



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondents

Mr Mohamed Awais Ellahi

Royal Mail Group Limited

RECONSIDERATION

1. Pursuant to rule 70 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") the order made on 20 September 2023 striking out the claim of victimisation is revoked, such that the Claimant may allege that his suspension on 6 February 2023 was an act of victimisation for bringing claim 2204646/2021.
2. This claim will be heard alongside claims of unfair dismissal and victimisation arising from dismissal at a final hearing listed to take place commencing on **Wednesday, 26 June 2024**.

REASONS

Background

1. The factual background to this matter is set out in my written reasons dated 15 August 2023, provided following a hearing on 11 July 2023.
2. Further to that hearing there was a reconsideration hearing on 20 September 2023, at which I reconsidered the decision made on 11 July 2023, allowed the claims of unfair dismissal and victimisation arising from dismissal to proceed but not the remainder of the claim.
3. At the hearing on 20 September 2023 the Claimant told me that he had been told that he could pursue a separate claim in respect of his allegation that he

was victimised by being suspended in February 2023. It was for this reason, he said, that he did not pursue an application to amend a claim of victimisation on the first day of it being heard by a tribunal presided over by Employment Judge Snelson.

4. I told the parties I would enquire whether the Claimant was correct about the circumstances in which he did not pursue that application to amend.

Note of evidence

5. I received the following note of that hearing, which I shared with the parties by correspondence:

NOTE OF EVIDENCE

C denotes Claimant

R denotes Respondent

J denotes Employment Judge Snelson

C Mr Ahmed says there was an application to amend

= R hands up copy dated 6 Feb - wishes to amend to include victimisation by Sharma (giving evidence)

J No question for us to agree the amendment today - just to put it in on day 1 of 5 is impractical. The option is to withdraw and add to this claim drag on for many months, will come back to fresh tribunal in late 23/24 or treat victimisation as separate

Mr Ahmed = accepts J's analysis - will treat vict. as separate claim.

J advises C that this letter is not a claim

6. It seems to me that this largely supports the Claimant's contention that the Claimant was given to understand that he could pursue this allegation (i.e. that his suspension in February 2023 was an act of victimisation) as a separate claim.

Position of the parties

7. The Tribunal wrote to the parties at my instruction on 16 October 2023 referring to the note of evidence above.
8. On the same day Respondent wrote back to say that a note of evidence referred to in the letter as being attached had not been attached. Accordingly on 17 October 2023 that note of evidence was forwarded to the parties.
9. The Claimant replied in a letter dated 24 October 2023. The Respondent did not however make any substantive reply.

10. I was concerned that no substantive response had been received from the Respondent and directed that a letter be sent chasing a response. This was sent on 2 November 2023, with a deadline to respond by 9 November 2023. Despite chasing no substantive response was received from the Respondent.
11. Given that the final hearing is now listed in this matter and that the matter needs to be resolved I decided against allowing a further period of time for the Respondent to reply.

Decision on reconsideration

12. The law in relation to abuse of process is set out in the written reasons 15 August 2023.
13. The Tribunal's powers to reconsider and the process to be adopted are set out at rules 70 – 73 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules").
14. I find that it is in the interests of justice to reconsider the decision made on 20 September 2023 in view of the note of evidence that I have seen from the hearing in February 2023.
15. I do bear in mind the public interest in favour of finality of tribunal decisions. There is a balance to be struck between that desirable finality and the risk of injustice when further information comes to light which had not been previously available to a judge making a decision.
16. The Respondent will in any event be defending a claim of victimisation, which is listed to take place next year.
17. In this case my decision that there was an abuse of process focused on the Claimant decision not to pursue his application to amend the earlier claim.
18. Now that I have a note of what transpired at the hearing in February 2023 presided over by Employment Judge Snelson, it seems to me that the Claimant may have reasonably decided not to pursue the application to amend his claim to include a claim of victimisation arising from his suspension in the belief that he would be able to pursue it as a separate claim.
19. Now that I understand that he reasonably formed the impression that he could pursue a claim separately, it seems to me, taking account of the broad merits based approach described in *Johnson v Gore Wood* that it was not an abuse of process to pursue the allegation of victimisation as a separate claim. I have reminded myself there has been no judicial determination of the allegation that the suspension was victimisation, nor has the Respondent already been put to the trouble of defending it.
20. Bearing in mind the broad merits based approach to be applied to an alleged abuse of process, it seems to me that it is in the interests of justice to vary the order striking out the claim that the suspension was an act of detrimental amounting to victimisation and instead to allow this claim to proceed.
21. The list of issues will now stand amended to reflect an additional alleged detriment, namely that of suspension in February 2023.

22. The parties have already been notified that final hearing of all outstanding issues including remedy will take place **in person** at Victory House 30-34 Kingsway London WC2B 6EX from **Wednesday, 26 June 2024 - Wednesday, 3 July 2024 (inclusive)**.

Employment Judge Adkin

Date 17.11.23

JUDGMENT SENT TO THE PARTIES ON

.17/11/2023

FOR THE TRIBUNAL OFFICE