EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Mahsn Majidy [1]	**v**	**School of Oriental and African Studies (SOAS) University of London**

Heard at: London Central
On: 05 March 2024.

Before: Employment Judge G Hodgson

Representation

For the Claimant: in person
For the Respondent: Ms Kristen Barry, counsel

JUDGMENT

The claims are struck out and dismissed.

REASONS

Introduction

1. The claimant has brought two previous claims both of which have been dismissed.

[1] The claimant's name was corrected on 17 April 2024 pursuant to rule 69 Employment Tribunal Rules of Procedure 2013.

2. This claim (which I will refer to as the third claim or the current claim) was issued on 14 September 2023.

3. The respondent's grounds of resistance seek a strike out of the claim. At 2.1 of the grounds of resistance the respondent says -

> **There are no ascertainable legal complaints made out as part of the Claimant's claim form. It is notable that as part of the existing proceedings, the Claimant has attended 4 case management Preliminary Hearings, 1 full day substantive Preliminary Hearing and has been in receipt of 3 Grounds of Resistance/Amended Grounds of Resistance on behalf of the Respondent. The Claimant's involvement in/awareness of all of these exercises means that, notwithstanding that he is unrepresented for the purpose of these proceedings, he has been informed on numerous occasions of the information and detail that is required for the purposes of particularising a valid complaint in the Tribunal. Beyond ticking the relevant boxes at 8.1 of the ET1 which indicate the Claimant is pursuing claims of race, gender reassignment and sexual orientation discrimination, the remainder of the claim form simply provided general allegations of perceived wrongdoing without any reference to the Equality Act 2010. The Claimant appears to have attached an internal grievance that was lodged, which again contains vague and unparticularised complaints which are incomprehensible from a legal perspective. It is understood that the Claimant has had access to Union support as part of the internal processes…**

4. In addition, the respondent indicates that, to the extent any claims could be inferred, there appears to be a significant amount of duplication with the previous claims. Seeking to re-litigate claims which have been decided would be an abuse of process.

5. The respondent notes that it cannot be assumed that the claims are in time. Those acts prior to 11 April 2023 are said to be out of time.

6. The respondent identified three potential factual allegations which can be summarised as follows:

7. First, in or around April 2023, the respondent provided information to a prospective employer. The claimant does not identify the prospective employer or the information. The respondent accepts that there was an enquiry from a prospective employer. The following information was supplied:

> **I can confirm Dr Mahsn Majidy has been employed with SOAS, University of London, as a part-time language teacher in Arabic since 1 November 2008. He made currently in employment were part-time fractional .29 FTE .**

8. Second, In June 2023 the claimant noticed an erroneous reference to gender assignment as "transgender". The respondent states that this is an error experienced by other members of staff.

9. Third, The claimant refers to sending an email to a student which was intended for a supervisor. This led to the respondent requesting the claimant to take more care.

10. It is the respondent's contention that those allegations have no reasonable prospect of success.

11. On 14 December 2023, EJ Klimov gave directions for the respondent's application for strike out and/or deposit to be considered.

12. At that hearing, the claimant withdrew any claim of discrimination on the grounds of gender reassignment and sexual orientation.

13. EJ Klimov considered the three points identified in the response, set out above. He identified three alleged detriments that were said to be either race discrimination or victimisation.

14. First, the claimant stated that the information provided to the prospective employer was inaccurate as to the start date (it should have been April 2004) and the reference should not have included his part-time fraction.

15. Second, the claimant alleged that the reference to gender reassignment in June 2023 was an act of racial discrimination and/or victimisation. He stated that it was not the first time he had seen the error. He did not state when he saw the error first.

16. Third, the claimant accepted the respondent sent an email on 25 May 2023 concerning the claimant's email mistakenly sent to the student. This led to the student leaving. The email, insofar as it was material, stated:

> **While I acknowledge that errors can occur, this particular mistake has resulted in damaging consequences for both the reputation and finances of SOAS. I kindly request that you take greater care when sending emails concerning student to prevent such mistakes from happening again in the future.**

17. EJ Klimov stated at paragraph 10, "The claimant's third claim is confined to the above three factual matters, which are not in dispute."

The hearing

18. The claimant's application to adjourn, made prior to the hearing, had been refused.

19. Shortly before the hearing, I received an email from the claimant which stated

> **I have just arrived from from hospital. I spent the whole evening and early morning at emergency. They suspected a stroke. I have just arrived home I am not sure whether I can get some sleep or not. It would be impossible to attend the hearing. The case is not only a 2 hour session and case management. it seems wrong information has been passed to the judge. Under this current health situation is would be impossible for me to defend my claim.**

20. Despite this email, the claimant attended the hearing. He renewed his application to adjourn orally. He indicated he had no new medical evidence. It was unclear if he had any evidence from the hospital. He stated he did not wish to show any medical evidence to the respondent, but it was unclear whether he had obtained any. The claimant's presentation was not consistent with a total inability to conduct the hearing, as he had suggested in his email. He appeared to participate with little if any difficulty and he was able to present his arguments.

21. In accordance with the order of EJ Klimov, the respondent filed a skeleton argument. The respondent confirmed that it was content to rely on that skeleton argument and did not need to make any specific oral submissions.

22. The claimant had been ordered, by 9 January 2024, to provide any documentation relevant to the application to strike and the application for a deposit order. In addition he was to file a witness statement concerning his financial circumstances. The claimant had filed a statement, albeit it was not confined to the matters set out by EJ Klimov. The statement made submissions on the application to strike out.

23. It had been envisaged that the strike out hearing would be considered in January at the end of the liability hearing in claim two. It follows the claimant had ample time to prepare.

24. I was not satisfied that there was medical or other evidence sufficient to demonstrate that the claimant was unable to deal with this hearing. I did not consider it appropriate to adjourn, given the hearing was likely to be short. The matters to be considered were clear. The claimant had had an opportunity to prepare. I had insufficient evidence to demonstrate the claimant's current medical situation had a material effect on his ability to conduct this hearing. There was no medical evidence confirming when the claimant could proceed. His presentation was not consistent with an argument that he was unable to proceed. There was a limited need for further oral submissions.

25. I refused the postponement.

26. At the hearing I gave claimant an opportunity to make any further oral submissions he wished make about strike out.

27. To prevent any possibility of disadvantaged to either party, both parties were given the right to make further written submissions by 16:00, 12 March 2024.

28. I received further written submissions from the claimant, and I have considered them.

The law

29. The tribunal may strike out a claim pursuant to rule 37 Employment Tribunal Rules of Procedure 2013.

> **37(1) At any stage of the proceedings, either on its own initiative 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--**
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> > **(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 shall be as if no response had been presented, as set out in rule 21 above.**

30. As a general rule, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute (see **North Glamorgan NHS trust v Ezsias 2007** IRLR 603**)**. This is authority for the proposition that it would only be in exceptional cases that it would be appropriate to strike when the central facts were in dispute. Such situations would include situations where the facts sought to be established by the claimant were "totally and inexplicably inconsistent with the undisputed contemporaneous documentation."

31. Discrimination cases should not be struck out except in the very clear circumstances. For instance in **Anyanwu v South Bank Students Union 2001 IRLR 305**; Lord Steyn put it as follows:

> **For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.**

32. This does not place a fetter on the tribunal's discretion. Nevertheless, it indicates that the power to strike out in discrimination cases should be exercised with greater caution than in other, less fact sensitive, types of case.

33. There is a two-stage test: (1) has one of the grounds for strike-out in r 37(1)(a)–(e) been established on the facts; (2) if it has, is it just to proceed

to a strike-out in all the circumstances (see, e.g., **Hasan v Tesco Stores** Ltd UKEAT/0098/16 (22 June 2016, unreported).

34. It should also be noted that where the threshold grounds for striking out proceedings has been made out, the tribunal should still consider alternatives where appropriate this may include ordering further particulars or ordering a single joint medical reports in the case of a disability claim (**see Lambrou v Cyprus Airways Ltd** EAT 0417/05).

35. This is not a fetter on the tribunal's discretion, but the power to strike out in discrimination cases should be exercised with great caution.

36. A tribunal should not take the view that **Anyanwu** creates some form of public policy that prevents claims being struck out. The test is whether there is no reasonable prospect of success, as is made clear by Lord Hope at paragraph 39 of Anyanwu itself.

> **Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to [sic] taken up by having to hear evidence in cases that are bound to fail.**

37. The Court of Appeal in **Ahir v British Airways Ltd** [2017] EWCA Civ 1392 made it clear there is no general proposition that where there is a potential disputed facts a claim must proceed. It is necessary to look carefully at the facts and to consider the nature of the dispute.

38. Underhill LJ put it as follows:

> **16 … Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment, and I am not sure that that exercise is assisted by attempting to gloss the well understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be 'little reasonable prospect of success.'**

At paragraph 19 he went on to say:

> **… in a case of this kind, where there is an ostensibly innocent sequence of events leading to the act complained of, there must be some burden on a claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was, or at least may have been, the real story, albeit (as I emphasise) that they are not yet in a position to prove it.**

And at paragraph 24

> **… As I already said, in a case of this kind, where there is on the face of it a straightforward and well documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so...**

39. It can be seen from **Ahir** that it is not enough for a claimant to assert there is a dispute of facts, and that, therefore, the tribunal is compelled to find there is a prospect of success. First, the claim must be clear. Second, the facts alleged and relied on should be clear. Third, resolution of those facts should be capable of demonstrating discrimination whether directly or by way of inference. Fourth, the respondent's explanation should be considered. Fifth, if the explanation is disputed, there should be some plausible explanation for this from the claimant.

40. In **Rolls Royce plc v Riddle** [2008] IRLR 873, EAT, Lady Smith pointed out that it is quite wrong for a claimant "to fail to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the tribunal and/or its procedures" (para 20).

41. I should note the importance of a claimant setting out the claim clearly in order to facilitate a fair hearing. It is for the claimant to set out the case in a relevant statement of case. (I have referred to the claim form and any statements of case generally as the pleadings.) It is common, particularly when individuals are not represented, for there to be deficiencies in the initial documentation. Those deficiencies are sometimes addressed by what are generally referred to as further and better particulars. It is important to recognise that, rather than being a necessary part of the pleadings, the use of further and better particulars is a remedial response to a failure of process.

42. It is frequently the case that further and better particulars, when provided, identify new facts. The addition of facts will normally require an amendment, see **Selkent Bus Company Limited v Moore** 1996 ICR 836. However, a tribunal should avoid excessive formality. Where neither party makes specific objection to a new fact, it is included as part of the claim without the need for a formal amendment. However, this reflects a pragmatic approach; it is not a right. Care should be taken to prevent the remedial process of further and better particulars from circumventing the exercise of a tribunal’s discretion to grant amendments.

43. In short, the process of providing further and better particulars may be a pragmatic way of rectifying a deficiency in a pleading.

44. The point was re-emphasised by Langstaff P in the case of Chandhok v Tirkey EAT 190/14.

> **17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.**
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> **18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.**

45. When considering a claim, it is appropriate to consider what must be identified by a claimant before it can be said the claim has been brought. The Court of Appeal's decision in **Housing Corporation v Bryant** 1999 ICR 123 is of assistance. Buxton LJ put it as follows:

> **...it is not enough to say that the document reveals some grounds for a claim of victimisation, or indicates that there is a question to be asked as to the linkage between the alleged sex discrimination and the dismissal. That linkage must be demonstrated, at least in some way, in the document itself.**
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> **..the words making the necessary causative link between the making of the complaint of discrimination and the dismissal were absent from the application. But if this is to be taken as a question of construction, as a matter of law, and not merely of the judgment and assessment of the Chairman, the absence from the document of any such linkage must be**

fatal: because the issue of construction is whether the document makes a claim in respect of victimisation.

Conclusions

46. The claims to be decided were identified by EJ Klimov at the last hearing. I should consider if each of those three claims have no reasonable prospect of success.

Allegation one

47. This potential claim concerns the information sent to a prospective employer in April 2023. It is the claimant's case that the information was inaccurate and as such there was a detriment. He alleges this constitutes less favourable treatment because of the claimants race or was an act of victimisation because of a protected act.

48. I have regard to **Ahir**. This allegation does not indicate any dispute of fact. A request for information was made. The information was sent. It is the claimant's argument that there is a potential error concerning the start date and information was given about his part-time status which was not relevant. The respondent does not dispute that the request was made and the information was sent. The respondent's explanation is that the response was an innocent and objective response.

49. Where there is a clear potential innocent explanation, it is not enough for the claimant simply to state it is disputed. There must be some rational basis for that dispute. The claimant has failed to identify any rational basis. There is no reasonable prospect of demonstrating that the act was detrimental at all. There is no reasonable prospect of a tribunal finding it was because of his race. There is no reasonable prospect of a tribunal finding it was because of a protected act. I find this claim is fanciful. I strike it out

Allegation two

50. I note that any claim based on the protected characteristic of gender reassignment has been withdrawn. It is the claimant's case that reference on the respondent internal system to "transgender" was an act of race discrimination or an act of victimisation. The respondent's explanation is that this was an innocent error which affected a number of other individuals. It appears to be the claimant's case that it was a deliberate act undertaken because of his race or as a deliberate act of victimisation. It is his case that reference to "transgender" was some form of detrimental treatment.

51. The only matter in dispute is the reason why the reference was made. Where there is a clear potential innocent explanation, it is not enough for the claimant to simply state it is disputed. There must be some rational basis for that dispute. The claimant has failed to identify any rational

basis. There is no reasonable prospect of demonstrating that the act was a detrimental at all. There is no reasonable prospect of a tribunal finding it was because of his race. There is no reasonable prospect of a tribunal finding it was because of a protected act. I find this claim is fanciful. I strike it out.

Allegation three

52. This claim concerns an email sent by the respondent which requested the claimant to take greater care when sending emails. There is no dispute the claimant sent an email to a student which was meant for the supervisor. There is no realistic basis for arguing that the email did not refer to the student's learning ability. The student left. There is no reasonable basis for arguing that the respondent did not believe that the email and the student leaving were connected. However, if the student had remained, the claimant's error would still have been a significant one and it would have justified an email from management requesting he take greater care.

53. There is a potentially innocent explanation which is that the response was modest and appropriate. The response was needed because of the claimant's carelessness when sending the email. Where there is a clear potential innocent explanation, it is not enough for the claimant to simply state it is disputed. There must be some rational basis for that dispute. The claimant has failed to identify any rational basis.

54. There is no reasonable prospect of demonstrating that the act was detrimental at all. There is no reasonable prospect of a tribunal finding it was because of his race. There is no reasonable prospect of a tribunal finding it was because of a protected act. I find this claim is fanciful. I strike it out.

55. It follows that the claim, the scope of which was agreed before EJ Klimov, has no reasonable prospect of success and I have struck it out.

Other potential claims

56. I have considered whether the claims were accrurately identified by EJ Klimov.

57. The claim form is poorly drafted; the allegations are diffuse and unclear. It is possible that the claimant may seek to argue that there are other allegations. I have considered the possibility.

58. The respondent must know the case it is to answer. It is not appropriate to make general allegations which lack specific allegations of detrimental treatment. When no specific allegation is set out adequately or at all, there is nothing that can be particularised further.

59. It is for the claimant to set out his case and to do so in a manner which can be understood and which can be responded to. The possibility of further clarification is not unbridled licence to add claims by way of 'particularisation' in a manner which may suit the claimant from time to time and which would circumvent the need for amendment.

60. At paragraph 8.2 of the claim form, the claimant sets out nine specific paragraphs.

61. Paragraph one appears to concern matters which form allegation one.

62. At paragraph six, there is reference to his pay documents and the erroneous recording of the word "transgender." It is that paragraph which forms the basis of allegation two.

63. Paragraph 7 fails to set out clearly any claim. To the extent it suggest there were claims, they would appear to be out of time. It is unclear if they were claims that could have been brought, or were brought, in his previous claims. It also appears that EJ Klimov interpreted Paragraph 7 as containing allegation three, albeit the detail recorded by EJ Klimov is not contained in the claim form.

64. Paragraphs, two, three, four, five, eight and nine contain what are, essentially, wholly un-particularised generalised allegations. The claimant also attaches a grievance. The status of that grievance is less clear, but it does not plead clear claims.

65. It is not enough for the claimant to make general assertions that there is discrimination and then attach numerous documents. In order for a claim to pleaded, there must be some clear wording. The resolution of discrimination claims may be complicated and engage difficult areas of law, but that does not mean that it is difficult to plead a claim. For a claim of direct discrimination all that is required is a clear reference to an event, e.g., refusal to promote in a statement, and some clear statement that the alleged detriment was because of race. In the case of victimisation, there will commonly be the detriment and reference to a protected act. That point was made clear in **Bryant**. If this basic principle of pleading is not observed, it may be impossible for the respondent in the case it is to answer, and impossible for the tribunal to know the cases to determine. If the respondent does not know the case it is to answer, the respondent will not be able to produce the appropriate evidence, and in particular the relevant cogent evidence needed for the explanation. The respondent is materially disadvantaged the prospects of fair hearing is damaged or denied.

66. The claimant has had ample opportunity to define his case. He has had the opportunity to apply to amend, should he choose to do so. I have considered whether the claimant should be given further opportunity, but I am satisfied that he has had sufficient opportunity to deal with this matter.

67. I have considered whether there is any other potential claim contained in the claim form. If there are any such claims, they are are so poorly pleaded it is impossible to identify what they are and it is not possible to deal with them. The claimant has had ample opportunity to clarify them. In those circumstances, to the extent there may be residual claims, I consider that they should be dismissed on the basis that there is no possibility of a fair hearing, and in the alternative, the claimant's approach is unreasonable conduct of the proceedings.

68. For the reasons given, I strike out the claims.

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Employment Judge G Hodgson

Dated: 28 March 2024

Original Judgment sent to the parties on:

10 April 2024

Amended Judgment Sent to the parties on:

26 April 2024

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For the Tribunal Office