EMPLOYMENT TRIBUNALS

Claimant: Ms S Messi

Respondent: Alvarez & Marsal Europe LLP

Heard at: London Central (by video)

On: 31 May 2024

Before: Employment Judge E Burns

Representation

For the Claimant: Represented herself
For the Respondent: Edward Kemp, Counsel

JUDGMENT

The judgment of the Employment Tribunal is that all of the Claimant's complaints are struck out under Rule 37(1)(a) because they are vexatious.

REASONS

INTRODUCTION

1. The hearing was a preliminary hearing to consider the Respondent's application that all of the complaints contained in the Claimant's two claims should be struck out or in the alternative a deposit order made.

2. The Respondent's application was made on two grounds:

   (a) The Claimant's complaints (in full or in part) should be struck out under tribunal rule 37(1) (a) on the ground they are vexatious; and/or

   (b) The Claimant's complaints (in full or in part) should be struck out under tribunal rule 37(1)(a) on the ground they lack reasonable prospects of success. Alternatively, deposit orders should be made.

The Claims and Issues

3. The Claimant commenced employment with the Respondent on 21 August 2023. She was dismissed two days later on 23 August 2023. Following a period of early conciliation from 22 to 23 August 2023, she presented two claims to the employment tribunal on 23 August 2023.

4. In one of the claims (allocated case number 2214044/2023) the Claimant did not supply an Acas certificate number. She gave her employment dates and indicated that she was making a claim for interim relief. The details she gave of that claim were:

   "This claim is for interim relief- a claim under the public interest disclosure Act 1998 (PIDA)
   1. Unfair dismissal - section 103A, ERA
   The principal reason for my dismissal is because I made protected disclosure to the ICO on 22.8.2023 for GDPR breach who shared my sensitive information without my consent. raised concerns of heath and safety to the HSE on 22.8.2023 and the EHRC for failing to comply with the equality act 2010.
   2. Unlawful detriment- section 47B, ERA
   I suffered from a detriment and as a result they terminated my employment without any investigations, did not comply with their policies and failed to looked in to my grievance sent on 22.08.2023
   they called me in to a meeting on 23.8.2023-10am that lasted 12 minutes that was not to discuss reasonable adjustment but was a disciplinary meeting in which i was denied my statutory right to bring an union representative."

5. In the other claim (allocated claim number 2214057/2023) the Claimant did give an Acas early conciliation number. She did not, however, provide her employment dates. Instead the box saying her employment was continuing is shown as ticked, but this may simply be because it is the default option.

6. In response to the question (8.1) which asked the Claimant to indicate the type of claim she was making, she ticked the boxes for race and disability discrimination, notice pay, holiday pay, arrears of pay and other payments. She also added *"failed to comply with legal obligations of GDPR by breaching data breach and confidentiality. sent email to ICO*". She then provided brief, but incomplete details of the claims as follows:

   "Direct discrimination:
   I have been treated less favourably because of a Protected Characteristic which is my race. Being paid less than my comparator which is Rosie Lintott, because she is white.
   Indirect discrimination
   Failure to make reasonable adjustments
   Disability Discrimination
   no referal to OH
   no risk assessments
   a provision, criterion or practice that applies to everyone but adversely affects

people with a particular Protected Characteristic more than others, and is not justified. I have been treated less favourably because of my disability.
My employer did not make any reasonable adjustment to my disability since I asked for reasonable adjustments to WFH and sent my fit note in comparison to a colleague who is Sharon Dale- currently off sick.
whistleblowing
I raised concerns of GDPR laws to the ico when my sensitive information was sent without my consent and since then I am facing victimisation, harassment and retaliation by my employer who try to terminate my contract by making me do background checks again which i believe is not necessary because I completed on 15.08.2023 which they confirmed.
The role was advertised as remote, and they trying to make me go to the office 3 times a week despite me requesting WFH."

7. The Claimant's interim relief application was heard on 2 October 2023 and refused. A copy of the decision made in that case was included in the bundle prepared for the hearing. I note that the Claimant submitted an appeal to the EAT following this decision. The information in the bundle suggests that the appeal did not get through the initial paper sift (87), but that the Claimant may be seeking to challenge this decision (341).

8. Following the interim relief hearing, the two claims were joined together. A case management hearing took place on 11 March 2024 at which a list of issues was drawn up. A copy of the list of issues he incorporated into his case management order is attached as an Appendix.

9. Reference is made in that list of issues to three purported protected disclosures said to be made in emails dated 21 August 2023. In her Claim Form, the Claimant gave the date of 22 August 2023 for her purported disclosures. That was also the date relied upon by her at the interim relief hearing. Rather than adopt an unduly restrictive approach, I have considered the possibility of there having been purported disclosures on both dates.

10. There is also reference to a meeting on 22 August 2023, which I have assumed is a reference to the meeting that took place on 23 August 2023.

Material

11. At the hearing, I was referred to documents contained in a main pdf bundle (402 digital pages) and a supplementary bundle (174 digital pages) both of which had been prepared by the Respondent's solicitors and separately indexed. Apart from 2 pages at the end, the supplementary bundle consisted of 29 judgments that the Respondent had obtained from the public on-line register of Employment Tribunal judgments from cases which the Claimant has brought. I shall return to the significance of these documents below.

12. The Respondent's application for strike out/deposit order was first made in a letter dated 21 February 2024 (92 – 93). The Claimant provided several written prior to the case management hearing (280 – 281, 287 – 288, 303)

13. At the case management hearing, as well as listing this hearing to determine the application, EJ Adkin allowed the Respondent to update its application in light of the discussions that had taken place at the case management hearing. The application I considered was the one dated 18 March 2024 (146 – 148).

14. The Claimant was given permission to provide further points in response to the revised application. The Claimant had by that time sent the tribunal and respondent lots of emails making different points. She was therefore ordered to provide her response to the application by 22 April 2024 "in a single document." EJ Adkin's order specifically says:

"I explained to the Claimant that it is not helpful to have her arguments put forward in multiple documents since it becomes more difficult for the judge at a hearing to identify her relevant documents and follow the arguments." (114).

15. The Claimant was also required to send any documents to be included in the bundle for the preliminary hearing to the Respondent's solicitors by 10 May 2024.

16. Despite these clear orders, the Claimant sent the Respondent's solicitors and the tribunal a large number of emails attaching documents for the hearing or making submissions. Those that arrived in time were included in the bundle prepared for the hearing (319, 327, 345 – 364, 369)

17. However, this was not the case for all of them. Notwithstanding the Claimant's failure to comply with the orders, I read all of the emails that were in the bundle and all additional ones in the Tribunal's digital case file system prior to the start of the hearing. I cannot say if this was all the emails that the Claimant sent.

18. I was also provided with a written skeleton argument prepared by Mr Kemp with an Annexe and a bundle of authorities. The Claimant said she had provided details of her means in an email sent to the tribunal and the Respondent's solicitor on 24 May 2024. During the hearing, the Respondent's solicitor located that email and forwarded it to my clerk, who in turn forwarded it to me. Although I asked the Claimant other questions about her means, she was unable to answer my questions. Following the hearing, she sent in subsequent emails with additional information which I also considered. I cannot be sure, however, if all of emails reached me.

19. The Claimant sent the Respondent medical evidence to be included in the bundle to support her claim that she is a disabled person for the purposes of the Equality Act 2010. I did not review that information. This was because it was necessary for me to do so to consider the Respondent's application. It was not made on the basis that the Claimant could not establish she was a disabled person and therefore I proceed on the basis that she would be held to be disabled. This was also why I considered that it was not necessary for the tribunal to decide if the Claimant was disabled or not before considering the Respondent's application.

Postponement Request, Reserved Judgment, Claimant's Other Claims

20. Prior to the hearing, the Claimant had applied, on 29 May 2024 by an email sent at 13:20, to postpone the hearing because she had received a text message reminder from her GP about a medical appointment at 12:30 pm. The postponement application was refused by REJ Freer.

21. At the start of the hearing, the Claimant said she was unable to stay for the full hearing and that she intended to leave because of her medical appointment. I discussed how much time each side needed to present their arguments. It was possible to do this before the Claimant needed to leave, although it meant that there was insufficient time to ask the Claimant questions about her previous claims as highlighted by the Respondent.

22. I explained to the Claimant that my intention was, if possible, to deliver an oral judgment at 3pm, but she told me that she would not be back from her appointment by then. I therefore reserved my judgment.

23. I apologise to the parties for the length of time it has taken to issue this reserved judgment. Having made the decision to reserve my judgment, I decided that I should familiarise myself with the Claimant's litigation history more closely by reviewing some of the tribunal's file. This has taken a considerable amount of time.

24. I explain below, what I have done, but first record that here were two reasons why I felt this was necessary in the interests of justice.

25. It is without doubt that the Claimant is a serial litigant, but this does not mean that she is automatically a vexatious litigant.

26. I was conscious that the material provided to me by the Respondent was limited to the material available in the pubic domain. Inevitably this cannot tell the entire story of the litigation, although I note that several of the judgments contain a great deal of detail about procedural matters. I considered it was important to review the material available to me of which the Claimant would be aware, but which the Respondent would not have seen, so that I could critically evaluate the Respondent's submissions based on the full picture rather than take a one-sided view based simply on what I was being told by the Respondent.

27. The second reason was because in the last five years I have dealt with some aspects of the Claimant's claims in my capacity as a salaried judge at London Central. I have heard one of her applications for interim relief and conducted case management hearings with her. I have also reviewed some of claims at vetting stage and dealt with some correspondence. This has given me a snapshot of the litigation being pursued by the Claimant. I decided it was unwise to rely on any impressions that such a snapshot may have given me, but that instead I should adopt a more rigorous approach.

28. Aware that the Respondent only had access to the public judgments in the cases it relies upon, I have accessed the tribunal's digital case files to learn

more about those cases and those cases alone. The tribunal only introduced its digital case file system in 2021 and so not all of the background documents were available to me. In addition I do not have access to more recent cases in Scotland. Where they were, I have however, read and considered the pleadings (ET1s and ET3s) in all the claims cited by the Respondent, samples of the correspondence and all case management orders.

29. I have not, however, not read any documents from any other cases involving the Claimant. According to the searches I undertook using the digital case management system, the Claimant has issued 70 separate claims. They appear to relate to around 30 different periods of employment or job applications that she has had in the last five years.

EVIDENCE

30. The hearing was a preliminary hearing at which I was asked to make an assessment of the Claimant's claims without hearing any evidence. I was, however, referred to evidential documents that were contained in the bundle and a witness statement prepared for one of the Respondent's witnesses containing the evidence that person would give at any final hearing.

31. I treated those documents with caution, bearing in mind that the evidence they contain had not been tested through cross examination at a substantive hearing and there may be other documents that I had not seen.

32. A feature of the evidence was most of the interactions between the Claimant and the Respondent's staff were in writing. Notes were taken of the interviews the Claimant attended, although the Claimant disputes the accuracy of these. The meeting at which the Claimant was dismissed was covertly recorded by her and a transcript was in the bundle.

33. I have set out a summary of the factual background as I understand it,. I am consciously not making findings of facts where the facts were in dispute and to the extent that I may have wrongly assumed the facts were not in dispute, I do not intend this section to bind any future tribunal which hears actual evidence.

34. The Claimant had not prepared any witness evidence dealing either with the substance of her claims against the Respondent or the allegation that the claim was vexatious based on her litigation history.

RELEVANT FACTS

Interviews and Pre-Employment Correspondence

35. The Claimant interviewed by the Respondent for a permanent role in its Accounts team in May and June 2023 (157 - 160). The role was offered to a different candidate only because the Claimant decided not to proceed with her application (161).

36. The Claimant was interviewed again in August 2023 (164). This time the role was a fixed term role lasting for 8 weeks, but with the possibility of an extension.

37. The Claimant says that the role was advertised as being fully remote. The location where the job should be carried out is not mentioned in the job description for the role (156), however the Claimant provided an undated advert (269) which does classify the role as remote.

38. The Respondent says the Claimant raised the issue of the job being remote at the interview. The notes from the interviews say that the Claimant said that she thought the role was remote, but was told that she would need to work three days in the office, although it might be possible to reduce this to two days per week. (164).

39. There is also an email from the date of the interview in which Cerina Daly, Accounts Payable Supervisor discusses the Claimant's wish to limit the number of days in the office to 2 days per week. She receives approval from Alex Parkes, Finance Director to make an offer to the Claimant for *"£35k, 2 days in the office on an initial 2 month contract. If made permanent this may have to revert to 3 days in the office."* (183)

40. The Claimant was issued with an offer letter dated 15 August 2024 that referred to her being offered the position of Accounts Clerk Payable "based at our London office" (166). The letter also informed her that the offer was subject to:

    - "references and background checks proving satisfactory and the production of documentary evdience of Academic and Professional Qualifications, where appropriate" and

    - "documentary evidence that she has the right to work in the United Kingdom."

41. The contact of employment she was issued at the same time simply said "UK-London" against place of work (167 and 170). She signed and returned the contract on 15 August 2023. It confirms her salary as £35,000.

42. On 15 August 2023 Ms Daly and the Claimant exchanged messages agreeing that the Claimant would start work at 10:45 am on Monday 21 August 2023. Ms Daly explained that the Claimant would need to be in the office on the Monday and the Tuesday. This was in order to have her induction. Ms Daly also confirmed that until she had received her IT equipment for home working, the Claimant would need to work in the office in the meantime. She noted that the Claimant would need two monitors and other equipment to work from home as it was too difficult to just work on a laptop screen. The Claimant appears to agree to this as she responds "ok" (185 – 187)

43. On Friday 18 August 2023 the Claimant messaged Ms Daly to ask if she knew the timeframe for delivery of the equipment. She explained that she

"was having some builders coming over the next 2 weeks and would like to plan as I will need to be home." (188) Ms Daly replied to say that she would check with IT and let the Claimant know. She then added that she had been asked if the Claimant could arrive at 10 am on the Monday so that she could show her around and introduced her to the team (188). The Claiamnt replied saying "OK no problem see you at 10 am on Monday." The exchange of messages finished with the two women wishing each other good weekends.

44. On that same day, Friday 18 August 2023, the Claimant visited her GP and obtained a fit note covering the period from 17 August to 30 September 2023. The fit note says that the Claimant has "Lumbago with sciatica" and that she may be fit for work with altered hours and workplace adaptions (182).

Monday 21 August 2023

45. On Monday 21 August 2023, the Claimant messaged Ms Daly to ask if it would be possible to start later that day or preferable tomorrow due to an engineer visit that day. She said she had just got a call that he was coming later that morning and apologised for the short notice (193). I am unable to see the time the message was sent.

46. Ms Daly replied to say that the Claimant would need to take the day as holiday and that she would let IT know regarding the induction. She asked the Claimant to arrive by 9.30 am the next day (191).

47. At 12:20 that day, the Claimant sent an email addressed to a generic HR helpdesk email address (HRIS). I do not know where the Claimant got this email address or what she intended by sending the email to this address.

48. The Claiamnt also copied Ms Daly into the email. In the subject line she said:

"STRICTLY PRIVATE AND CONFIDENTIAL FOR ADDRESSES ONLY – NOT TO DISCLOSE WITHOUT MY CONSENT-Asking for reasonable adjustments to WFH (special equipment at home) – see GP fit note"

In the body of the email she said the following:

"Good morning

I writing this email because I want to disclose that I have a disability and I suffered from a back impairment, lumbago with sciatica, and I am asking that you consider reasonable adjustments by allowing me to WHF for the duration of my contract or 1 day in the office.

This will support me because I have special equipment at home and from medication I take also for my depression, panic attacks and anxiety it will help if I can start work slightly later (9.30am – 10 am)." (198)

She attached the GP fit note dated 18 August 2023 referred to above.

49. It is difficult to follow the email trail. It appears that Ms Daly replied to ask if she could forward the message to her manager Mr Parkes. The Claimant agreed that she could (197).

50. Separately, a recipient of the HRIS email address, Samantha, replied to say that the email was not something that HRIS could help with and that it needed to be shared with HR. She asked if the Claimant objected to the email being shared with a named person in HR. The Claimant replied to say she did not really want the email to be shared with a lot of colleagues, but did not expressly say no to this question (197). She added a further reply asking who Mr Parkes was and if it was still ok for her to attend work the following day. The HRIS recipient replied to say she would be escalate the matter to the named contact in HR. The Claimant queried if she had done this without her consent.

51. Ms Daly then replied to the Claimant at what appears to be nearly 6 o'clock in the evening. She asks the Claimant to arrive at 9:30 am the following day so that they can meet with their HR Business Partner "*to better understand the adjustments that may be required for [her] to succeed in [her] role*." (195)

52. The Claimant replied at 6:19 pm asking for the meeting take place by Teams as she was having anxiety attacks. She said this was because she had not consented to the email being shared with HR and now found herself being invited to a meeting. She also asks why if HR is best to deal with the matter, the email needed to be shared with Mr Parkes (195).

53. Ms Daly replied to note that the Claimant had sent the original email to an HR helpdesk email address and that she had given permission to Mr Parkes seeing the email. She added that because the Claimant requested reasonable adjustments she and Mr Parkes needed to involve HR. She added that their priority was the Claimant's wellbeing and that they would discuss the reasonable adjustments request at the meeting the following day.

54. The Claimant replied to say that she had not given permission to share the email with HR and that wanted the meeting the next day to take place by Teams. Ms Daly did not reply.

55. I could not find copies of email, either in the bundle or the additional material sent to me by the Claimant, which appeared to be emails from the Claimant making purported protected interest disclosures to the ICO, EHRC, HSE or internally sent on 21 August 2023.

Tuesday 22 August 2023

56. At 8:35 am the next day, 22 August 2023 the Claimant emailed the Information Commissioners Office (ICO) copying in the HRIS email address and Ms Daly. She forwarded the previous emails and said in her email:

"I am raising concerns in good faith that [the Respondent] breached their own data protection policy and breached confidentiality law when Samantha disclosed my sensitive information to HR WITHOUT my consent. I sent an

email specifically requesting not to disclose my sensitive information without my consent and this was NOT acknowledged causing me anxiety, panic attacks and being nervous. See attached evidence and I hope to her from you soon." (200)

57. The Claimant did not attend the Respondent's offices that day. She messaged Ms Daly to say that she was not feeling well due to panic attack and anxiety and that she needed to see her GP as she had run out of medication. She also questioned the nature of the meeting with HR and asked if the meeting was formal or informal. (199) (209)

58. Ms Daly replied to say that it was noted that she had failed to attend her induction that day and that the meeting with HR would take place by Teams the next day at 10 am. She did not answer the Claimant's question but did confirm that present at the meeting would be her, Mr Parkes and HR (199).

59. The Claimant emailed Ms Daly, Mr Parkes and Victoria Tobin, who was the relevant HR Business Partner at 4:41 pm to ask for an explanation about the nature of the meeting the next day including whether it was formal or informal. She said that if it was a formal meeting she would like to be accompanied by a trade union representative. She added that if the meting was to discuss reasonable adjustments she did not understand why HR needed to be present (204).

60. Ms Tobin replied at shortly after 7pm to explain that she and Mr Parkes needed to attend the meeting as the Claimant had requested a change to her terms and conditions (204). The Claimant replied at nearly 8:30 pm challenging Ms Tobin's explanation. Ms Tobin did not reply.

61. At 10:42 pm that day, the Claimant sent the Respondent a subject access request (202).

62. In the meantime, the Claimant had been corresponding with the third party the Respondent uses to conduct background checks on new starters, Hire Right. They sent her an automated message at 10 am on 22 August 2023 asking her to complete an on-line form so that the relevant background checks would be undertaken. The Claimant emailed their customer service desk to explain that she had completed the form. She received a reply thanking her for providing the information and saying that if any further information was need they would be in touch. The Claimant replied reiterating that she had provided all the information sought and add that being "bombarded" with the emails was causing her unnecessary stress and anxiety while she was off sick. She copied this reply to the HRIS email address and a further email address for the People Operations Team (206).

63. Based on the evidence provided by the Claimant, the checks that had been completed were the checks necessary to establish that the Claimant had the right to work in the UK. A report confirming that Hire Right had established this can be found at page 255 of the bundle. There was no evidence int eh bundle that confirmed that the Claimant had provided information about her

previous employment and/or the names of referees which the Respondent could contact.

64. Other than the email referred to above sent to the ICO, I could not find copies of any others emails, either in the bundle or the additional material sent to me by the Claimant, which appeared to be emails from the Claimant making purported protected interest disclosures to the EHRC, HSE or raising a grievance sent on 22 August 2023.

65. I note that the Respondent has conceded that the Claimant sent an email to it making a subject access request at 10:24 am. It also conceded that she sent an email at 14:04 to Ms Daly, it's HRIS email address, its People Operations email address with the EHRC, HSE and the Respondent's CEO copied in. I could not find either emails in the bundle.

23 August 2023

66. The meeting took place with the Claimant on 23 August 2022 at 10 am by Teams. It lasted less than 15 minutes. A note of the discussions at the meeting made by the Respondent was included in the bundle (211 – 213) In addition, the Claimant covertly recorded the meeting. An initial transcript of the meeting was produced by the Claimant and then amended by Respondent. I note it was not agreed by the Claimant. I was not able to listen to the recording to verify this for myself (309 – 318 and 329 - 336). I note, however, that EJ Glennie did this at the interim relief hearing and summarised the contents in paragraph 18.4 of his judgment (41). The transcript is consistent with his summary.

67. At the meeting the Claimant accepted that she had only raised the issue of reasonable adjustments on her first day of employment. She said that the adjustments that she required were to be able to work at home 100% of the time because she had special equipment at home. The requirement for this adjustment appeared to relate to her back condition. When she was informed that the respondent was able to provide specialist equipment in the office, she said that she took medication for depression which sometime meant she was tired in the mornings and needed to avoid travel. She also said she needed to take frequent breaks and intimated that this was easier to do at home.

68. At 3:16 pm that day the Respondent sent the Claimant a letter terminating her employment that day with a payment in lieu of her entitlement to one week's notice by email at (210 and 214 – 215).

69. The letter began by thanking the Claimant for attending the meeting earlier that day, saying the purpose of the meeting had been to establish if she and the Respondent could work to find a constructive way forward together. It went on to say that the Respondent had concluded it was unable to do this for the reasons set out in the letter.

70. The reason given was that the Claimant had not demonstrated the required cooperation and candour expected as an employee of the Respondent.

71. This was said to be because the Claimant had been aware that the role was primarily office based with the option for homeworking and agreed to this. However she was now asking to work from home 100%. The letter noted that the Claimant had provided the Respondent with conflicting information regarding her request to work form him saying she had initially said this was in respect of builder engineer visits, but then saying it was due to a medical condition.

72. The letter went on to say that due to the lack of candour the Claimant had demonstrated and the resulting disorganisation which meant that the Respondent could not easily rearrange matters in an eight week contract, it had decided her continuing employment was untenable.

73. A final reason for the termination was said to be because the Claimant had field to complete the necessary background checks, specifically in respect of providing details of her former employers.

74. As noted earlier, the Claimant presented her two claims to the employment tribunal on 23 August 2023. She also sent three emails to the tribunal which were copied to Ms Tobin, Payroll, HR, Mr Parkes, Ms Daly, Hire Right, Job Vite (who had helped with obtaining the job), the EHRC and the HSE. In the emails she added additional details about her claim as well as accusing the Respondent of being "vexatious, malicious and dishonest", "*fabricating*" evidence and of "*disgusting and shameful behaviour*".

Additional Complaints

75. One of the matters raised with me by the Respondent is that the Claimant has sent numerous emails to it, and the tribunal as well as the external bodies mentioned above. They did not provide me with a count, but I could see that the email correspondence was extensive.

76. In addition, the Claimant has complained about the solicitors and barrister acting for eh Respondent. She has accused them of being vexatious and dishonest and deliberately omitting to include relevant evidence in the bundles prepared for the various hearings. She has written to them, copying in the Metropolitan Police, Solicitors Regulation Authority and the Bar Standards Board accusing them of making false statements in court and of being guilty of contempt of court (287, 301, 305 – 306, 343). She has also made a complaint of bias against Employment Judge Adkin (307).

Miscellaneous Evidence

77. The Respondent included documentary evidence in the bundle that Rosie Lintott, cited by the Claimant as a comparator, was paid the same salary as the Claimant (supplementary bundle page 174).in addition, on page 173 of the bundle it provided evidence that Sharon Dale, also cited as a evidential comparator by the Claimant, had been absent from work on long term sickness absence. That absence had commenced on 24 July 2023 with an initial fit note until 27 August 2023. Subsequently her absence extended into 2024 and was continuing as at 29 May 2024.

Claimant's Means

78. The Claimant provided email evidence which appeared to show that she was in receipt of universal credit at the time of the hearing.

Claimant's Litigation History

79. My review of the public judgments to which the respondent referred me and the associated digital case files has brought to the following to my attention. The case numbers for the cases I have reviewed are:

- 4110316/2021
- 2204302/2021
- 2204154/2021
- 3321170/2021
- 3322788/2021
- 1404778/2021
- 2202400/2022
- 3314225/2021
- 3314273/2021
- 2200391/2023
- 2200243/2023
- 3204190/2022
- 2213167/2024
- 2212747/2023
- 2300226/2023.

80. The Claimant has a pattern of pursing claims for whistleblowing following purported disclosures made by email to the EHRC, ICO and HSE. She appears to send emails to these organisations, often copied to the CEO, at times when disputes between her and her current employer arise.

81. On occasions, according to the respondent's versions of events, the emails are sent after the Claimant's employment has been terminated for performance or conduct reasons. On other occasions, the emails are sent after the Claimant has been invited a meeting, but before the meeting takes place. Several of the judges that have reviewed the cases where this has happened have concluded that she has contrived to send the emails in anticipation of being dismissed.

82. A feature of her claims is confusion about the dates when such emails take place. She is often ordered to provide further particulars of her purported disclosures and produce copies of the, but fails to do so.

83. The complaints made to the ICO appear very often about the respondent having shared the Claimant's own medical information without her consent. This is despite her having sent it to general HR email addresses.

84. There is also a pattern of her making covert recordings of her colleagues.

85. She also frequently accuses the respondent to her claim of fraud and dishonestly.

86. There is also a pattern of the Claimant including complaints of pay disparity in her claim forms based on her race or sex which she does not particularise.

87. The Claimant has told a number of respondents that she needs to work from home due to being disabled. She relies on a back condition and the need for special equipment. She says she needs to take frequent breaks and that her depression and anxiety mean that she takes medication which makes her tired in the mornings and unable to commute to an office.

88. Many of her jobs have been jobs which she has done remotely, either because the roles were remote or because she has asked and been allowed to work from home. Even when permitted to work fully remotely she has claimed that the respondent is in breach of a duty to make reasonable adjustments because of failures to provide her with special equipment. This appears to have arisen where questions have been raised about her performance.

89. In at least two cases, this one and one other, the Claimant has accepted a role based in part in an office, but then on her first day of employment produced a GP fit note asking for reasonable adjustments.

90. None of the claims I reviewed led me to believe the Claimant had ever worked from a respondent's office. One respondent, to a more recent claim, has analysed the Claimant's dates of employment based on publicly available judgments and identified they overlap. That respondent says it employed the Claimant from 3 July 2023 to the end of March 2024. There is a direct overlap with this claim. In addition, it identified that the Claimant had taken time off as sick leave when she was in fact attending tribunal hearings in other cases.

91. The Claimant also has a history of making last minute postponement requests for hearings. She often does not attend hearings, or where she does not attend for the full hearing.

92. The review also reviews that the Claimant has a history of sending large volumes of emails to the respondents and to the tribunal. One respondent counted that in the lead up to a failed interim relief hearing, the Claimant sent its solicitors 32 emails in two days. She regularly challenges the respondent over the bundles for hearings, telling them she will prepare her own, but then doesn't and instead sends the tribunal emails with numerous attachments including screen shots.

93. None of her claims have been successful to date. She has been ordered to pay thousands of pounds by way of costs orders.

THE LAW

The Rules

94. The tribunal's power to strike out claims is found in Rule 37(1) of the Tribunal Rules. The power to make deposit orders is found in Rule 39.

95. The relevant parts of Rule 37(1) for the purpose of this hearing say the following:

> "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—
>
> (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.

96. Rule 39 of the Tribunal Rules says:

> "(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.
>
> (2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit."

97. The overriding objective in Rule 2 of the Tribunal Rules is also relevant at all times when considering applications of this nature. It says:

> "The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
> (e) saving expense.
>
> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective

and in particular shall co-operate generally with each other and with the Tribunal."

Vexatious claims and conduct – Rules 37(1)(a) and (1)(b)

98. Vexatious conduct can apply both to the bringing of proceedings and the conduct of these proceedings.

99. In an early employment case, *ET Marler Ltd v Robertson* [1974] ICR 72, where the Claimant was not held to have acted vexatiously, Sir Hugh Griffiths said:

''If an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously, and likewise abuses the procedure."

100. When considering whether a claimant is vexatious, motive is not the sole consideration. The impact of the claimant's actions on the respondent to the claim can also be considered.

101. The definition of a vexatious claim has also been considered in cases brought under section 42 of the Senior Courts Act 1981. This section empowers a court to limit the ability of a person to pursue litigation without obtain permission from a court. It applies where a person has habitually and persistently and without any reasonable ground instituted "vexatious" civil proceedings.

102. In *Attorney General v Barker* [2000] 1 FLR 759, Lord Bingham CJ said:

"*The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process*." (764)

103. In the case before him, he held that Mr Barker, the respondent had acted vexatiously. He noted that , the proceedings issued by him were flawed in various respects. Many showed no justiciable complaint, and there was an unnecessary multiplicity of proceedings in that many of the individual defendants could have been joined in a single action. None of the actions had proceeded to trial, and none in fact could have succeeded.

104. Where it is not the Applying these rules involves three elements:

- Identifying the conduct and determining whether it is scandalous, vexatious or unreasonable

- Considering whether the conduct means that a fair trial is rendered impossible

- Considering whether striking out is a proportionate response to the conduct.

(*Blockbuster Entertainment Ltd v James* [2006] IRLR 630, CA; *De Keyser Ltd v Wilson [2001] IRLR 324, EAT*; *Bolch v Chipman* [2004] IRLR 140, EAT)

Rule 37 (1)(a) – no reasonable prospects of success

105. The courts have repeatedly warned of the dangers of striking out discrimination claims on the grounds that they lack prospects of success, particularly where "the central facts are in dispute" e.g. in *Anyanwu v. South Bank Student Union* [2001] ICR 391 at [24] and [37] and *Ezsias v. North Glamorgan NHS Trust* [2007] ICR 1126 at [29]. The same caution should also be applied where there are other grounds for a strike out.

106. However, while exercise of the power to strike out should be sparing and cautious in discrimination claims, there is no blanket ban on such practice.

107. The question of striking out discrimination claims was considered by the Court of Appeal in *Ahir v. British Airways Plc* [2017] EWCA Civ 1392, where Underhill LJ stated at [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*."

Rule 39 – Deposit Orders

108. The purpose of a deposit order is to identify at an early stage claims with little prospect of success so as to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs if the claim failed. Their purpose is not to make it difficult to access justice or to effect a strike-out by another route (*Hemdan v Ishmail and anor* 2017 ICR 486, EAT).

109. Similar considerations apply to those required as in a strike out application under rule 37(1)(a) where a claim is said to have no prospects of success.

110. When determining whether to make a deposit order, I am not restricted to a consideration of purely legal issues. I am entitled to have regard to the likelihood of the party being able to establish the facts essential to his case, and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward (*Van Rensburg v Royal Borough of Kingston-upon-Thames* UKEAT/0095/07).

111. The same caution should be exercised in discrimination claims where there are disputed facts as when considering applications for a strike out under rule 37 (*Sharma v New College Nottingham EAT 0287/11* applying *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*). The test of 'little prospect of success' under rule 39 is however plainly not as rigorous as the test of 'no reasonable prospect' under rule 37 and the consequences of a deposit order are not as severe as a strike out order. It therefore follows that a tribunal has a greater leeway when considering whether to order a deposit.

112. An order should be for payment of an amount that the paying party is capable of paying within the period set (*Hemdan v Ishmail* [2017] IRLR 228, EAT) taking into account his or her net income and any savings. The employment tribunal must give its reasons for setting the deposit at a particular amount (*Adams v Kingdom Services Group Ltd* UKEAT/0235/18).

ANALYSIS AND CONCLUSIONS

Approach

113. I began by considering the merits of each complaint individually and what my decision would have been had I not been aware of the Claimant's litigation history. I then revisited my reasoning taking the Claimant's litigation history into account. Finally, I considered the overall position.

Purported Disclosures (List of Issues (1(a)(b) and (c))

114. The Claimant relies on three purported disclosures, only one of which was contained in the bundle.

115. Based on his analysis of the email sent to the ICO and the events that preceded it, EJ Glennie took the view at the interim relief hearing, without making any findings of fact, that the contents of the email were sufficient to amount to a disclosure of information tending to show a breach of a legal obligation. He held, however, that it was not likely (i.e. there was not a pretty good chance) that a tribunal, at a final hearing, would find that the Claimant genuinely believed that the disclosure was made in the public interest or that it was reasonable for her to believe this.

116. I agree with his analysis. Absent my knowledge of the Claimant's litigation history and pattern of claims, I would have been minded to strike this purported disclosure out. I accept that in order to understand the Claimant's genuine belief, it would be necessary to hear evidence as to what was in her mind at the time of making the disclosure. However, whether such belief is reasonably held is an objective matter informed by the circumstances.

117. My reasoning is reinforced when I take into account the Claimant's litigation history. In my judgment, in common with her behaviour with other employers, she appears to have deliberately contrived to create difficulty for the Respondent by sending her medical certificate into a generic email address so that she could then complain to the ICO. This was because she

anticipated the dispute between her and employer. In my judgment, this makes the complaints based on this disclosure vexatious.

118. I take a similar view of her other purported disclosures despite not having seen them. This is based on the timing of when she says they were sent. The Respondent had not refused to undertake a risk assessment, make an occupational referral or make adjustments at the point when she says she made the disclosures. The Claimant's own covert recording shows that at the meeting on 23 August 2023 the Respondent was actively exploring what the Claimant said she might needed by way of reasonable adjustments with her.

119. On an objective analysis, ignoring the Claimant's litigation history, it cannot have been reasonable, for her to believe that the Respondent was in breach of any legal obligation, on 21 or 22 August 2023. I would have struck the other two disclosures out for this reason alone.

120. However, when the Claimant's litigation history is taken into account, it is difficult not to each the conclusion that having been invited to a meeting to discuss reasonable adjustments, the Claimant sent the emails in order to create difficulty for the Respondent and contrive a potentially whistleblowing claim ahead of their meeting. In my judgment, this changes the complaint into one that simply lacks merit to one that is vexatious.

Detriments and dismissal due to making purported protected disclosures

121. Four detriments are identified in the list of issues as well as dismissal. In view of my decision about the purported disclosures, it is not strictly necessary to consider these separately but I have done so.

122. Because the Claimant was an employee she would not be able to pursue a dismissal claim under section 47B. I would therefore strike out detriment 13(a) in the list of issues based on a pure legal analysis.

123. Issue 13(b) concerned the alleged failure of the Respondent to deal with a grievance the Claimant said she sent them. There was no evidence in the bundle that C submitted a grievance on 21 or 22 August 2023, but as the bundle was incomplete I can not be sure that this did not exist. However, it is difficult to understand what the grievance could have been about if she sent it on 21 or 22 August 2023. Had I not decided that the Claimant could not rely on the disclosures and that her whistleblowing claim was contrived, I would have made a deposit order in order for this claim to be able to proceed. However, in my judgment, the grievance is simply another part of her contrived claim.

124. Turning to the meeting and the Claimant's right to be accompanied to it (issues 13 (c) and (d)), based on the Claimant's covert recording of that meeting, it was not and was never intended to be a disciplinary meeting. It was intended to be. and was, a discussion about the Claimant's request for reasonable adjustments. The Claimant was not therefore entitled to be accompanied to it by a trade union representative. I would have struck both these claims out for lacking merits.

125. Finally, turning to the issue of the reason for the Claimant's dismissal (issue 18), I would have struck this claim out on the basis that I did not consider the Claimant would have succeed in establishing she had made a qualifying disclosure for the reasons outlined above.

Race Discrimination Claim (Issues 19-21)

126. The Claimant's complaint of race discrimination was that Rosie Lynott, who is white and did the same job as the Claimant was paid more than the Claimant because she was white. The Respondent produced, albeit untested, documentary evidence that this claim was entirely without merit.

127. Had I been considering this claim without taking into account the Claimant's litigation history, I would have made it subject to payment of a deposit. This was because the Claimant did not accept the evidence provided by the Respondent.

128. Taking into account the Claimant's litigation history however, I have decided this too is a vexatious claim. This type of claim has featured in the vast majority of the Claimant's claims. The respondents involved have frequently defended the claims by saying that the Claimant is wrong about there being any such pay differentials. In my judgment, she simply adds this claim to the other claims, in the hope that it will lead somewhere where she has no basis for it. I believe that is what she has done here. She knew that Ms Lynott did the same job as her because she knew the names of the people in her team, but she did not know her pay rate. I consider the Claimant decided to take a chance there was difference because Ms Lynott was white and had been employed by the Respondent for several years.

Reasonable Adjustments Claim (25 – 27)

129. Had I not taken into account the Claimant's litigation history, I would have allowed this complaint to proceed.

130. Based on the Claimant's own covert recording, the Respondent had been very clear with the Claimant that her job meant she was required to work in the office for at least 2 days per week. It was also able to provide specialist equipment in the office. This calls into question whether the Claimant would have been able to establish that allowing her to work from home would have been a reasonable step for the Respondent to have make in the circumstances. However, this would be a matter of evidence.

131. However, based on my review of the Claimant's litigation history, I have formed the view that this too is a vexatious claim. In common with at least one other occasion, the Claimant accepted a role that she knew required her to be office based in part, possibly while employed elsewhere, when she had no intention of working from that office.

Overall Assessment

132. In my judgment, all of the Claimant's complaints made in this claim qualify as vexatious claims as defined by Lord Bingham, CJ. They have a basis in employment law, but very little to no merit. I do not know the Claimant's motivation for pursing this claim or her many other claims, but whatever her intention may be, the effect of the litigation is to subject this and the other Respondents to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to her.

133. In addition, I consider that her conduct of the proceedings is also vexatious. Her approach of sending numerous emails, failing to prepare properly for hearings and only attending them in part, together with her habit of making unfounded complaints about all involved in the litigation serves to exacerbates the inconvenience, harassment and expense to all involved, including the public purse. It also means it would be very difficult to have a fair hearing in this case, even if her claims had any merit.

_____

Employment Judge E Burns
13 December 2024

Sent to the parties on:

13 December 2024
.....

.....
For the Tribunals Office

Appendix

The Issues

The issues the Tribunal will decide are set out below.

Alleged qualifying disclosures – s.43B ERA

1. C relies on the following alleged qualifying disclosures:

    a) a complaint that R had shared C's sensitive information without her consent said to be a GDPR breach to the Information Commissioner's Office by email on 21 August 2023 ("ICO email");

    b) raising unspecified "concerns of health and safety" to the Health and Safety Executive on 21 August 2023 by email ("HSE email"); and

    c) raising unspecified complaints of failure to comply with the Equality Act 2010 to the Equality and Human Rights Commission on 21 August 2023 by email ("EHRC email").

2. It is accepted that C emailed the ICO on 22 August 2023 (08.53).

3. It is accepted that C emailed the EHRC and the HSE on 22 August 2023 (14:04).

4. Did any of the alleged disclosures constitute disclosure(s) of information by C?

5. Did the alleged protected disclosures, in C's reasonable belief, tend to show one or more of the following matters:

    a) in respect of the ICO email, that R had failed to comply with C's data protection rights by sharing C's sensitive information without her consent, a legal obligation to which R was subject under the Data Protection Act (s.43B(1)(b) ERA);

    b) in respect of the HSE email, that the health and safety of any individual had been endangered (s.43B(1)(d) ERA); and

    c) in respect of the EHRC email, that R had failed to comply with the Equality Act 2010, a legal obligation to which it was subject (s.43B(1)(b) ERA).

6. If so, was such disclosure, in C's reasonable belief, made in the public interest?

ICO email – s.43F ERA

7. It is admitted that the ICO is a person prescribed by the Public Interest (Prescribed Persons) Order 2014, SI 2014/2418.

8. Did C reasonably believe that any relevant failure fell within compliance with the requirements of the legislation relating to data protection and to freedom of information?

9. Did C believe that any information disclosed, and any allegation within the ICO email was substantially true?

HSE and EHRC email – s.43G ERA

10. Did C reasonably believe that any information disclosed, and any allegation contained in the EHRC email and the HSE email, was substantially true?

11. Did C make the EHRC email and the HSE email for personal gain namely as part of an unreasonable campaign waged against R pre- and post-dismissal and/or to contrive a claim against R?

12. Was it in all the circumstances reasonable for C to make any disclosure?

Detriment

13. C relies upon the following alleged acts or deliberate failures:

a) Her dismissal.
b) A deliberate failure to investigate a “grievance” dated 21 August 2023.
c) R calling C into a “disciplinary” meeting on 22 August 2023.
d) R denying C the right to be accompanied at the meeting on 22 August 2023.

14. Is C precluded from relying on her dismissal as a detriment pursuant to s.47B(2) ERA?

15. Did the alleged acts or deliberate failures happen?

16. If so, was C subjected to a detriment?

17. If so, was C subjected to that detriment on the ground that she made a protected disclosure?

Dismissal

18. Was the reason or principal reason for C’s dismissal that C had made a protected disclosure?

Direct Race Discrimination

19. The Claimant identifies as black African.

20. Was the Claimant paid less than a white comparator Rosie Lintott?

21. If so whether that lower pay constituted less favourable treatment because of Claimant's race?

    The Tribunal will consider whether there were material differences between the Claimant's circumstances and those of her comparator.

Disability

22. What is the mental or physical impairment that the Claimant relies upon? She says her disability was due to a mental impairment of depression (depressive disorder) and panic attacks and physical impairment of a back impairment namely sciatica & lumbar.

23. Was the Claimant a disabled person by reason of that mental or physical impairment?

24. Did the Respondent have knowledge of the Claimant's disability and/or substantial disadvantage.

Failure to make reasonable adjustments

25. The Claimant relies on the PCP (provision, criterion or practice) of the Respondent requiring her to work in the office.

26. The Claimant alleges that the following caused her substantial disadvantage:

    a) Working in the office would cause anxiety;
    b) Working on the Respondent's chair not her own would cause back pain.

27. C alleges that R should have taken the following steps:

    a) referral to OH;
    b) carry out risk assessments; and
    c) allow Claimant to work from home.