



EMPLOYMENT TRIBUNALS

Claimant
Mr M Diop

v

Respondents
Ardmore Construction Limited

OPEN PRELIMINARY HEARING

Heard at: Central London Employment Tribunal (by CVP)

On: 12 December 2023

Before: Employment Judge Brown

Appearances

For the Claimant: In person
For the Respondents: Miss J Linford, Counsel

JUDGMENT AT A PRELIMINARY HEARING

The Judgment of the Tribunal is that:

1. The Claimant's claim is not struck out.
2. The Claimant has permission to amend his claim to include further factual particulars of his existing race discrimination, race harassment, victimisation and wages claims.

This Hearing

1. This hearing was listed to consider the Respondent's application to strike out the claim on the basis that the Claimant had failed to comply with an order of the Tribunal pursuant to *ET Rules of Procedure 2013 r 37 (1) (c)*.
2. IMPORTANT NOTE: The hearing was conducted by CVP video platform. Unfortunately the Claimant had great difficulty joining by videolink and, eventually, joined the hearing by telephone only. This meant that almost an hour of the half-day hearing time was lost. It was also apparent that there had never been a completed List of Issues in the case and that the status of the Claimant's further particulars had not been resolved in previous case management hearings. That

meant that this hearing was required to address a number of important case management issues in a short period of time. As a result, on reflection, I considered that some matters, which needed to be addressed, had not been addressed during the hearing. I have dealt with these below, in underlined sections. The parties are encouraged to pay particular attention to these sections,

Procedural History

3. By a claim form presented on 15 December 2022, the Claimant brought complaints of race discrimination and harassment, victimisation, unpaid wages and holiday pay and unfair dismissal, against the Respondent.
4. EJ Nicolle conducted a private case management preliminary hearing on 11 April 2023. At that hearing, the Claimant acknowledged that he did not have the 2 years' service required to bring an ordinary unfair dismissal complaint. That complaint was dismissed on withdrawal.
5. EJ Nicolle identified the complaints in the claim as follows:

“EQA, section 13: direct discrimination because of race

(iii) Has the Respondent subjected the Claimant to the following treatment:

- a. By being called names and abused by the Respondent's managers and supervisors;
- b. The police twice been called to the site and the Claimant being dismissed in front of the police officers; and
- c. Being refused payment on equivalent terms to the Respondent's white workers in respect of work performed and bank holidays.

(iv) Was that treatment “less favourable treatment”, i.e., did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on hypothetical comparators. If the Claimant seeks to rely on actual comparators he should provide details of such individuals by 4 PM on 25 April 2023.

...

EQA, section 26: harassment related to race

(vi) Did the Respondent engage in conduct as follows?

As set out above in respect of direct race discrimination and any further particulars to be provided by the Claimant by 4 PM on 25 April 2023.

...

Equality Act, section 27: victimisation

(x) Did the Claimant do a protected act?. The Claimant is ordered to provide particulars of any protected act relied upon by 4 PM on 25 April 2023.

...

Unpaid annual leave – Working Time Regulations

...

Unauthorised deductions

...

Breach of contract

(xxii) To how much notice was the Claimant entitled?"

6. The Claimant relied on being "Black African" in his race discrimination and harassment complaints.
7. As can be seen, EJ Nicolle ordered the Claimant to provide further particulars of his discrimination, harassment and victimisation complaints.
8. The Claimant did so on 25 April 2023, as follows:

"I am a Black African man, Senegalese.

I would like to say that the certificate that was issued by ACAS regarding this matter did not run out.

I started working with the Respondent on 25th January 2021, as a labourer.

On 12th February 2022, I made a complaint about race against the Respondent's cook. And then, the Respondent's supervisor, Mr Chris, who sworn at me.

On 2nd and 12th February 2022, the Respondent's contractors were making monkey chant. Crime report 6538352/22

On 10th August 2022, the Respondent's supervisor, Mr Ron, dismissed me in front of the Respondent Health and Safety site manager, Mr Earl and 2 police officers, just because the police attended the site. Crime report 6547122/22

And, a co worker, Bulgarian man, Mr Roman, who called me one day and showed me on his phone, a very upsetting and racist video of a Black African woman. Crime report 6544160/22

The Respondent's different managers, Mr Mime, Mr Dan and a female Romanian and supervisors, Mr Ron and Mr Powel, were sending me to a quiet place and came close to me while rising the volume of their communication radio, and allowed their correspondent to swear and calling me names in my own Senegalese language.

It was a conspiracy and hate crime form White managers, supervisors and co workers.

The police crime report are:

I was too directly discriminated by the Respondent's manager, Mr Mihai, who was giving the instructions to Mr Jodi, who did not speak English and told me to go with him, in multiple occasions.

I think my constructive dismissal was due to race and a breach of my employment contract, because when the Respondent offered me the job as a labourer, I was working Monday to Friday, from 8 am to 6 pm, mandatory, and Respondent was always providing tools to perform tasks.

I was working 7 day a week most of the time but they never paid me overtime or a higher rate on weekends or paid me on Bank Holiday Pay.

I could not find advise or help on the further particulars. I had an appointment with Hoxton Trust, but they said that they do not do such employment matter.

So, I would like to keep my amended claims that was submitted on 11th April 2023.

I am claiming a compensation too.”

9. In a different email, sent on the same day, the Claimant also gave a list of adjectives and nouns, including some legal heads of claim, without giving any particulars of such claims, for example, “Employment Rights. Act 1996. The right to be told key employment terms. Sunday, time off and suspension. Dismissal notice and reason. Protection for whistleblowers. Automatic unfair and wrongful dismissal. Unfair procedure. Breach of Employment Contract. Constructive dismissal. Damage of performance reputation. Detrimental treatment. Type of employment status. Misleading. Exploitation. Under pay. Slavery ...”.
10. The Respondent presented an amended Response, responding to each of the Claimant’s factual allegations.
11. In its Response the Respondent, however, also contended that the Claimant needed permission to amend his claim to include his particulars and saying that the particulars were not sufficient for the Respondent to understand the claim against it. The Respondent also contended that the Claimant was an independent contractor, so his claims must fail and that, in respect of some allegations, the alleged acts had been carried out by third parties for whom the Respondent was not liable.
12. No final list of issues was ever established following the Claimant’s particulars and the Respondent’s amended grounds of resistance.
13. The case had been listed for a 3 day final hearing commencing 22 November 2023. EJ Nicolle had ordered the parties to exchange witness statements 28 days before the hearing.
14. On 31 October 2023 the Respondent applied for the claim to be struck out on the basis that it was not being actively pursued and/or that the Claimant had failed to comply with the terms of EJ Nicolle’s Case Management Order dated 11 April 2023. It made a further application for strike out on 20 November 2023, on the basis that the Claimant had failed to provide a witness statement, as at 20 November 2023.

15. The case was not ready for a final hearing and REJ Freer directed that it should be converted to a case management hearing on 22 November 2023 before EJ Nicolle.
16. On 22 November 2023 the Claimant attended Victory House in person. He explained that this was due to Internet connectivity issues at his home. He was able to join the hearing via his phone.
17. The Claimant had sent his witness statement to the Tribunal on 20 November 2023 at 14.14. It was essentially a repeat of his 25 April 2023 further particulars as set out above. He forwarded that statement to the Respondent on 24 November 2023.
18. At the 22 November 2023 case management hearing, EJ Nicolle listed this hearing to consider the Respondent's application to strike out the claim on the basis that the Claimant had failed to comply with an order of the Tribunal pursuant to Rule 37 (1) (c). EJ Nicolle said that, depending on the outcome of the strike out application, the Tribunal would then go on to consider what case management orders were applicable.

At This Hearing

19. The Respondent clarified that it sought strike out of the Claimant's claims on the basis that the Claimant had not complied with orders of the Tribunal, pursuant to r37(1)(c) ET Rules of Procedure 2013.
20. Miss J Linford, Counsel for the Respondent, said that the Tribunal needed to apply a 2 stage test, first deciding whether grounds for strike out had been established and, second, considering the overriding objective and the need to do justice between the parties, including all the circumstances and whether strike out, or a lesser sanction is appropriate. She contended that the magnitude of default was an important consideration, including the disruption, unfairness and prejudice caused and whether a fair hearing was still possible, in light of the default.
21. Miss Linford noted that, on 11 April 2023 EJ Nicolle had ordered, at his order paragraphs 2.1 and 5.1, that the Claimant provide an updated schedule of loss by 9.5.23, following withdrawal of the Claimant's unfair dismissal claim, and the parties should simultaneously exchange witness statements on 25 October 2023, in preparation for the final hearing.
22. The Respondent said that the Claimant had breached both those orders. He had provided a schedule of loss on 9.5.23, but it was still predicated on a claim if unfair dismissal. The Claimant had not sent his witness statement until 20.10.23, and then he had done so directly to the Tribunal and not to the Respondent.
23. Regarding the magnitude of default, Miss Linford contended that this was grave: the orders were made to ensure the claim was ready for hearing, the Claimant had had sufficient time to prepare and had provided no explanation to the Tribunal as to why he did not serve his statement on time. That resulted in disruption to the case, including vacating the 3 day final hearing. She contended that the Respondent had been prejudiced, in that the Claimant had had the benefit of seeing the Respondent's witness statements before he served his. She said that the statement was still inadequate and the Respondent still had difficulty understanding the case against it.

24. The Claimant resisted the application.

25. He said that he had applied for strike out himself because the Respondent had failed to comply with a court order, but he had never had a response from the court. He said that he was a litigant in person and did not understand what he needed to do. He said that the Respondent had failed to send him the bundle of documents.

26. Miss Linford said that the Respondent had a delivery slip, showing safe receipt of the bundle to the Claimant – p148.

The Law on Strike Out

27. By *r37(1)(c) ET Rules of Procedure 2013*: “(1) At any stage of the proceedings ... a Tribunal may strike out all or part of a claim or response on any of the following grounds (c) for non-compliance with any of these rules or with an order of the Tribunal; ...”.

28. In *Blockbuster Entertainment Ltd v James* [2006] EWCA Civ 684, [2006] IRLR 630, the Court of Appeal stated that it would take 'something very unusual indeed to justify the striking out, on procedural grounds, of a claim which has arrived at the point of trial' (at [19], per Sedley LJ). The Court also said that, when determining the proportionality of the response, the tribunal is required to make a structured examination in order to see whether there is 'a less drastic means to the end for which the strike-out power exists'. As Sedley LJ stated (at [21]): 'Proportionality ... is not simply a corollary or function of the existence of the other conditions for striking out. It is an important check, in the overall interests of justice, upon their consequences'.

29. In *Emuemukoro v Croma Vigilant (Scotland) Ltd* EA-2020-000006, [2022] ICR 327, the EAT said that the requirement for exercising the power to strike out all or part of a claim or response under *rule 37(1)(b) ET Rules 2013*, on the ground of unreasonable conduct of the proceedings, was either that the unreasonable conduct had taken the form of a deliberate and persistent disregard of required procedural steps or that it had made a fair trial impossible; that, where the party's unreasonable conduct had resulted in a fair trial not being possible within that trial window, the power to strike out was triggered; that whether the power should then be exercised depended on whether it would be proportionate to do so, taking account of all factors relevant to a fair trial, such as the undue expenditure of time and money, the demands of other litigants and the finite resources of the court; and that, having found that a fair trial was not possible within the hearing window and that an adjournment would have entailed unacceptable prejudice to the claimant, the tribunal had been entitled to conclude that there was no other option than to strike out the response.

30. In coming to that conclusion the EAT relied on the authority on strike out generally of *James v Blockbuster Entertainment* [2006] EWCA Civ 684, [2006] IRLR 630.

Discussion and Decision

31. I did not strike out the claim. I noted that the claim was ready for hearing, in that the Claimant had provided particulars of his claim, the Respondent had responded

to them, the parties had exchanged documents on that basis and had now exchanged witness statements.

32. I noted that the hearing on 22 November 2023 had not proceeded and that the Claimant had not provided a witness statement until 20 November 2023. He did so only to the Tribunal. He had been ordered to exchange witness statements 28 days before the hearing. His failure to do so meant that the hearing could not go ahead.
33. The grounds for striking out had therefore been established. I noted that the Claimant's failure to exchange his witness statement on 25 October 2023 had meant that the parties were not on an equal footing. However, the Claimant's witness statement had simply repeated his further and better particulars, rather taking advantage of having received the Respondent's statements, so there had been no real prejudice to the Respondent in that regard. The Final Hearing could now be listed for the parties' convenience. I had not been told that the postponement of the previous Final Hearing had had put the Respondent at a disadvantage through any deleterious effect on its ability to call its witnesses, or the witnesses' ability to recall the relevant matters. The witnesses had already prepared their witness statements. I noted that the claim had been presented in 2022 and that the allegations related to matters which happened in 2022. That was relatively recent. I did not consider that the postponement of the final hearing was likely to cause fading of memories. The Respondent was not likely to be prejudiced by the additional passage of time. Regarding the schedule of loss, there was no disadvantage to the Respondent: it would be able to point out that compensation should not be awarded for the unfair dismissal claim which had been dismissed.
34. I decided that a fair hearing was still possible and it was not proportionate to strike out the claim. A lesser sanction for the Claimant's default could be applied, for example, an order for costs to compensate for any additional costs incurred as a result of the postponement, including applications made in relation to the postponement.

The Claimant's Particulars and List of Issues

35. The Claimant had provided particulars pursuant to EJ Nicolle's order. I noted that the Respondent had said, in its amended Response, that the particulars were inadequate, so that they should be disallowed and that the Claimant had failed to specify the provisions of the Equality Act 2010 on which he relied.
36. I noted that EJ Nicolle had ordered the Claimant to provide further particulars of his race discrimination and harassment and victimisation claims, and I asked the Respondent why the Respondent contended that the factual particulars the Claimant had provided were not details of claims he had already pleaded, for example, "being called names and abused by the Respondent's managers and supervisors", rather than new complaints, based on new facts.
37. I said that I agreed that, where the Claimant had listed new legal claims, not previously identified, those might be out of time and require permission to amend, as they were new claims based on new facts not previously brought.

38. Miss Linford said that the Respondent did not accept that the Claimant was entitled to amend to bring a constructive unfair dismissal, or additional claims which could not be inferred from the pleadings.
39. I asked the Claimant whether he agreed that his factual particulars should be treated as particulars of the claims already identified by EJ Nicolle. I noted he had used the words "Sunday working" and "whistleblowing" in his new particulars, but he had given no factual detail of these. The Claimant said he had put all the things he wanted to bring, including unpaid wages in relation to working on Sunday.
40. The Respondent agreed to the factual particulars being treated as additional factual particulars of the claims already identified by EJ Nicolle.
41. I said that I would allow the Claimant to add the factual particulars to the claims which had already been identified at the hearing before EJ Nicolle, but I would not allow the Claimant to amend to include new legal claims, for example whistleblowing and Sunday working, which had not been mentioned before. I said that he had not made an application to amend his claim to include these - there was no application for amendment before me. I said that he had included no factual particulars of these new legal claims. I would not extend time to include those complaints when they were devoid of any factual content and could not be understood. I had decided not to strike out the claim on the basis that the claim was ready for hearing. I would therefore not allow the Claimant to add new legal claims (which would necessitate further facts), at this stage of the proceedings.
42. I then went through the List of Issues as identified by EJ Nicolle, with the Claimant and the Respondent, adding the factual particulars which the Claimant had provided, to the claims already identified. I asked the Claimant to provide some further context, to assist understanding.
43. Having reviewed the discussions I had had with the Claimant, and on reflection, I considered that I had not fully dealt with his alleged protected acts, as included in his factual particulars. I noted that the Claimant said, in his particulars, "Mr Ron, dismissed me in front of the Respondent Health and Safety site manager, Mr Earl and 2 police officers, just because the police attended the site. Crime report 6547122/22." The Claimant also told me, during discussions, that his reports to the police had been complaints of race discrimination. It therefore appeared that he was relying on his crime reports as protected acts and that they should be included in the list of issues as protected acts. I noted that these reports of race discrimination by the Claimant to the police, and the Respondent's knowledge of these, had been dealt with in the Respondent's witness statements, in some detail. It therefore appeared that the Respondent was aware that the Claimant was contending, in these proceedings, that he had also made allegations of race discrimination to the police.
44. As the protected acts were not fully clarified during my discussions with the Claimant on the List of Issues, I have also included permission for the Respondent to file amended Grounds of Response to the claim, responding to the protected acts, see below.

45. If the Respondent disagrees with this approach, it is able to write to the Tribunal accordingly.
46. Having incorporated the Claimant's further particulars, and some factual clarification provided at today's hearing, I finalised the Claimant's allegations in List of Issues as follows:

LIST OF LEGAL AND FACTUAL ISSUES

"Time limits / limitation issues"

(i) Were all the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including when the treatment complained about occurred, whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures and whether time should be extended on a "just and equitable" basis.

(ii) The Respondent acknowledges that given the date upon which the ACAS early conciliation certificate was issued (18 November 2022) that the claim issued on 15 December 2022 is not out of time, but depending on whether the Claimant identifies a continuing course of conduct, it is possible that the Respondent may contend that acts or omissions relied on by the Claimant are out of time.

(iii) Whether any of the persons responsible for the alleged acts were within the Respondent's control so that the Respondent was liable for their actions ss109 – 112 Eq A 2010;

(iv) Was the Claimant an employee within ss83 & 84 EqA 2010.

EQA, section 13: direct discrimination because of race

(iii) Has the Respondent subjected the Claimant to the following treatment:

- b. By being called names and abused by the Respondent's managers and supervisors;
- a. On about 12 February 2022, in an email to HR, the Claimant made a about complaint race discrimination against the Respondent's cook and the Respondent's supervisor, Mr Chris, who used the, "F word" at the Claimant without reason, before 12 February 2022.
- b. On 2nd and 12th February 2022, the Respondent's contractors were making monkey chant. Crime report 6538352/22
- c. On 10th August 2022, the Respondent's supervisor, Mr Ron, dismissed the Claimant in front of the Respondent Health and Safety site manager, Mr Earl and 2 police officers, just

because the police attended the site. Crime report 6547122/22

- d. A co worker, a Bulgarian man, Mr Roman, called the Claimant one day and showed him, on his phone, a very upsetting and racist video of a Black African woman. Crime report 6544160/22. Mr Roman was a very tall/big labourer employed by the respondent at 57 Whitehall.
- e. The Respondent's different managers, Mr Mime (Albanian), Mr Dan (Romanian or Bulgarian) and a female Romanian and supervisors, Mr Ron and Mr Powel, were sending me to a quiet place and came close to me while rising the volume of their communication radio, and allowed their correspondent to swear and calling me names in my own Senegalese language -the name was "monkey" in Senegalese –"Golo".
- f. The Respondent's manager, at the fire station site, Mr Mihai, gave the instructions to Mr Jodi, who did not speak English, and told the Claimant to go with Mr Jodi, on multiple occasions. Mr Mihai gave instructions to Mr Jodi, but not to the Claimant, despite the Claimant being qualified and having a CSCS card, when Mr Jodi did not.

b. The police twice been called to the site and the Claimant being dismissed in front of the police officers; and

c. Being refused payment on equivalent terms to the Respondent's white workers in respect of work performed and bank holidays.

(iv) Was that treatment "less favourable treatment", i.e., did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators.

(v) If so, was this because of the Claimant's race and/or because of the protected characteristic of race more generally?

EQA, section 26: harassment related to race

(vi) Did the Respondent engage in conduct as follows?

a. As set out above in respect of direct race discrimination.

(vii) If so was that conduct unwanted?

(viii) If so, did it relate to the protected characteristic of race?

(ix) Did the conduct have the purpose or (considering the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Equality Act, section 27: victimisation

(x) Did the Claimant do a protected act?. The Claimant relies on:

a. On about 12 February 2022 the Claimant made the complaint by email HR about race discrimination by the Respondent's cook and by Mr Chris, saying he used the "F word" at the Claimant without reason before 12 February 2022.

b. The Claimant's crime report 6538352/22

c. The Claimant's crime report 6547122/22

d. The Claimant's crime report 6544160/22.

(xi) Did the Respondent subject the Claimant to any detriments as set out under the race discrimination allegations above.

(xii) If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

Unpaid annual leave – Working Time Regulations

(xiii) When the Claimant's employment came to an end, was he paid all the compensation he was entitled to under regulation 14 of the Working Time Regulations 1998?

(xiv) What was the Claimant's leave year?

(xv) How much of the leave year had elapsed at the effective date of termination?

(xvi) In consequence, how much leave had accrued for the year under regulations 13 and 13A?

(xvii) How much paid leave had the Claimant taken in the year?

(xviii) How many days remain unpaid?

(xix) What is the relevant net daily rate of pay?

(xx) How much pay is outstanding to be paid to the Claimant?

Unauthorised deductions

(xxi) Did the Respondent make unauthorised deductions from the Claimant's wages in accordance with ERA section 13 and if so how much was deducted?/ Was the Claimant paid less in wages than he was entitled to be paid and if so, how much less?

The Claimant claims

Unpaid Saturday and Sunday work: £240

Unpaid 2 days Bank Holiday Pay: £240

Unpaid first day at Whitehall Ardmore Group site: £120

Breach of contract

(xxii) To how much notice was the Claimant entitled?

(xxiii) Did the Claimant fundamentally breach the contract of employment by an act of so-called gross misconduct]?

Remedy

(xxiv) If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and, if the Claimant is awarded compensation and/or damages, will decide how much should be awarded.

a. if it is possible that the Claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?

b. did the Respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (“section 207A”)?

c. did the Claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any compensatory award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?

47. I gave the Respondent permission, by 9 January 2024 to present amended grounds of resistance – responding specifically to the race discrimination allegation as clarified in relation to Mr Mihai. The Respondent had not previously fully understood this allegation. As indicated above, I now include permission for the Respondent’s amended grounds of resistance to respond to the protected acts in the List of Issues.

48. I also ordered the Respondent, by 9 January 2023, to add any specific legal and factual defences on which it relies in its grounds of resistance to the List of Issues I have finalised and send that List of Issues to the ET and to the Claimant. The issues added to the List of Issues must be contained in the amended grounds of resistance (amended only as permitted by my orders). That composite list of the Claimant’s allegations and the Respondent’s responses will form the Final List of Issues for determination at the Final Hearing.

Other Directions and Case Management

49. The Claimant relies on his 24 November 2023 witness statement.

50. The Claimant told me that the existing Bundle did not include all his documents. I made clear that the Bundle must include the relevant documents which the parties have disclosed to each other.
51. The Claimant told me that he had audio recordings of relevant matters which he had thought he could simply bring to the Final Hearing.
52. I told the Claimant that he must send anything he wants to show to the Tribunal to the Respondent first. If he does not do this, he will not be allowed to show it to the Tribunal.
53. I ordered that the Claimant sends all additional recordings, electronic documents, sound files, or other documents, which he has, relevant to the issues in the case, to the Respondent by 19 December 2023. I said that I was not giving him permission to rely on them, because they were already late. The Respondent can consider whether it objects to the Tribunal seeing or listening to these documents. The Tribunal which hears the claim can decide whether to look at the additional documents. If the Claimant does not send all his recordings, documents and sound files to the Respondent by 19 December 2023, however, I said that the ET would be very unlikely to look at them. The claim should have been heard in November 2023 and it is already very late for the Claimant to be producing new evidence.
54. Having conducted this hearing, I considered that the Tribunal would benefit from the assistance of an Interpreter to assist communication with the Claimant. The Claimant agreed that that would be a good idea in the formal, legal setting of a Tribunal hearing. The Claimant said that a French interpreter would be best. He told me that his French language skills are good enough to participate fully in a court setting.
55. The case had previously been listed for 3 days to determine both liability and remedy. With an interpreter, I considered that 4 days would be required.
56. Having established the parties' availability, I listed the claim for 4 days on 21 – 24 May 2024.
57. The Respondent did not have all its witnesses' availability. I gave it permission to write to the Tribunal within 14 days, confirming its witnesses' availability.
58. Given the Claimant's communication difficulties with the CVP video platform, and the need for an interpreter, I said that the Final Hearing MUST be heard IN PERSON at the Tribunal, and not by video.
59. The Respondent has contended that the correct legal title for it is Ardmore Construction Limited. I have changed its name on the proceedings. The Claimant has permission to write to the Tribunal objecting to that change.

Judicial Mediation

60. Due to pressure of time, I did not discuss Judicial Mediation with the parties. Judicial Mediation may have been discussed previously, but the parties may since have changed their view. I ordered the parties to write to the Tribunal by 11 January 2024 confirming whether they are interested in Judicial Mediation. A note on Judicial Mediation accompanies this hearing record.

61. I therefore made the following orders:

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

Final Hearing

1. The Final Hearing is listed for **4 days on 21 – 24 May 2024, in person, before a Full Tribunal, to determine both liability and remedy. This hearing MUST be in person.**
2. The Respondent has permission to write to the Tribunal within 14 days, confirming its witnesses' availability.

Interpreter

3. **The Tribunal will provide an interpreter in the French language on all days of the Final Hearing.**

Respondent's Name

4. The name of the Respondent in the proceedings is changed to Ardmore Construction Limited. The Claimant has permission to write to the Tribunal objecting to that change.

Judicial Mediation

5. The parties are ordered to write to the Tribunal **by 11 January 2024 confirming** whether they are interested in Judicial Mediation.

Amended Response and Complete List of Issues

6. **By 9 January 2024** the Respondents have permission to file and serve amended grounds of resistance, responding to the race discrimination allegation in relation to Mr Mihai and to the protected acts in the List of Issues.

7. **By 9 January 2024** the Respondents shall add their specific legal and factual responses, as set out in their amended grounds of resistance, to the Claimant's claims into the List of Issues and shall send it to the Claimant and the Tribunal.

Disclosure of Documents

8. **By 19 December 2023** the the Claimant shall send all additional recordings, electronic documents, sound files, or other documents, which he has, relevant to the issues in the case, to the Respondent.

Documents for the Final Hearing

9. The Respondents shall bring 5 copies of the Bundle and all the witness statements to the Final Hearing.

Employment Judge **Brown**
Date: 12 December 2023

SENT to the PARTIES ON
14/12/2023

FOR THE TRIBUNAL OFFICE

Other matters

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

You may apply under rule 29 for this Order to be varied, suspended or set aside.