



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Lozano  
**Respondent:** Chief Constable of Kent Police  
**Heard at:** London South Employment Tribunal  
**On:** 22 October 2024  
**Before:** Employment Judge Curtis

## Representation

**Claimant:** In person  
**Respondent:** Mr A Hodge (Counsel)

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The application to strike out the claim is refused. The claim will therefore proceed.

# REASONS

## Application

1. The Respondent applied for the Claimant's claims to be struck out on the grounds that the manner in which the proceedings have been conducted by the Claimant are unreasonable, pursuant to rule 37(1)(b) of the Employment Tribunal Rules of Procedure.
2. The Respondent's application was contained in an email dated 22 January 2024. In its application the Respondent states the following in relation to the Claimant's unreasonable conduct:

*"We consider that the Claimant's persistence with his application for specific disclosure, in light of the detailed response provided by the Respondent, to amount to unreasonable conduct. The Claimant has consistently behaved unreasonably in respect of his conduct of this case, he made repeated requests for specific disclosure before the disclosure process in this case was complete. This was despite both the Tribunal and the Respondent informing the Claimant that his previous applications were premature... The Claimant is demonstrating a pattern of behaviour by making repeated and*

*unnecessary applications... and is unnecessarily adding to the time and costs incurred by the Respondent and the time that the Tribunal is required to spend on this matter”*

3. The application also referred to the fact that the parties were at an impasse in relation to the bundle, as the Claimant had refused to agree to the contents of the hearing bundle until a judge ruled on the application for specific disclosure.

#### **Documents and evidence heard**

4. I was provided with a bundle of documents running to 318 pages. I heard submissions from the Claimant and from Mr Hodge on behalf of the Respondent.

#### **Fact findings**

5. The chronology in relation to the disclosure applications is as follows:

23.05.2022 ET1 lodged

14.07.2022 ET3 lodged

19.03.2023

- 03.04.2023 Emails between Claimant and respondent regarding disclosure. Claimant seeks specific disclosure; Respondent says the application is premature as there has not yet been a preliminary hearing

05.04.2023 First application for specific disclosure

27.04.2023 Order listing preliminary hearing; stating that disclosure does not appear to have taken place and if that is correct then Claimant's application is premature. Claimant responded and said that disclosure had taken place on 18 August 2022 and the application was pursued.

27.04.2023 Respondent's response to application. Initial disclosure had been on basis of Claimant's claim as understood from the ET1; it has since become clear that the issues are potentially wider; there is a preliminary hearing ('PH') listed to clarify claims; the application is premature and should wait for the PH and clarification of the claims

14.06.2023 Preliminary hearing before EJ Aspinall. Directions given to clarify and finalise the list of issues. Further PH listed for case management.

16.07.2023 Second disclosure application from the Claimant. Application totalled 45 pages in length.

- 17.07.2023 Respondent's response: the application is premature as previously stated, as the list of issues has not yet been finalised.
- July 2023 Further correspondence between the Claimant and the Respondent regarding the above.
- 28.07.2023 Letter from EJ Frazer: the Claimant's request for specific disclosure is premature since the list of issues has not yet been finalised.
- 16.08.2023 Preliminary hearing before EJ Rice-Birchall. Disclosure ordered to take place by way of list by 12 October 2023, with requests for copies by 26 October 2023. Final hearing to be listed for 10 days. Claims clarified and set out in a list of issues.
- 11.10.2023 Respondent provided list of documents for disclosure. Claimant requests copies of items from the list, and requests some items not on the list. Respondent states that it will take longer than seven days to assess the relevance of, and to obtain copies of, the items not on the list.
- 21.10.2023 Third disclosure application from the Claimant.
- Over the period to 27 October the parties communicated regarding the extent to which the most recent application differed from the earlier request for documents made on 11 October.
- 03.11.2023 Respondent provided some additional documents to Claimant
- 10.11.2023 Fourth disclosure application from the Claimant. Application ran to 84 pages in length.
- 30.11.2023 Respondent responded to application. Application premature as Respondent had told the Claimant that it was seeking additional documents and would revert as soon as possible; Claimant should wait until Respondent has reverted to 21 October 2023 request.
- 22.12.2023 Respondent sent Claimant sixteen documents/classes of documents. Due to difficulties with the Claimant accessing the documents they were resent on 2 January 2024.
- 12.01.2024 Claimant emailed Tribunal to ask for his application of 10.11.2023 to be addressed.
- 22.01.2024 Respondent wrote to the tribunal responding to the Claimant's disclosure application. Also made an application for the Claimant's claim to be struck out on the basis that the manner in which the Claimant is conducting the proceedings is unreasonable as he has made repeated and unnecessary applications.

- 23.01.2024 Letter from EJ Tsamados to the parties: Respondent to confirm more particularly why it objects to providing each category of document sought by the Claimant, if not already done.
- 28.01.2024 The Claimant wrote to the tribunal to clarify which documents he continued to seek by way of specific disclosure.
- 21.03.2024 Letter from REJ Fowell: the application for disclosure is too extensive to be considered on the papers, a preliminary hearing will be listed to consider it. A notice of hearing was sent the same day, listing today's hearing.

### **The Law**

6. The relevant part of Rule 37 of the ET Rules of Procedure provides:  
*“(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-*  
...  
*(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”*
7. This involves a three-stage test:  
i. Is the conduct of the Claimant unreasonable?  
ii. If so, is a fair trial still possible?  
iii. If not, is it proportionate to strike out the claim?
8. In submissions the Respondent's representative took me to the case of *Arrow Nominees v Blackledge* [2000] B.C.L.C. 167, particularly paragraph 55, in relation to the question of whether a fair trial was still possible. The Respondent's representative suggested that in this context a fair trial is one which is conducted without an undue expenditure of time and money and with proper regard to the demands of other litigants upon the finite resources of the tribunal.

### **Conclusions**

9. I began by considering the Claimant's application for specific disclosure, as I considered it necessary to determine that before reaching a decision on whether the Claimant's conduct was unreasonable.
10. I refused the application for specific disclosure for reasons which were given orally at the time. In summary they were as follows.
11. The Claimant sought disclosure of sixteen documents or classes of documents.
12. For nine of these classes of documents, the Respondent stated that it had provided all that it had. That led me to conclude that an order was not

necessary for the fair disposal of proceedings (items 1, 2, 3, 4, 7, 8, 9, 10,12).

13. For two of these classes of documents I considered that the Claimant's application was akin to a fishing expedition and I was not satisfied that disclosure was likely to produce relevant documents. I was also satisfied that an order was not necessary for the fair disposal of proceedings due to the fact that the documents, if relevant, were likely to be of limited relevance (items 11, 13)
14. For item 5 I refused to make an order for disclosure as it would be disproportionate to order a full copy of the manual sought and an order was not necessary for the fair disposal of proceedings.
15. For item 6, the Claimant confirmed that items had been disclosed but he sought the metadata to satisfy himself that the correct documents had been disclosed. He was clear that he was not asserting that the documents had been fabricated or manipulated; he simply wanted to satisfy himself that they were the genuine documents. I refused to order disclosure as an order was not necessary for the fair disposal of proceedings.
16. I refused disclosure of items 14 and 15 on the grounds that the documents did not appear to be relevant to the issue of what training the Claimant received. It appeared to be a fishing expedition and was not necessary to the fair disposal of proceedings.
17. Item 16 post-dated the Claimant's employment and did not appear to me to be relevant to the issues in the case.
18. Having reached a decision on the Claimant's application, I then considered whether his conduct had been unreasonable. I took into account the fact that the Claimant is a litigant in person and cannot be expected to be as familiar with the practice and procedure in the employment tribunal as a represented party. Against that, I balanced the fact that the Claimant has made four very lengthy applications for specific disclosure, and has done so despite the Respondent stating that the applications were premature and despite the Respondent stating that it needed more time to request and consider the additional documents the Claimant sought.
19. In my judgment the Claimant has conducted the litigation in an unreasonable way. He has maintained his application for disclosure despite the Respondent stating that documents do not exist; he has sought documents which have limited, if any, relevance to the case, and he has pursued his applications despite the tribunal and the Respondent stating that they are premature. This is particularly the case for the second application (made prior to the list of issues being finalised and prior to the tribunal making an updated order for disclosure), and for the fourth application (made approximately three weeks after the third application and in circumstances where the Respondent had said it was looking into the earlier request).
20. I turn to consider whether a fair trial is still possible. I have taken into account Mr Hodge's submission that a fair trial is one which is conducted without an

undue expenditure of time and money. I note that the factual circumstances in *Arrow Nominees* was far removed from the facts of this case: in *Arrow Nominees* a party had deliberately presented forged documents as part of their evidence and it was against that background that the court was considering whether a fair trial was still possible. I do not consider that *Arrow Nominees* should be interpreted as laying down a hard and fast rule that unreasonable conduct leading to extra expense means that a fair trial is no longer possible. The court made clear at paragraph 55 that it was referring to the context of that particular case (i.e. deliberately forged documents) when stating that a fair trial is one conducted without an undue expenditure of time and money. That is confirmed by the following sentence, which refers to the risk of the court's process being abused by "[the] *real point in issue becom[ing] subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself.*"

21. In my judgment, a fair trial is still possible. The conduct of the Claimant has caused additional expense to be incurred by the Respondent, but it is still possible to have a trial of the issues in this case, as identified in the earlier case management orders, within the intended trial listing.
22. If I am wrong on that point then I would not have considered strike out to be a proportionate response. A lesser sanction would have allowed the case to proceed to a final determination of the issues between the parties, without additional unnecessary costs being incurred from this point onwards.
23. A separate order will follow with case management directions to take this matter to a final hearing.
24. Finally, I would like to apologise to the parties for the delay in this judgment being sent to them. The fault is my own, caused by some annual leave and pressures of other work.

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Employment Judge Curtis  
Date: 26 November 2024

Sent to the parties on  
Date: 27 November 2024