the matters are not said to be out of time, on the grounds that they add nothing, on their face, to a very voluminous existing claim, and are disproportionate.

13 The Tribunal concluded that there were insufficient substantive grounds for refusing the application to amend, given that it is within time limits and the Claimant has the right to issue another ET1. The unwieldy and voluminous nature of this claim, and its proportionality, is rather a matter for rigorous case management. Case management orders were also made today and are contained in a parallel document to this Judgment.

Signed: Employment Judge A Stewart

Date 18 October 2023

Judgment sent to the parties on

18/10/2023

FOR THE TRIBUNAL OFFICE