



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ikeji

Respondent: Civil Service Commission

Heard at: London Central (via Video) **On:** 18 October 2024

Before: Employment Judge S Connolly

Representation

Claimant: In person

Third Respondent: Ms Begum (Solicitor)

JUDGMENT WITH REASONS

The judgment of the Employment Tribunal is as follows:

1. The claimant's application dated 11 December 2023 for a reconsideration in relation to the decision of EJ S Connolly (sent to the parties on 8 December 2023) is allowed on the basis set out below.
2. The whistleblowing detriment claims against the respondent in relation to what was described as "Disclosure 1" are reinstated. The application to reinstate claims against the Third Respondent is not allowed.
3. Updated case management orders will be issued separately.

REASONS

Background

1. This was an application for a reconsideration of a decision of EJ S Connolly dated 8 December 2023, following a Preliminary Hearing on 11 August 2023.
2. The application was made in writing on 11 December 2023 and included two grounds.
3. The second ground in relation to claims against the Third Respondent was rejected by EJ S Connolly by letter dated 30 August 2024.

4. The Tribunal considered the first ground at this hearing.

Background correspondence

5. The Tribunal wrote to parties on 30 August 2024 explaining the reasons for the delay in dealing with the application and requesting additional information from the parties. The Tribunal has considered the following correspondence:
 - a. Correspondence the claimant on 30 August 2024 (with attachment);
 - b. Correspondence from the respondent on 13 September 2024;
 - c. Documentation from the claimant sent in advance of this hearing, including a position statement dated 16 October 2024.

Application

6. The Tribunal has considered the application regarding the first ground of the application. This related to what was described as “Disclosure 1”:

“Two senior officials at the Office of Rail and Road had concealed evidence relating to his complaint of racial discrimination and victimisation, by fabricating notes of the evidence he had provided to them in an interview” (“Disclosure 1”).

7. EJ S Connolly struck out claims in relation to Disclosure 1 on the basis that the claimant had no reasonable prospect of showing that he had a genuine belief that one of the matters in section 43B of the Employment Rights Act 1996 had taken place.
8. The main rationale was that at the Preliminary Hearing of 22 October 2022, in separate proceedings at London South Employment Tribunal, the claimant and his counsel could not demonstrate any material discrepancies between the notes provided by Ms Rosalia and his own notes of the relevant meeting, despite having approximately one hour to do so.
9. The claimant’s application pointed out that in making this decision, EJ S Connolly seemed to have overlooked the document entitled “Record of Material Differences Document” dated 10 February 2023 which was part of the bundle for the Preliminary Hearing dated 11 August 2023.
10. This document is a witness statement from the claimant which sets out the claimant’s views on the difference between notes taken by Ms Rosalia and the claimant’s transcript of the meeting on 17 May 2022.

Conclusions

11. The Tribunal has considered the correspondence of the parties and the Employment Tribunal Rules, particularly Rule 70-72.

12. The Tribunal does consider that this is a relevant document and that Tribunal should have given more weight to it. It was part of the bundle and referred to by the claimant's representative in his submissions.
13. Striking out claims is a serious sanction and the Tribunal is aware that it needs to take claimant's claims at its highest.
14. There might be questions about the origins and date of this document and how it should be balanced with the events during the hearing at London South of 22 October 2022. However, it is not necessary for Tribunal to assess this in detail that at a preliminary stage.
15. Upon reconsideration, the Tribunal does not consider that there is no or little reasonable prospect of the claimant showing a reasonable belief that one of the matters in section 43B of the Employment Rights Act 1996 had taken place.
16. Therefore, this ground of the claimant's reconsideration application is successful on the following basis: the allegations in relation to Disclosure 1 insofar as they relate to the Respondent (Civil Service Commission) are reinstated.
17. It will be a matter of further case management to address the impact on the directions and the listing of the Full Merits Hearing. This will be address in separate case management orders.

Employment Judge S Connolly

18 October 2024

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

25 October 2024

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FOR THE TRIBUNAL OFFICE