EMPLOYMENT TRIBUNALS

Claimant: **Ms S Cockburn**

Respondent: **Airbus Operations Ltd**

Heard at: **Bristol** **On: 7th / 8th May 2024**

Before: **Employment Judge P Cadney**

Representation:
Claimant: In Person
Respondent: Mr T Cross (Solicitor)

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

i) The claimant has conducted the litigation unreasonably within the meaning of r37(1)(b) Employment Tribunal (Constitution and Rules of Procedure) Regs 2013 and her claims are struck out.

Reasons

1. This case has a long procedural history, but in summary, the claimant submitted her first claim on 20th January 2022. It was the subject of a number of TCMPH's and was listed for final hearing in October 2023, but was postponed, in part because the claimant was not well enough to participate. Prior to that she had submitted her second claim on 3rd July 2023.

2. On 6th February 2024 I set it down for a Preliminary Hearing today to determine the following issues:

i) The respondents' application to strike out the claim;

ii) The claimant's application to strike out the response / have default judgment entered in her favour;

iii) Subject to the outcome of the applications above to identify the issues in the second claim and give directions for any further hearings.

Background

3. The claimant was employed by the respondent as General Procurement Legal Counsel from March 2013 until she was dismissed on 12th June 2023 (which is in part the subject matter of the claim for unfair dismissal in claim 2). It is not in dispute that she has been a disabled person within the meaning of s6 Equality Act 2010 from April 2016 by reason of Acute Polymorphic Psychotic Disorder.

4. The claims as set out in the consolidated List of Issues in respect of claim 1 include claims of harassment (age / sex / disability) from 2013 to 2021; direct discrimination (age / sex / disability) as alternatives to the harassment claims; discrimination arising from disability in 2019; failure to make reasonable adjustments from 2019/2020.

5. The second claim includes claims (in respect of which the specific issues have not yet been clarified) of unfair dismissal; age/sex /disability discrimination; and whistleblowing.

6. The specific factual basis for the respondent's strike out application is set out below but the background to it is summarised in an email the claimant sent to the tribunal on 4th April 2022. In it she states that (inter alia) :

i) "I am a very senior intelligence officer who has been conducting an investigation with her organisation (massive and worldwide).."

ii) "This employer has literally arranged for me…to be repeatedly interned, interrogated and tortured in psychiatric institutions in the UK and elsewhere"

iii) And that there have been "…repeated serious attempts to assassinate me and my senior colleagues (and immediate family I might add) …"

Allegations/ Evidence

7. The respondent alleges that the claimant has behaved unreasonably, vexatiously or scandalously in the conduct of these proceedings towards the employees of Airbus; and has called Ms Lesley Bovington as a representative example; and towards its representatives Vista Employment Services, and has called Mr Christopher McNaughton as a representative example. Documentary evidence of what the respondent alleges is similar treatment of other employees of Airbus/Vista is contained in the bundle.

8. I will deal first with the allegations relating to the two witnesses who have been called at this hearing.

9. Mr Christopher Mc Naughton – Mr McNaughton is a solicitor employed by Vista Employment Services and originally represented the respondent in relation to the claimant's claims.

10.Mr McNaughton points to the fact that the claimant has alleged to his own employer and Airbus that he works for MI6, and has defamed and threatened him. It is not necessary to refer to every occasion relied on by the respondent, but by way of example, on 6th April 2022 in an email the claimant refers to him as a "..low level security intelligence officer in MI6", and herself as his "..de facto boss."; and in a separate email the same day describes herself as a "very serious intelligence officer", and that "We are so highly trained we understand very serious combat and other methods…".

11.In an earlier email on 5th March 2022 13.12 the claimant alleged that she had psychologically profiled him, had hired him and was his de facto boss, and stated "And I am literally going to warn you ONE LAST TIME.. This is for you Chris, this is just how bad it gets… And by the way the people in the ET1 form can literally fuck off very far away as far as we're concerned. They have seriously concerning psychological profiles AND I MIGHT ADD IF THEY TRY TO DEFEND THIS CLAIM WE REALLY WILL GET SERIOUS." This appears on the face of it to involve specific threats to Mr McNaughton (Chris) and generalised threats to those named in the ET1 if the respondent seeks to defend the claims.

12.In an email that same day at 21.00 hours she appears to suggest that Mr McNaughton is in part responsible for, and has the capacity to stop "..military intelligence and the MET Police trying to kill me and my immediate family".

13. On 28th March 2022 she sent an email to a large number of recipients including some within Airbus and some within Burges Salmon solicitors, and Mr McNaughton in which she stated " "Well I haven't heard from you boys (tick tock by the way, tick tock).."And I would suggest you private practice boys stay well away. You all know me from my past and I really don't like you."

14.On 2nd April 2022 the claimant made a complaint to the Legal Ombudsman about Mr McNaughton. He was notified by an email from her which stated " This Chris, happens to be in relation to your firm… details to follow. I would suggest that you start to get a bit sensible now." In an email of 4th April 2022 she describes both Mr McNaughton and the solicitor who had previously represented her as "two minor Security Intelligence officers who were trying to intimidate and silence me, hence me making very serious complaints to the Legal Ombudsman."

15.She has also made what he alleges are false allegations (which the claimant insists are true) that he mocked her disability in a TCMPH before EJ Gray.

16.On the weekend of 23rd April 2022 she telephoned Mr McNaughton 8 – 10 times with the messages getting louder and more agitated, and he describes her in one as screaming down the phone.

17.Later and after he had ceased to represent the respondent, on 1st June 2023 the claimant copied him in to graphic photographs of her, showing injuries which

she alleged in the accompanying email had been arranged by Airbus to be done to her in hospital and which constituted torture under international law.

18. I accept Mr McNaughton's evidence; and in my judgment it encapsulates a number of themes of the correspondence:

i) The claimant contends that she is a senior intelligence officer, of an unidentified intelligence grouping;

ii) That Mr McNaughton is an MI6 officer who is in part responsible for torture inflicted on her and attempts on the life of her and members of her family; and is part of larger conspiracy against her;

iii) It is therefore legitimate to subject him (and the respondent, its employees and representatives more widely) to the threats set out above.

19.The respondent contends that these all include clear threats to Mr McNaughton, defamatory allegations made to his employer, his professional client and more widely; which were clearly intended to influence his ability to act properly in his professional capacity as the respondent's solicitor.

20.Ms Lesley Bovington – Ms Bovington has worked in HR for some thirty four years, and is currently Social Policy and Industrial Relations Business Partner. Her direct involvement with the claimant began in early May 2023 when she was involved in providing information to the claimant in relation to vacancies available during her notice period. On her return to work on 22nd May 2023 she listened to two voicemail messages from the claimant from 19.35 and 19.40 11th May 2023. I have transcripts of those messages and have listened to the recordings. Ms Bovington describes them as "extremely threatening, upsetting and distressing", and describes her as screaming during the second call which on the basis of the recordings is clearly correct. The voicemail include the following:

i) Call 1- The claimant says she was hoping to speak to Ms Bovington, and says "..maybe we'll see you accountable for all this I would like to hope so and I think that the International Criminal Court would also.."

ii) Call 2 – "You tried to destroy my pregnancy didn't you in your so called medical treatment , me and my husband are *understandably fucking furious with you* and so are the International Criminal Court by the way. *Run run run run run run* if I were you. No sorry, too late (sections in italics screamed on the recording).

21. She describes these messages as putting her in fear and this case being the most upsetting she has dealt with in thirty four years.

22.She also refers to the emails sent at the end of May, beginning of June 2023 attaching graphic photographs of injuries she has suffered, in which the claimant alleges that the respondent is responsible for her being tortured in hospital, and that it is under investigation in the International Criminal Court.

23.I accept Ms Bovington's evidence, and in my judgement the voicemails in particular clearly constitute threats against her.

Other Allegations

24.. In addition to the specific allegations set out by the two witnesses the respondent contends that this forms part of a broader pattern set out in a table in its Written Submissions. These include:

i) Threats made to Stepehen Foster (Vista) on 15th August 2023 in a telephone conversation – "I am strongly connected to the security services. I'd be fucking careful if I were you"

ii) Allegations of conspiracy made against Mr Stephen Foster of Vista and of Airbus generally;

iii) Repeated allegations of attempts to kill her and/or of torture by or at the behest of Airbus.

Claimant's case

25.The claimant's position is that:

i) She denies sending the emails relied on by the respondent or making the phone calls relied on by Ms Bovington, and contends that it is very easy to fake emails or voicemails particularly for a company with the size and influence of the respondent.

ii) She contends that her disability has been mocked by Mr McNaughton, that he is not telling the truth when he denies this, and that it is he who has acted vexatiously.

iii) More broadly, she contends that it is not her who is acting vexatiously but the respondent, and that the attempts to strike out the claim are part of a campaign against her by the respondent to avoid the claims being aired publicly, rather than the other way round.

iv) She contends that the allegations she has made are true and that the respondent is endemically corrupt, that the evidence of it or its representatives should not be accepted; and that it is important that the claims are heard.

Respondent's Strike out Application

26.The respondent asserts that the claims should be struck out on the basis of the claimant's clear breaches of rule 37 (1) (b):

Rule 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—*

(1)(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*".

27.The general principles against which a strike out application should be considered are well known. In respect of applications under rule 37(1)(b), for a tribunal to strike out for unreasonable conduct, it must conduct a two stage test and be satisfied (See *Hasan v Tesco Stores Ltd*) :

i) Firstly that the party is in breach of the rule;

ii) Secondly that to strike out the claim is an appropriate exercise of the residual discretion.

28.In terms of the exercise of the discretion striking out must be a proportionate response, and a lesser sanction not sufficient, and the tribunal must bear in mind that a strike out is not a punishment for the failure to comply with the rules (See *Bolch v Chipman [2004] IRLR 140 (para 55 Burton J*).

29.The exercise of the discretion will normally involve consideration of whether a fair trial is still possible. In respect of the test as to whether a fair trial is still possible, there are two relevant authorities , *Emuemukuro v Croma Vigilant [2021] UKEAT,* (and specifically para 19 of the judgment of Choudhury P), and *Smith v Tesco Stores [2023] EAT 11*. It is not necessary to deal with these authorities as the respondent does not dispute that at least in a narrow sense, that a fair trial is still possible. It accepts that in one sense a fair trial is still possible in that the case could be listed for final hearing, evidence given and the claims determined on their merits. Nothing that has happened has fundamentally affected that possibility. However it contends that a fair trial does not simply include the final hearing itself but the process leading to the trial, and that this case this falls within the category of exceptional cases where it is appropriate to strike out the claims despite the fact that a fair trial (in the sense of a final hearing) is still possible (as was recognised in *Bolch v Chipman (para 55)*). It relies specifically on the judgment of Pill J in *Terry v Hoyer (UK) ltd [2001] EWCA civ 678 (para 16)*:

"I make the general observation that I do not accept that conduct is incapable of being scandalous or frivolous such as to justify a strike out only if there cannot eventually be a fair trial notwithstanding that conduct. There is conduct which no court or tribunal with its necessary concern for the proper administration of justice, could tolerate. Courts an tribunals must be concerned to do justice. They must, in doing that have regard to litigants in general, to the proper use of court time and to the need to enforce respect for courts and tribunals within the community."

30.The respondent submits that the claimant's conduct has clearly been scandalous in that the claimant has "misused the privilege of legal process in order to vilify others" (*Bennet v London Borough of Southwark [2002] IRLR 407 Sedley J*). In

addition the use of threats and intimidation is necessarily scandalous or unreasonable behaviour (see *Force One Utilities v Hatfield [2009] IRLR 45 EAT*).

31.Moreover the respondent submits that there is no reasonable expectation that any lesser sanction, such as unless order would have any effect on the claimant's behaviour. She has continued with a pattern of threats and intimidation both before and after both the strike out applications in 2022 and 2023. It contends that she has not at any stage apologised or shown any remorse for her behaviour. Whilst there may be a medical explanation for her behaviour arising out of her disability this is not something she herself relies on, and in this hearing she simply contends implausibly, that she did not send or make, and is not responsible for what are clearly her own emails and voicemails.

32.Fundamentally it contends that fairness in litigation involves consideration for all those involved, including the parties, employees of the parties, potential witness and representatives. They are entitled to participate in the process without being subjected to threats and intimidation, and should be entitled to do so without being put in fear. The tribunal is not solely concerned with whether the conclusion of the process, a fair trial itself is still possible, but whether the process leading to that trial can be conducted fairly taking into account the interests of all the relevant participants. It asserts that the claimant has used the assertion that she is a senior intelligence officer to attempt to threaten and intimidate its witnesses, employees and representatives, and that tribunal has an obligation to those people and others who may become involved in the litigation, and also to enforce respect for tribunals (see para 27 above) by ensuring that their processes are not abused in this way.

Conclusions

33. My conclusions are:

I) In this case the claimant has repeatedly asserted that she is a senior intelligence officer of an intelligence organisation which stands above and apart from the publicly known intelligence services such as MI6. Whilst it is impossible to know whether these claims are true, or if they are not whether the claimant believes them to be true, or whether she knows them to be false, she has used this assertion as the basis of a campaign of intimidation against people who have done no more than to do their jobs;

II) I do not accept the claimant's assertion that she was not responsible for the emails and voicemails in question. There is no evidence before me that they are not exactly what they purport to be, and they make very similar assertions to communications sent to the tribunal by the claimant herself, and I will proceed on the basis that they were sent by the claimant;

III) The claimant's conduct as set out above is clearly in my view scandalous and unreasonable. There can never be any justification for threatening members of staff of a respondent and/or their representatives and in my judgement the emails and voicemails relied on by Mr McNaughton and M Bovington, and the telephone call with Mr Foster of the other allegations, clearly involving making threats against them.

IV) That leaves the question of whether a strike out is the appropriate sanction. Ordinarily that would involve consideration of whether a fair trial is still possible but that is not in dispute in this case (in the narrow sense set out above). The question appears to me to devolve into two separate issues. Firstly is the conduct, even if scandalous and unreasonable, not so scandalous or unreasonable that a strike out would be inappropriate in any event. The second is, even if it is sufficient in and of itself to justify a strike out, whether some lesser sanction such as an unless order would sufficiently curtail the behaviour such that there would be a reasonable expectation going forward that there would be no repetition.

V) As to the first this is in my judgment a very serious case in which apparently serious threats have been made against the respondent and their representatives, which was intended to put them in fear and expressly to affect their conduct of the litigation, and I have no doubt that the conduct is of sufficient seriousness to justify a strike out.

VI) As to the second, on one analysis it is tempting to avoid the draconian sanction of a strike out and see if an unless order would allow the litigation to be conducted reasonably and properly going forward. However I accept the respondents submission that in all the circumstances of this case that that is an unrealistic expectation. If that is correct, which I accept it is, it is not fair on those who will be involved in this litigation going forward to expose them to the risk of being put in fear by further communications of the type set out above. Indeed in my judgment that would be an abdication of the responsibility the tribunal owes all those who become involved in litigation in any capacity.

VII) In the circumstances, and albeit with some reluctance, I am driven to the conclusion that the only appropriate order is to strike out the claimant's claims on the basis of unreasonable and/or scandalous conduct of the proceedings within the meaning of rule 37(1)(b).

34. In the circumstances it is not necessary to go on to consider the other matters listed for determination at this hearing.

_____
Employment Judge P Cadney
Dated: 8th May 2024

ORDER SENT TO THE PARTIES ON
28 June 2024 By Mr J McCormick

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS