



EMPLOYMENT TRIBUNALS

Claimant: Mr S Sharma

Respondent: ITC Infotech Ltd

Heard at: Watford (By CVP)

On: 22 September 2023

Before: Employment Judge Bansal

Representation

Claimant: In person

Respondent: Miss R Swords Kieley (Counsel)

RESERVED JUDGMENT

The respondent's application to strike out the claimant's claim under rule 37(1)(b) of the Employment Tribunals (Constitution & Rules of Procedure) Regs 2013 is refused.

REASONS

Introduction

1. By a Notice of Hearing dated 4 May 2023 this hearing was listed as a public preliminary hearing to determine the respondent's application made on 4 April 2023 that the claimant's claim be struck out on the basis that the manner in which the proceedings have been conducted by the claimant is scandalous, unreasonable or vexatious pursuant to rule 37(1)(b) of the Employment Tribunal Rules of Procedure 2013.
2. This application was listed to be heard on 18 July 2023. Due to the non-attendance of the claimant because of ill health the hearing was adjourned to this hearing.

Background

3. The respondent is an IT consultancy service provider which provides specialised IT consultancy services to clients globally. The claimant was employed by the respondent as a Lead Software Consultant from 28 June

2021 (having been seconded to the respondent from ITC Infotech India Ltd) until 17 November 2021, when his employment was terminated on the grounds of redundancy. Early conciliation started on 16 February 2022 and a Conciliation Certificate was issued on 18 February 2022. A Claim Form (ET1) was presented on 12 March 2022. The claimant brought claims for ordinary Unfair Dismissal; Whistleblowing Detriments; Automatically Unfair Dismissal for making protected disclosures. The respondent submitted its response on 19 April 2022 contesting the claims.

4. At a public preliminary hearing held on 6 March 2023 EJ Cotton dismissed the claims for Whistleblowing Detriments and Automatically Unfair Dismissal. The only claim that is before the Tribunal is for ordinary unfair dismissal. At this hearing EJ Cotton made case management orders and also vacated the final hearing listed for 3-7 June 2024.
5. By a Notice of Hearing dated 28 March 2023 the final hearing was listed for 3 days commencing on 10 January 2024 to 12 January 2024.
6. At the open preliminary hearing held on 18 July 2023, EJ Anstis varied the case management orders as follows; disclosure to be completed by 13 October 2023; final bundle to be prepared and paginated by 10 November 2023, and witness statements to be exchanged by 7 December 2023.
7. At the preliminary hearings held before EJ Cotton (6 March 2023) and EJ Anstis on 18 July 2023, the claimant was cautioned about his conduct. EJ Anstis stated that; *“The claimant must bear in mind that any behaviour of his (of the kind complained about by the respondent) between now and the resumed hearing may be relevant to the question of whether his claim should or should not be struck out”*.

Preliminary Hearing

8. The claimant was in attendance. The respondent was represented by Miss Swords Kieley of Counsel.
9. I was presented with two bundle of documents, one which was a supplementary bundle prepared by the respondent solicitors, which contained copies of the pleadings; tribunal orders and correspondence; and the claimant’s emails; messages and publications made on WhatsApp; Twitter and other social media platforms.
10. I did not hear oral evidence from the claimant or any one for the respondent. Miss Swords Kieley provided a skeleton argument which formed her representations and legal submissions. The claimant made no representations but gave his response to questions I asked of him. Due to losing time because of the claimant’s conduct, there was insufficient time to give an oral judgment.

Claimant’s conduct during this hearing

11. During the course of Miss Swords Kieley making her representations, I observed the claimant was crying, and in an agitated and distressed state. I offered the claimant a short break which he declined. However, the claimant then had an emotional outburst. In a loud and incoherent manner the claimant claimed that he and his children had been threatened by the respondent; that

they feared for their lives as they will be killed in India, if they are forced to return. He said he had evidence of the alleged threats made. I was able to calm the claimant to allow Miss Swords Kieley to complete her representations.

12. After Miss Swords Kieley finished, the claimant had another emotional outburst. This time he appeared to be deeply distressed and mentioned he was having a panic attack because his blood pressure was very high. He picked up a blood pressure machine and started taking his blood pressure and put the monitor showing the reading on screen. The claimant's wife was in the room and gave him a glass of water and tried to calm him down. During this outburst the claimant continued to make accusations against the respondent and claimed he and his family were suffering. The claimant firmly believed he and his family life was under threat from the respondent. I had to warn the claimant that because of his behaviour I was seriously considering adjourning the hearing, and that I was only prepared to continue if he assured me that he was prepared to continue in a calm, respectful and reasonable manner. He insisted he wanted to continue. He did then compose himself and was able to continue without further disruption.

Respondent's application & representations

13. In summary Miss Swords Kieley made the following representations, in support of the application;
- (a) Miss Swords Kieley, in her skeleton argument set out at Paras 21 to 26 the content and extent of the claimant's allegations and intimidation, which refers to the respondent being a terrorist company; who has tormented his children; accusing the respondent of fraud, torture, harassment, wanting to kill him and his family who are in danger from them; and being involved in immigration crimes, financial and money laundering; and their being a conspiracy to make him return to India because they want to murder him and his family.
 - (b) Despite the warnings given to the claimant about his future conduct at previous hearings by EJ Cotton and EJ Anstis, the claimant has ignored these warnings and has continued with his false, derogatory, malicious and threatening allegations towards the respondent, and Manager Jitendra Mohan. In fact, the claimant's conduct has worsened.
 - (c) The allegations are baseless, spurious and are denied. They have been made to mislead or lie to the Tribunal, even though they have no bearing whatsoever on the unfair dismissal complaint.
 - (d) The claimant's conduct is overwhelmingly prejudicial to the respondent and has rendered a fair trial impossible, for the following reasons;
 - (i) The respondent cannot be expected to tolerate being privately and publicly subject to such serious, baseless and spurious allegations as part of these proceedings;
 - (ii) The respondent (and its legal representatives) cannot fairly be expected to continue to conduct this litigation in the face of the series and spurious allegations repeatedly made against them;

- (iii) The respondent's witnesses are distressed by the nature of the allegations made against them, which may affect the willingness and ability to give evidence in due course;
 - (iv) The claimant is unwilling to use these proceedings to determine the claim actually before this tribunal;
 - (v) The claimant has attempted to misrepresent the respondent to the Tribunal which has caused overwhelming prejudice to the respondent.
 - (vi) Due to the claimant's unreasonable approach to this litigation the respondent has been caused to incur significant and unnecessary costs.
- (e) The claimant's conduct today is a good indicator of how he is likely to behave at a final hearing and not deal with his claim.
14. Overall, the claimant has behaved scandalously, unreasonably and vexatiously in these proceedings.

Claimant's representations

15. The claimant did not say much to oppose the application. I therefore asked him a series of questions to understand and ascertain his position. I summarise his replies below.
16. First, he denied sending and posting the messages and making the allegations. After further questions, he claimed he did not know he was sending/posting the messages, and did not know he was doing anything wrong. He added at the time he was not well and suffering from mental health issues. The claimant confirmed he was not taking any medication and neither did not produce any documentary evidence concerning his health issues.
17. In reply to my question, why should the claim not be struck out, he replied, his actions and conduct is not intentional; that he has been suffering with his mental health and now has anxiety and depression, which he claimed has been caused by his dismissal which has destroyed his life. He assured me that he has now withdrawn from using social media and refrained from posting messages and publications against the respondent.
18. He was not prepared to withdraw his claim and has every intention to continue with it to a conclusion.

The legal framework

19. In my deliberations I gave consideration to the applicable legal framework and the case law referred to by Miss Swords Kieley.
20. Rule 37(1) of the Employment Tribunal (Rules of Procedure) 2013 provides

that at any stage of the proceedings, either on its own motion or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds:-

- (a) that 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 either party has been scandalous, unreasonable or vexatious.

21. Rule 37(2) provides 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.

Conclusion

22. In my deliberation I have taken into account the respondent submissions, the relevant legal framework and case law.
23. I have born in mind the guidance in the cases of **Abegaze v Shrewsbury College of Arts & Technology [2010] IRLR 236; Bolch v Chapman (2004) IRLR 140, and De Keyser Ltd v Wilson (2001) IRLR 324.** I must consider not only whether there has been default, but also whether, as a result of that behaviour, there cannot be a fair trial and whether strike out is a proportionate sanction.
24. I also recognise that striking out a claim is one of the most draconian powers a Tribunal can exercise, since it brings the claim to an end and prevents a claimant's case being determined on its merits.
25. I have concluded that the claimant's conduct has been unreasonable and therefore falls within Rule 37(1)(b). There is no justifiable reason for the behaviour displayed by the claimant, whatever maybe his views about being dismissed by the respondent. His behaviour has been inexcusable. He has disregarded the warnings given by EJ Cotton and EJ Anstis.
26. Nonetheless, I do conclude that it would not be appropriate to strike out the claim, for the reasons that a strike out is not a proportionate sanction as I consider a fair trial remains possible. I find that the claimant's messages and postings are of a personal nature directed towards the respondent and others. It appears these have been made to discredit and tarnish the reputation of the respondent, and to avoid having to return to India now that his employment has come to an end. It appears the claimant has a strong fear of returning to India. This issue has no direct relevance to the legal issues to be determined by the Tribunal in this claim. Further, in the messages and postings referred to by Miss Swords Kieley, there is no reference made about these proceedings or about the respondent witnesses, to support the assertion that the respondent has been caused "overwhelming prejudice" and that a fair trial is not possible. Neither do I accept that the respondent has been put to incur significant and unnecessary costs.
27. In the context of this claim, (i.e unfair dismissal) the burden of proof is on the respondent to satisfy the Tribunal of the principal reason for dismissal, namely redundancy. I am not satisfied that the claimant's conduct as displayed and complained of, is relevant or would be taken into account by

the Tribunal in determining the reason and fairness of the dismissal.

28. I also note it is not being argued that compliance with the case management orders and preparation for the trial is not possible.

29. Therefore the application for a strike out is refused.

Orders

30. At the request of Miss Swords Kieley, the case management orders made at the last hearing on 18 July 2022 are varied as set out below. The claimant did not oppose this request.

- (i) Disclosure of documents to be completed by **13 November 2023**;
- (ii) Final hearing bundle to be prepared and paginated by the Respondent by **10 December 2023**.
- (iii) Witness statements to be exchanged by no later than **4pm on 31 December 2023**.

31. The parties are reminded to comply with the case management orders and that the services of ACAS is available for assistance in any settlement discussions.

32. The claimant is, once again, warned about his future conduct leading up to the final hearing.

33. I apologise to the parties for the delay in sending out this Judgment.

Employment Judge Bansal
Date 19 December 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON
21 December 2023

FOR THE TRIBUNAL OFFICE