EMPLOYMENT TRIBUNALS

Claimant: Ms Evelina Rodrigues

Respondent: Allford Hall Monaghan Morris Limited

Heard: London Central (by CVP) On: 25th July 2024

Before: **Employment Judge Codd**

Appearances

For the Claimant: Ms Evelina Rodrigues (in person)
For the Respondent: Mr Thomas Cordrey (instructed by Payne Hicks Beach LLP)

JUDGMENT

1. The claim is struck out under Employment Tribunal Rules 37(1)(b) and 37(1)(c) because the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable and vexatious, and the claimant has failed to comply with the Tribunal's orders.

Employment Judge Codd
25th July 2024

Sent to the parties on:
31 July 2024
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For the Tribunal Office:

Reasons

Claim

1. The claimant brings claims for unfair dismissal and breach of contract. This Judgment deals with the preliminary strike out application issued by the respondent, which I dealt with as a preliminary matter at the final hearing.

Background

2. The claimant was employed as an apprentice architect and assistant by the respondent between the 17th of September 2018 and 30th of September 2023 when she was made redundant. She was part of an apprenticeship scheme and was also studying at university for the associated qualifications. The claimant appealed the redundancy decision internally, however the redundancy decision was upheld. She engaged in ACAS conciliation between the 22nd of December 2023 and the 02nd of February 2024. She issued her claim on the 01st March 2024.

3. The claimant brings a claim for unfair dismissal and breach of contract. She argues that there are 4 limbs to her case:

    a. An unfair scoring mechanism to her redundancy.
    b. Issues with her appraisal (presumably impacting her scoring).
    c. Breach of the implied terms of trust and confidence in her apprenticeship contract.
    d. Breach of apprenticeship agreement.

4. These are opposed by the respondent. They argued that the redundancy was part of a second phase of restructuring and that the process was transparent and had gone through appropriate consultations.

5. On the 5th of April 2024 the Tribunal issued a hearing notice for this hearing and issued standard directions for disclosure, bundle and exchange of witness evidence and associated preparation for trial.

6. On the 8th of April 2024 the claimant requested a postponement to the hearing as she had made a subject access request (SAR), against the respondent, which was outstanding. This was opposed by the respondent. On the 8th May 2024 Employment Judge Webster refused the application. Although a reconsideration application was made, this was out of time. In any event, I cannot see that the position would have changed as the arguments were simply repeated. Employment Judge webster directed the claimant to respond to a request for further clarification information and to comply with the previously issued directions.

7. On the 13th of June 2024 the respondent issued disclosure. It was downloaded by the claimant but not read. Not until I directed her to do so, this morning, had the claimant accessed that document. The claimant has not

provided any disclosure, and has not cooperated with the request to agree a bundle.

8. On the 17th of June 2024, the respondent applied for a strike out and reiterated its request for the narrow list of questions to be answered to explain the claims in more detail, particularly in respect of the breach of contract and why the scoring matrix was said to be an issue. That application offered a caveat to that the respondent would withdraw the application upon compliance the orders and clarification.

9. On the 09th July 2024 Employment Judge Smith issued a strike out and inference warning to claimant, regarding her compliance and directed that the strike out application be considered before me as a preliminary issue at today's hearing.

Evidence

10. I have considered the skeleton arguments, the relevant orders. I have allowed the claimant time to view documents and prepare. I have considered the hearing file and relevant documents to this issue as well as the claim and response forms. I have considered the case law referred to.

11. I am satisfied that the claimant has been able to fairly participate in the hearing today, and I note and give due allowance that she was palpably anxious in doing so and that English was not her first language.

12. The claimant was forceful in re-iterating throughout that she 'wants justice'. I have not heard any live evidence, but during submissions I was able to ask relevant questions of both parties. No party suggested I should hear evidence.

The Law

13. The Tribunal can on an application of a party or its own motion strike out a claim or response under Rule 37 of the Employment Tribunal Rules of Procedure 2013. The relevant criteria for the purpose of this application are set out below:
    a. Rule 37(1)(b): the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious; or

    b. Rule 37(1)(c): non-compliance with the Tribunal Rules or with an order of the Tribunal.

    c. Rule 37(1)(d): that the claim has not been actively pursued; and/or

    d. Rule 37(1)(e): that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim.

14. Both parties have referred me to various case law which I have considered in detail and in particular the cases, *Blockbuster Entertainment Ltd v James [2006] IRLR 630 and Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327.*

15. In short Where a party's unreasonable conduct had resulted in a fair trial not being possible within the trial window, the power to strike-out may be triggered. Whether the power should be exercised would depend on whether it was proportionate to do so.

16. The process to be adopted in considering such powers can be summarised as follows and I have applied this to my determination:

    a. Before making a striking-out order under rule 37(1)(b), an employment judge must find that a party (or their representative) has behaved scandalously, unreasonably or vexatiously when conducting the proceedings, or failed to comply with relevant orders.

    b. Once such a finding has been made, the employment judge must consider whether a fair trial is still possible. If it is, the case should be allowed to proceed. Striking out should not be regarded as a mere punishment.

    c. Even if a fair trial is unachievable, the employment judge will need to consider the appropriate remedy in the circumstances, taking into account the circumstances of the case. For example a cost order or an unless order, if an order for strike out is not proportionate.

17. As with other civil matters I have considered any findings I make on the balance of probabilities and note the burden on the respondent to prove its case in respect of the application for strike out.

Findings and analysis

18. The respondent has set out a clear document as to what it says are the transgressions, in terms of compliance with the timetable and directions. I am satisfied that the respondent has provided disclosure to the claimant in the spirit of the orders. I am also satisfied that the final hearing did not need to wait for the outcome of the SAR request, as was indicated by EJ Webster, as the disclosure should have included everything that the claimant sought.

19. It is telling in my finding that at no point has the claimant reviewed that disclosure until my direction today. The claimant has argued that she needed the information from the SAR. This appears inextricably linked in my finding with her perception that the respondent has retained her property and destroyed relevant material to her claim (which was in hard copy around her desk). She has been using both a formal request and the SAR to attempt to obtain this material.

20. I find that the respondent has obviously taken steps to return the claimant's property, and in so far as any is still missing, that this is unlikely to ever be recovered. Therefore the claimant will never have the benefit of this material, whatever relevance it may or may not be. I also find that the permanent loss of this material is a point that the claimant has not considered, or if she has she has refused to come to terms with the reality of the situation, even if that involves an injustice to her at the loss of some of her personal university course material. I do not find that there is any evidence of a deliberate attempt to withhold information from the claimant.

21. It is palpable from reading the material and hearing from the claimant that she is operating in a high state of anxiety and paranoia in relation to the conduct of the respondent. Unfortunately, this has led her to conduct herself in a manner that has sabotaged her own litigation. She has accused the respondent (wrongly) of non-compliance, but has failed to take adequate notice of her own responsibilities in this regard. I find that the claimant had set her mind against compliance with the Tribunal's directions, that is clear from the submissions and documents I have seen. She perceived that Employment Judge Webster had got matters wrong (in refusing and adjournment of this hearing) and not understood that the material she sought would be included in disclosure. As a result, the claimant has conducted her own agenda in response.

22. The claimant says that the failure to copy in ACAS and the Tribunal to the disclosure emails is unfair and an injustice. I disagree. The orders are clear this is an activity between parties and not the role for the Tribunal and would be an abuse of ACAS and its functions. The argument that this failure to copy in the Tribunal and ACAS created an injustice is unfathomable to a fair minded observer. The fact that the claimant has never looked at these documents, but persists in saying that the SAR is incomplete, shows her deliberately orchestrated ignorance, and closed mind against looking at these documents. I find she did not want to know what was in them, as it suited her agenda to continue to complain about the SAR and seek to postpone the hearing.

23. I do not criticise the claimant for not properly answering the further and better particular's request. Many litigants including those with a mental health diagnosis (as is the case with the claimant) fail to understand what they are being asked to do and the nuance of a particular point of clarification. The

absence of a clear answer, in and of itself, would not have disrupted the fairness of the hearing, had she completed her own disclosure and filed a statement. The gap in knowledge could have then been deduced, or the argument that the claim was ill formed could have persisted.

24. I accept the submission that the claimant was intending to submit her own disclosure as she was compiling the same for this hearing, although it has not materialised. Why this has not come before now is not at all clear.

25. At paragraph 17 of her letter to the Tribunal (sent today) the claimant said that:

"C has decided not to rely on any witness statements. This decision underscores her commitment to a fair and transparent process, allowing the Tribunal to consider the evidence on its merits without the potential bias that witness statements might introduce."

26. In her submissions she said this referred to third parties. I do not find that to be the case. I find the claimant has chosen not to file a statement as she considered the process unfair, and did not want the hearing to go ahead. She made it clear in submissions her lack of preparation was because she didn't think the hearing would be happening. She has orchestrated matters to seek and adjournment, as she wants to remedy what she sees as the injustice of the respondent's disclosure. However, as I have said she has not properly engaged or read the material available, so this is her fixated view rather than speaking from an informed position.

27. I also note in her skeleton argument she seeks to rely on discrimination (relating to matters dating back to 2018), which has never previously been pleaded and was unknown to the respondent. No amendment application has been made.

Conclusion

28. Taking all of these matters into account I find that the claimant has behaved unreasonably in the litigation. Her behaviour has also been scandalous in failing to comply with the requirements of the Tribunal and engage with the directions. The manner in which she has sought to achieve some from of different disclosure form the respondent was vexatious. She has deliberately avoided compliance with orders.

29. I have considered whether I could simply press ahead today with a hearing. However, the claimant has not seen the 1200 page bundle (by her own choice). The respondent's witness statements have not been served on the claimant. That is unfortunate. The respondent could have taken the view to send the witness statements to the claimant. It would have hardly prejudiced their position. However, I understand the litigation reasons they did not. They

should have lodged them with the Tribunal for completeness, prior to today, particularly as they were readily available.

30. The bigger issue is that the claimant is so under prepared that if I continued today she could not possibly have a fair trial. That is unfortunately of her own making. She has engineered a position where continuing today is not possible and there is now insufficient time for the hearing left.

31. I find the claimant has misled me at points saying she had not seen the skeleton argument of the respondent. I find that she has had access to the respondent's skeleton argument and that she has obviously prepared a response in the early hours of the morning with the two documents which she has forwarded.

32. I find that it is not possible to have a fair hearing to the claimant if I continued today. She is bound to fail in her argument which is due to her own non-compliance and lack of evidence. To allow her to cross examine the respondent would be equally unfair as the respondent is not on notice of what issues the claimant takes with the process and her claim is not clear in this regard, due to the lack of witness statement from the claimant. Based on what I have seen, the substantive claim is insufficiently pleaded and has at best a questionable prospect of success, but I do not attach weight to this fact in my decision about not proceeding today.

33. I have also considered an adjournment. I am not satisfied that adjourning the case will remedy the deficits. The claimant is paranoid and anxious that an injustice has occurred. She has had the information she needs from the disclosure and has refused to look at it. I find this is likely to re-occur if I adjourned and that the claimant will continue to seek disclosure she could not obtain.

34. I would not have made an order for specific disclosure if I had adjourned the claim, as I am not satisfied that the material sought by the claimant exists, or that the claimant knows properly what she is seeking, or understands that the material may not be relevant. Equally, it may well have been provided in the material already disclosed.

35. The cost to the respondent of adjourning is disproportionate and the resources of the court are finite. To adjourn would simply be to re-litigate the same issue that have beset and undermined the effective running of todays hearing, without the prospect of a resolution. The claimant is fixated on the SAR and none of the previous warnings have altered her views. Her explanation of what would be different next time was inadequate.

36. For all of these reasons I consider it proportionate and appropriate to strike out the claim pursuant to Rule 37(1)(b) and (c).

37. I have enormous sympathy for the claimant that her career and education has been derailed by the redundancy. However, the justice she seeks is perhaps beyond the powers of this Tribunal. I hope for her sake, that she can find some closure and refocus her considerable skills and energy on her future.

38. That is my Judgment.

Employment Judge Codd
25th July 2024

Sent to the parties on:

31 July 2024

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For the Tribunal Office: