



EMPLOYMENT TRIBUNALS

Claimant: Mr. N J Shepherd

Respondent: IQ Healthcare Limited

Heard at: Southampton **On: Tuesday, 8 October 2024**
Employment Tribunal

Before: Employment Judge Mr. M. Salter

Representation:

Claimant: Mr. R. Holland, counsel.

Respondent: Mr. M. Kemp, solicitor

JUDGMENT

The Claimant's application for anonymity is refused.

REASONS

INTRODUCTION

1. These are the written reasons to my judgment given at the Public Preliminary Hearing on Tuesday, 8th October 2024.
2. These reasons have been prepared at the request of Claimant, who applied for them by way of email on 9th October 2024.

BACKGROUND

The Claimant's case as formulated in his ET1s

3. The Claimant's complaints were presented to the Employment Tribunal on 14th December 2023. It contained claims of disability discrimination, unfair dismissal, and for whistleblowing detriments and dismissal.

4. He presented claims against IQ HealthTech Limited and Altera Healthcare (IT) UK Limited.

Relevant Procedural History

5. The matter came before E.J Roper on 3 January 2024 for an Interim Relief hearing. The application was unsuccessful.
6. Employment Judge Roper also conducted a Case Management Hearing and noted the claim for disability discrimination in the first claim was unsupported by an ACAS certificate and so had been rejected. At this hearing the Claimant was represented by Mr R. Holland of counsel and the Respondent by Mr A. MacPhail of counsel.
7. Employment Judge Roper's Judgment and Case Management Order were published with the Claimants name being reported as:
 - (a) "Mr Nicki-James Shepherd": on the Interim Relief Judgment
 - (b) "Mr. N J Shepherd": on the Case Management Order.
8. The Judgment and Order were sent to the Parties on 3rd and 5th January 2024 respectively.
9. On 19th February 2024 the Claimant emailed the employment tribunal requesting that his name be amended in the Judgment to "Mr N J Shepherd"
10. The Claimant presented a second claim on 22nd February 2024 containing claims of disability discrimination, unfair dismissal and identifying himself as a whistleblower.
11. On 1st March 2024 the tribunal wrote to the Claimant in these terms:

This tribunal does not have power to amend retrospectively any judgment which has already been entered on the public register of judgments. The Judge notes that the Claimant was represented by Counsel, and that there was no application under rule 50 made by or on behalf of the claimant at the hearing

12. On 13th March 2024, Mr. Charles Price of counsel, on behalf of the Claimant, wrote to the tribunal. The terms of that correspondence are:

Respectfully, the Claimant makes the following argument in rebuttal:

50.—(1) A Tribunal may at any stage of the proceedings, or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

It is submitted that the Claimant's case is still continuing and that an Application can be made 'at any stage in the proceedings', this would mean even after the judgment has been entered on the public register.

The Claimant seeks only partial anonymisation of his name so that the first name is set out as an initial only. The claimant did not make an application for anonymity at the time because in past judgements he had been referred to by his first initial and surname. Indeed, it appears that of all the judgements (sic) in respect of interim relief applications published in the last 12 months, Mr Shepherds appears to be the only one to use his full name in the header of the document.

Furthermore, in respect of applications for anonymisation after a judgment is made, I refer to the remarks of The Honourable Mr. Justice Cavanagh in X v. Y (2019) - UKEAT/0302/18/RN Notably, in paragraph 44, it is mentioned:

'...the Employment Judge erred in law in failing to grant anonymity on the basis of the Appellant's email of 12 February 2018, sent some 10 days after the Judgment had been sent to the parties...'

And in paragraph 45:

'I do not think that the fact that the Appellant himself did not make an application at the hearing for anonymisation under Rule 50 is itself a reason to decline to do so...'

It is submitted that these paragraphs highlight the EAT's stance that the tribunal has both the authority and duty to consider post-judgment anonymisation requests.

The insights from The Honourable Mr. Justice Cavanagh underscore a significant principle: the tribunal retains the discretion to address matters of anonymity as they arise, irrespective of the timing of such requests being after publication.

If the tribunal interprets Mr. Shepherd's email dated 19/02/24 as an application for anonymity (despite the content suggesting otherwise

from the claimant), and also views EJ Roper's response as a decision regarding this matter, then we formally request a reconsideration of that decision.

The request for reconsideration is made on the grounds that it is in the interest of justice (sic) for the tribunal to do so, and that there was an error of law. The claimant would request a reconsideration hearing on the same.

Alternatively, if the tribunal is of the view that Mr Shepherd can make an application for an anonymity order afresh, (having not made one before), his application is set out as follows:

Pursuant to Rule 50 of the Employment Tribunal Rules of Procedure, the claimant submits an application for an anonymity order to partially anonymise (sic) the claimant by way of substituting full name with an initial.

This application is grounded upon the provisions of the European Convention on Human Rights (ECHR), particularly Article 8, which ensures the right to respect for private and family life, and Article 14, which prohibits discrimination.

Mr. Shepherd, by virtue of his disability, faces unique challenges that necessitate this application. It is submitted that there must be balance between the principle of open justice and the safeguarding of Mr. Shepherd's rights to privacy and equality.

Mr Shepherd will produce evidence to show that the publication of his full name alongside details of his disability is having a detrimental impact on his right to privacy and family life. He tells me this Judgement (sic) has already been mentioned by a prospective employer. He fears it will stop him finding employment in future.

The claimant in this matter is a vulnerable person with cerebral palsy and anxiety, who has recently been the victim of a physical assault, though not related to his employment. These points are submitted in furtherance of the application.

This is in line with the Tribunal's inherent powers to ensure fairness and justice in its proceedings, recognising the disproportionate impact the publication of personal information can have on individuals with disabilities.

We would ask the tribunal considers listing a hearing for Mr Shepherd's application for an anonymity order, so that full submissions and evidence may be provided.

I confirm that the Respondent has been copied in to this email.

13. The application was for partial anonymity and the recording of the Claimant's name be limited to his title and initials, then his second name e.g Mr N J Shepherd.
14. On 15th March 2024 the tribunal replied:

In the first place the claimant and his representative should confirm whether the claimant is now represented and to whom the Tribunal should correspond. Secondly, the Judge notes that the claimant's original application was not for anonymity, but rather to change his name in the judgment to N J Shepherd, to which the respondent objected. Thirdly, the latest letter from the claimant's representative appears to make a different application, ie for complete anonymity. The claimant should therefore confirm whether an application is still being made, if so to what end, and on what basis and in accordance with what Rule. That should be sent to the respondent for comments. The Judge will then decide how to proceed and whether to list any contested application for hearing.

15. On 26th March 2024 Mr Price replied:

The Claimant makes the following application under Rule 50.—(1) A

The Tribunal may at any stage of the proceedings, or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

The Claimant respectfully seeks an order setting out partial anonymisation of his name in the employment tribunal interim relief judgment published online on 17.1.24 and future orders so that the first name is set out as an initial only.

The Claimant seeks in particular:

The adoption of his first initial instead of his first name in the present and future judgments. This format has been adopted in all interim relief judgements (sic) in 2023 and 2024.

This is requested as a measured effort to balance his personal rights with the overarching principles of open justice. Mr Shepherd simply seeks that his article 8 rights are upheld with as little derogation from the principle of open justice as possible.

The publication of Mr. Shepherd's full name in conjunction with the specifics of his disability significantly impacts his rights under Article 8 of the European Convention on Human Rights, which safeguards an

individual's right to respect for private and family life. This breach arises not merely from the public disclosure of his identity but critically, from the detailed exposure of his medical condition. Such disclosure not only infringes upon Mr. Shepherd's privacy but also places him in a vulnerable position where the intimate aspects of his life become public knowledge, leading to potential stigma, discrimination, and undue distress.

The intersection of Mr. Shepherd's identity with the particulars of his disability on a public platform exacerbates the challenges he faces, affecting his social interactions, employment opportunities, and psychological well-being. The essence of Article 8 rights lies in protecting individuals from arbitrary or unjustified interference by the state or other entities into their personal lives. The undue publication in this context serves as an unwarranted intrusion, potentially subjecting Mr. Shepherd to public scrutiny and prejudicial judgments, thus, undermining his dignity and autonomy.

Furthermore, the respect for privacy under Article 8 encompasses a person's physical and psychological integrity. The revelation of Mr. Shepherd's disability, tied to his full name, could lead to significant mental health repercussions, heightened by societal prejudice and barriers to equal opportunities. Mr. Shepherd would respectfully say it is pivotal to recognise the broader implications such disclosures have on an individual's right to lead a life with respect and free from unwarranted public exposure of their most personal and sensitive data.

The Judgment has already been referred to by a prospective employer, who rejected him for a role he would expect to ordinarily obtain. He fears it will stop him finding employment in future.

It is submitted that there must be balance between the principle of open justice and the safeguarding of Mr. Shepherd's rights to privacy and equality.

The claimant in this matter is a vulnerable person with cerebral palsy and anxiety, who has recently been the victim of a physical assault, though not related to his employment. These points are submitted in furtherance of the application.

I confirm that the Respondent has been copied into this email.

I presumed the application was made under r50(1) and that the "A": is errant as there is no r50(1A) in the 2013 Tribunal rules.

16. The application was forwarded to the Respondent by the Tribunal on 5th April 2024, requiring a response by the 19th April 2024. In its response the Respondent objected to the application

17. Two separate Case Management hearings were then listed, one on 1st July 2024, and the other on 25th September 2024. These were vacated on 11th June 2024 and one, 3-hour Public Preliminary hearing was listed for 8th October 2024. To be determined at that hearing were:
- (a) The Claimant's anonymity application
 - (b) IQ HealthTech Limited's applications for strike-out and/or deposit order
 - (c) Whether Altera Healthcare (IT) UK Limited

The Preliminary Hearing, 8th October 2024

18. The matter came before me on 8th October 2024. The Claimant was represented by Mr Holland, counsel and the IH HealthTech Limited by Mr Kemp, solicitor. Altera Healthcare (IT) Limited were represented by Ms. Hibbs, Director Human Resources.
19. The Claimant withdrew his claims against Altera Healthcare (IT) UK Limited, and I dismissed the claims against them upon withdrawal and their Ms. Hibbs left the hearing.
20. I heard submissions on the strike out and deposit order applications by IQ Healthcare (who I will now refer to as the Respondent), I rejected these applications. For this part of the hearing I had a bundle of 172 Pages, many of these documents were relevant to the r50 Application.
21. I then heard the Claimant's application for anonymity. I had before me an additional bundle of 91 pages entitled Claimant s50 Application
22. The Claimant's application took from 1210 until 1213: the application was for fully anonymity (so was wider than the written application) on grounds of the Claimant's disability.
23. The submissions, in summary, were:
- (a) The Claimant does not say that disability automatically means anonymity, and that the tribunal must consider the HRA element;
 - (b) the medical report is that does face harm, so there is a case for full anonymity, alternatively the Claimant should be identified as Mr N Shepherd;

- (c) Having obtained the medical report the Claimant makes application for full anonymity, even though application was for limited.
24. The Respondent made brief submissions, stating it did not wish to add anything to its written response to the application
25. Neither party referred me to any case law in their submissions or guiding principles.
26. I then rose to consider my decision between 1217 and 1330. I returned at 1330 and delivered my judgment until 1342.

Basic Principles

27. It is a trite point that justice must not only be done, but should 'manifestly and undoubtedly be seen to be done' R v Sussex Justices, ex parte McCarthy [1924] KB 256.
28. The reporting of judgment without restriction is part and parcel of the principle of open justice [BBC v Roden [2015] IRL:R 630 ET. In the EAT, Simler J allowed the BBC's appeal and overturned the permanent anonymity order. The question for the tribunal was summarised as:

"whether publication of the ... judgment without anonymity would interfere with [the claimant's] Article 8 rights to an extent that would justify interference with the public interest in open justice and the BBC's Article 10 rights to freedom of expression."

29. Simler J refers to the balancing exercise required between competing Article 8 rights on the one hand and Article 10 and 6 rights on the other, as summarised by Lord Steyn in In re S (A Child) (identification: Restrictions on Publication) [2004] 3 WLR 1129 (at paragraph 17):

"First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience, I will call this the ultimate balancing test. ..."

30. Rule 50 of schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 states:

50.— Privacy and restrictions on disclosure

- (1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.
- (2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.
- (3) Such orders may include—
 - ...
 - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
 - ...
- (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
- (5) Where an order is made under paragraph (3)(d) above—
 - (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;
 - (b) it shall specify the duration of the order;
 - (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
 - (d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.
- (6) “Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998.

31. Schedule 1 of the Human Rights Act 1998 includes:

(a) Article 8:

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

(b) Article 10 states:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

32. As set out in rule 50(2), the principle of open justice and the convention of free speech must be given full weight.

33. The default position is that hearings are in public, and that full decisions with the names of the parties are published and may be reported. This is not a right specifically of the media but reflects the public interest generally. It applies irrespective of the subject-matter of the case, it does not matter that a particular individual employment dispute does not 'raise issues of public interest in the wider sense': F v G UKEAT/0042/11 para 49

34. Derogations from the principle of open justice will only be justified in exceptional circumstances, if and to the extent that the court or tribunal is satisfied that they are the minimum strictly necessary to ensure justice is done (Roden)
35. The burden of establishing any derogation from the fundamental principle of open justice lies on the person seeking that derogation and it must be established by 'clear and cogent evidence that harm will be done by reporting to the privacy rights of the person seeking the restriction' (Fallows v News Group Newspapers [2016] ICR 801, EAT, Simler P)).
36. Being able to report the names of individuals is part of the principle of open justice / right to freedom of expression (Re Guardian News and Media Ltd [2010] UKSC 1 at para 63).
37. The required balancing exercise involved a fact-specific proportionality exercise to be carried out, with an intense focus on the importance of each of the specific rights being claimed and the justifications for interfering with or restricting each right. Clear and cogent evidence is required. Finally, the proportionality test must be applied. The question to be considered is whether harm will be done by reporting to the privacy rights of the person seeking the restriction on full reporting so as to make it necessary to derogate from the principle of open justice.
38. It is not unreasonable to regard a claimant, who has chosen to initiate proceedings, as having accepted the normal impacts of the public nature of court proceedings including the embarrassment and reputational damage which may be inherent in being involved in such litigation; (R v Legal Aid Board, Ex parte Kaim Todner [1999] QB 966 (CA))

Submissions

39. Neither party highlighted to me any particular factor they wished me to add into the balance when weighing the respective positions. Doing as best as I can therefore without such assistance

“Exposure of [the Claimant’s] Medical Condition”

- (a) In his application to the tribunal the Claimant refers to

This breach arises not merely from the public disclosure of his identity but critically, from the detailed exposure of his medical condition. Such disclosure not only infringes upon Mr. Shepherd's privacy but also places him in a vulnerable position where the intimate aspects of his life become public knowledge, leading to potential stigma, discrimination, and undue distress.

- (b) The critical reason for the application was, therefore, the Claimant's disability. In this matter the Respondent has accepted that the Claimant was disabled within the meaning of the Equality Act 2010 and that they knew about the Claimant's disability at the relevant time.
- (c) So far as is relevant, the claims as presented and identified at paragraph 56 of the Case Management Hearing are:

Section 15: Discrimination arising from disability [Second Claim, §35]

- (a) The Respondent accepts it knew of the Claimant's disability
- (b) Did the following thing arise as a consequence of the Claimant's disability? The Claimant's case is that the following arose from their disability:
 - (i) The Claimant's inability to make the same number of calls as his colleagues [Second Claim, §35]
 - (ii) Slower working pace [Second Claim §35]

...

And

Section 20 and 21: Reasonable Adjustment [Second Claim, §37-38]

- (l) Did the Respondent apply the following provision, criteria and/or practice ('the PCP') generally, namely:
 - (i) answering calls within 60 seconds, and at the same rate as able bodied colleagues, using the 'Zendesk system' [Second Claim §10, 15(a)];
 - (ii) complete the online 'Secure Link' platform and 'HR Fundamentals' course within approximately 4 weeks [Second Claim §15(b)];
 - (iii) using the desk provided [Second Claim §15(b)].

- (m) Did the application of any such provision put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:
 - (i) Criticized by MR Lawrenson in a meeting (Substantial disadvantage for 60 second PCP)
 - (ii) The Claimant was restricted in doing job which contributed to his dismissal [Training PP]
 - (iii) By failing to provide a suitable desk the Claimant was hindered in his ability to undertake his role sufficiently fast enough[Second Claim §14]

- (n) Did the lack of an auxiliary aid, namely a height adjustable desk put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:
 - (i) It inhibited his ability to perform his duties as
 1. he was unable to use his wheelchair or specialist height adjustable chair under the desk provided
 2. he was unable to place his specialist large format monitor on the desk as the desk provided could not support the weight of that monitor

Second Claim paragraph 13-14

- (o) Did the Respondent not know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?

- (p) Did the Respondent take such steps to avoid the disadvantage? The burden of proof does not lie on the Claimant; however, it is helpful to know the adjustments asserted as reasonably required and they are identified as follows:
 - (i) Answer fewer calls; The Claimant was criticised for missing a few extra calls than his colleagues.
 - (ii) Be given more time to complete the online 'Secure Link' platform and 'HR Fundamentals' course;
 - (iii) To provide an appropriate desk.

- (d) I do not see that the will need to be "detailed exposure" of the claimant's medical condition for the:
 - (i) s15 claim the "things arising" are likely to involve little consideration of the claimant's medical condition.
 - (ii) reasonable Adjustments: the PCP's are capable of investigation without any consideration of he Claimant's disability as are the pleaded substantial disadvantages as

presented by the Claimant. The Claimant's disability is irrelevant to the victimization claim

I do not, therefore consider this actor to be of great weight.

Claimant Presented Claim

- (e) The claimant,
 - (i) has chosen to initiate proceedings, and I assume had accepted the normal impacts of the public nature of court proceedings including the embarrassment and reputational damage which may be inherent in being involved in such litigation: Kaim Todner;
 - (ii) Indeed, he has presented a claim previously, in 2019, but I do not consider that this necessarily preclude Article 8 arising in this matter. The Judgment in this matter is in the name of Mr N Shepherd;
 - (iii) has been presented throughout, these proceedings, and no application was made prior to the interim relief judgment, and only then was made for the partial anonymisation of the Claimant's name to his initials.
 - (iv) The claimant was, therefore seemingly aware of the publicity that could arise from the matter, yet no application was made focusing on this impact on any anxiety condition.

Again I do not consider this factor to weigh much in the balance in favour of the Claimant.

Medical Evidence

- (f) The reason for the total anonymity application is the medical report obtained by the Claimant. I have considered the medical evidence that the Claimant has presented, but do not gain much assistance from it
- (g) In my opinion this medical report marks a shift in the basis of the application from the Claimant's "medical condition", i.e his disability: cerebral palsy, and addresses the adverse impact of publicity of the hearings on the claimant's anxiety;
- (h) Indeed, at points the report appears to support an application (not made) for a total non-publication of any judgment in this matter. Paragraph 6, for instance requests:

"that the reports from the judgment of this tribunal be kept private"

40. I have sought to balance the Claimant's applications (on whatever basis they appear to be made: partial anonymization; full anonymization; full non-publication) against the competing fundamental requirements of open justice and, on the basis of the factors I have identified above.

41. The question to be considered is whether harm will be done to the privacy rights of the person seeking the restriction by full reporting so as to make it necessary to derogate from the principle of open justice.
42. I do not consider it necessary in the interests of justice or in order to protect the Convention rights of the Claimant, giving all due weight to the principle of open justice, to derogate from open justice, and therefore do not grant the Claimant's application to vary the usual reporting of the claimant's name (his application (either total or partial)) or to prevent the publication of the proceedings (as set out in the medical report). For the avoidance of doubt I have considered these as separate applications and applied my mind to them individually.
43. I remind myself that to be granted the case does not need to be an exceptional one, but the derogation from the principle of open justice must be an exception. I do not consider that on the basis of the material I have and the submissions I have heard, that the Claimant has met the threshold of showing me that it is necessary to depart from the usual principles.
44. On the basis of what I have heard and read the Claimant has not made out the necessary justification for the interference with such a fundamental principle. On the grounds of his application: there will be limited consideration of his disability, and this is the ground the restriction was sought. I do not consider that this, when balanced against the principles of open justice necessitates any interference with the tribunal process of public judgments.

Employment Judge Salter

Monday, 11 November 2024

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

29 November 2024

Jade Lobb
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.