Case Number: 2303835/2022

EMPLOYMENT TRIBUNALS

Claimant		Respondents
Mr M Aljamal	v	1. UAE Embassy Cultural Attaché London 2. Mr Hamad Al Ebri 3. Mr Hatim Abdelaziz 4. Mr Salah Ahmed 5. Mr Mohamed Diab Idris

PUBLIC PRELIMINARY HEARING

Heard at: Central London Employment Tribunal

On: 6 & 7 March 2025

Before: Employment Judge Brown

Appearances

For the Claimant: In person
For the Respondents: Mr L Davies, Solicitor

Interpreter in the Arabic language: Ms R Abdelrahman

JUDGMENT AT A PUBLIC PRELIMINARY HEARING

The judgment of the Tribunal is that:

1 The Claimant does not have permission to amend his claim.

2 The following complaints are struck out because they have no reasonable prospects of success:

2.1 All the Claimant's complaints in relation to dismissal, including: unfair dismissal, notice pay, holiday pay, and redundancy pay.

2.2 "Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work;

2.3 All the Claimant's race discrimination complaints.

REASONS

1. This Public Preliminary Hearing had been listed to decide:

   1.1. Whether the Claimant has permission to amend his claim pursuant to an application made on 9 May 2023 (to add complaints of unfair dismissal, notice pay and holiday pay);
   1.2. Whether any complaints should be struck out because the complaints are misconceived, or have no reasonable prospects of success, or were presented out of time; or
   1.3. Whether time should be extended for any claims, or the issue of time should be left to the final hearing;
   1.4. Whether the Claimant should be ordered to pay a deposit as a condition of continuing to advance any arguments or allegations in the claim, because the allegations or arguments have little reasonable prospects of success;
   1.5. Case management as appropriate, if the claim continues.

The Complaint(s)

2. By a claim form, presented on 31 October 2022, the Claimant brought complaints of unfair dismissal, race discrimination, failure to pay holiday pay, a redundancy payment, wages and other payments, and "whistleblowing", victimisation, breach of the right to be accompanied by a Trade Union representative, breach of contract and "unequal pay" against the Respondents. The Claimant also said that he was bringing complaints of: "Unlawful act; Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work; and less favourable treatment."

3. The Claimant said that he started employment on 13 August 2015 and was employed as an accountant.

4. The claim was served by the FCDO diplomatic channel. The Respondents had 2 months and 28 days from then to present a Response.

5. The Respondents presented a Response to the claims on 22 February 2024, asserting state immunity, but also applying for time to be extended for presentation of its Response, and applying to strike out:

   5.1. the claims of unfair dismissal, race discrimination, notice pay/wrongful dismissal; accrued holiday pay because the Claimant had not been dismissed on 23 May 2022, but had been suspended;

   5.2. The unfair dismissal claim because it was brought considerably out of time and time should not be extended for it;

   5.3. The complaints of "Unlawful act; Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work; and less favourable treatment" because they are misconceived and not in the Tribunal's jurisdiction;

   5.4. The complaint of "whistleblowing" because the Claimant did not make any protected disclosures;

5.5. The complaint of failure to allow the Claimant to be accompanied because the Claimant did not have the right to be accompanied by a trade union representative because the Respondent does not recognise any trade union, so his claim is misconceived;

5.6. The claims against the individual Respondents because the Particulars of Claim do not identify or properly particularise any complaints against them.

6. The Respondents denied all the complaints and gave a factual narrative. They said that the Claimant had been investigated in relation to 2 disciplinary allegations but that, as at 31 October 2022, the First Respondent had neither dismissed the Claimant, nor had the Claimant resigned. The Respondents asked for further particulars of the claim.

7. At a previous preliminary hearing on 10 December 2024, the First Respondent accepted that it had submitted to the jurisdiction of the Tribunal by presenting a substantive response.

8. At that hearing, I indicted that I would send the Claimant a strike out warning in respect of his complaints of "Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work" because they are misconceived in law, the Tribunal has no jurisdiction to consider them and they have no reasonable prospects of success.

9. While I produced that document, it appears that it was never sent to the parties by Tribunal.

10. At the hearing on 10 December 2022, the Claimant agreed that his employment was continuing on 31 October 2022, when he presented his claim form. His unfair dismissal, notice pay and holiday pay complaints, and other complaints arising out of dismissal, were premature at that point.

11. The Claimant told me that he emailed an application to the Tribunal on 9 May 2023, seeking to amend his claim to add unfair dismissal, following his dismissal on 10 February 2023. He agreed to send a copy of that email to the Tribunal, because it was not on the Tribunal file. He did give me a copy of the attachment which he told me was attached to the 9 May email. Mr Davies said that the application ought to have been copied to the Respondents.

Particulars of the Claimant's Claims

12. So that the Tribunal could fairly determine whether the claims had no reasonable prospects of success, or little reasonable prospects of success, at the preliminary hearing, at the hearing on 10 December 2024 I asked the Claimant for further particulars so that I could identify the issues in the claims.

13. I took considerable time with the Claimant to identify his complaints and allegations. The Claimant agreed that the following were his complaints and allegations:

Unfair Dismissal

14. Regarding dismissal, the parties agree that the Claimant was dismissed on 10 February 2023.

15. The First Respondent contends that there was a SOSR potentially fair reason for dismissal because the Claimant's VISA had expired.

16. The Claimant contends that there was no fair reason for dismissal and that the reason for his dismissal was, either, race discrimination, or protected disclosures, or victimisation. The Claimant contends that the protected disclosures were the main reason for dismissal.

Race – Protected Characteristic

17. The Claimant relies on nationality in his race discrimination claim. He says that the Respondents discriminated against him because he was not from the UAE, Sudan, Egypt, Sri Lanka or India. He says that he was discriminated against because he was the only person of a single nationality.

Protected Disclosures

18. The Claimant contends that he made protected disclosures as follows:

    18.1. In an email on 21 September 2021. To his manager Mr Hamad Al Ebri – R2. He contends that, in the email, he said that a client had asked him to check a payment he had sent and that, when he checked, the payment had not been sent to the same bank account. The Claimant contends that he had a duty to protect public funds and was reporting a misapplication of funds to his manager; that public money had been misappropriated, or misapplied, that something was wrong / was suspicious. He did not say by whom the funds had been misapplied. He said the matter needed to be investigated.

    18.2. In an email 22 May 2022 to his employer. He said that his employer had tried to fabricate the same errors on him, that he had been forced to sign a forged and fabricated report and had been blackmailed to do so, in order to obtain a new work visa. He said that he had been compelled to take part in an investigation under difficult medical conditions despite providing medical evidence. He said that the Respondent was pursuing an allegation to supress evidence.

    18.3. In an email on 23 September 2022, to his employer. He said that since November 2021 he had been subjected to exploitation, abuse and inappropriate and unfair procedures; that he had been forced to sign a forged and fabricated report and blackmailed to do so to obtain a new work visa; he had been suspended from the workplace in a rude manner and allegations fabricated against him; he had been subjected to investigation without informing him about allegations against him; he had been asked to resign in exchange for an experience certificate and reference – which the claimant said was illegal because it would breach his statutory rights and compromise his professional reputation.

19. At this hearing, the Claimant could not say whether he believed the information tended to disclose a crime or breach of a legal duty.

Victimisation – Protected Act

20. The Claimant contends that he said to Saoud, in their first meeting on 14 September 2022: " They are from the same nationalities and they are putting me alone." The Claimant contends that this was the protected act in his victimisation complaint.

Unlawful Acts in the Race Discrimination / Victimisation / Protected Disclosure Detriment complaints.

21. The Claimant relies on the following alleged unlawful acts / detriments in his race discrimination / victimisation / protected disclosure detriment complaints:

    21.1. Being singled out for investigation being investigated in relation to funds being sent to the wrong account;
    21.2. On 5 November 2021 being forced to sign a forged and fabricated report and blackmailed to do so to obtain a new work visa
    21.3. Telling the Claimant he was dismissed on 29.3.22;
    21.4. Putting the Claimant under surveillance after 29.3.22 – instructing a contractor, Mr Al Homs, to call the Claimant to obtain information from him, about whether the Claimant was going to bring a legal claim against the Respondent;
    21.5. Between 29.3.22 – 7.4.22 Mr Al Ebri telephoning the Claimant and telling him to prepare himself for being removed from the UK;
    21.6. Suspending the Claimant on 7.4.2022, without telling the Claimant on what grounds he was suspended;
    21.7. After 7.4.22, seeking allegations against the Claimant from his colleagues, to justify his suspension;
    21.8. Inviting the Claimant to a disciplinary meeting regarding a harassment allegation and misallocation of funds, without telling the Claimant the facts of the allegations against him, so that he could not understand them;
    21.9. Fabricating a harassment allegation that the Claimant had harassed a Sudanese colleague;
    21.10. On 22.8.22 the Claimant's manager, Mr Al Ebri, telling the Claimant, "I don't want you", and repeating that in front of security officer Joseph Gereid;
    21.11. On 9.9.22 the Claimant's manager**,** Mr Al Ebri asking the Claimant to resign to get an experience certificate and reference letter and saying that the Claimant was not an employee of the Cultural attache;
    21.12. Saoud Al Teneji asking the Claimant to sign to agree to receive a warning letter to come back to work, without allowing the Claimant to read the document;
    21.13. Deliberately extending the investigation and suspension period so that the Claimant's visa would expire and he would be removed from the UK;
    21.14. Dismissing the C.

Other Race Discrimination Detriment

22. The Claimant contends that he was discriminated against because of race when he was not given an annual pay increment in December 2021. His comparator is his successor in post, who was from the UAE and was given a salary increment.

Money Claims

23. The Claimant is not bringing an "Equal pay" claim in law. He does not compare himself to a female.

Unlawful Deductions from Wages

24. He alleges that the First Respondent made unlawful deductions from his wages when it took the benefit of a tax exemption for Embassy staff by paying him only the net amount of what his gross pay should have been. His claim covers the whole period of his employment and he claims the difference between the gross pay he would have been paid, if he were taxed and the gross (and net) pay he was actually paid.

25. He also claims unlawful deductions from wages in respect of the pay he ought to have been paid if the First Respondent had given him the annual pay increments. He contends that he was entitled to annual pay increments under his contract and therefore that the failure to make these contractual payments constituted unlawful deductions from wages.

Notice Pay and Holiday Pay

26. The Claimant contends that he was paid a lump sum when he was dismissed, but was given no breakdown of it, so that he does not know whether he was paid his notice pay or holiday pay entitlements.

Preparation for this Public Preliminary Hearing

27. I had made the orders for disclosure of documents, preparing a bundle and exchanging witness statements for this public preliminary hearing. While I completed these on 10 December 2024, it appears that the Tribunal did not send them to the parties until 28 February 2025.

28. The Respondent had nevertheless prepared a bundle for this hearing. It had added many documents to the bundle, sent by the Claimant.

29. However, the Claimant had sent 15 emails to the Respondent and Tribunal on 5 March 2025. The Respondent did not object to the documents being referred to during this hearing.

30. It was agreed that, if the Claimant wanted to refer to any of the documents he had sent to the Tribunal by email, he should identify those and they would be added to bundle produced by the Respondent.

31. The Claimant had not produced a witness statement. He said that the 10 December 2024 order was sent to him late.

32. Both parties confirmed that they were ready to proceed with the hearing.

33. I heard submissions from both parties. I did not hear evidence on the amendment application because the relevant facts were not in dispute.

34. I decided the amendment application first, before the strike out and deposit order applications. If I decided the strike out application first – and struck out the claim, there would be no claim to amend and the amendment application would have been decided by default. That would not be fair.

35. The Tribunal had the help of an interpreter. The Claimant said that he would ask for the interpreter to assist if he did not understand legal terms or particular things in English.

Facts Relevant to the Amendment Application

36. By a claim form, presented on 31 October 2022, the Claimant dsought to bring brought complaints of unfair dismissal, race discrimination, failure to pay holiday pay, a redundancy payment, wages and other payments, and "whistleblowing", victimisation, breach of the right to be accompanied by a Trade Union representative, breach of contract and "unequal pay" against the Respondents. The Claimant also said that he was bringing complaints of: "Unlawful act; Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work; and less favourable treatment."

37. The claim was served by the FCDO diplomatic channel. The Respondents had 2 months and 28 days from then to present a Response.

38. The Respondents presented a Response to the claims on 22 February 2024, asserting state immunity, but also applying for time to be extended for presentation of its Response, and applying to strike out the claim.

39. The parties agree that the Claimant was dismissed on 10 February 2023.

40. It was not in dispute that the Respondent purported to dismiss the Claimant, at that date, because his visa had expired. His visa had expired in December 2022. The Claimant disputes that that was the real reason for his dismissal.

41. The Claimant underwent ACAS Early Conciliation between 21 August 2022 and 2 October 2022.

42. The parties agree that the Claimant was dismissed on 10 February 2023.

43. The Claimant relies on an amendment application sent to an email address LondonCentralCaseManagement@justice.gov.uk on 9 May 2023 at 23.56 and an attachment entitled, "Update regarding Employment Court Case No. 2303835/2022."

44. That was not on the Tribunal file.

45. The Claimant had received an email on 3 January 2023 from London Central Case management p98, which said " Please do not reply to this email. All responses should be directed to Londoncentralet@justice.gov.uk

46. When the Claimant sent his 9 May 2023 email 23.56, the attachment to at, p100 had a heading at the top, typed in Word saying, "Sent by: the Claimant – Moayed Aljamal Dated: 09/05/2023 To : londoncentralet@justice.gov.uk.

47. The Claimant sent another email on 9 May 2023 sent at 23.59, attaching a letter of dismissal and the Claimant's original claim form. The Claimant was not relying on that email as his amendment application. He also sent that to LondonCentralCaseManagement@justice.gov.uk

48. That second email had eventually found its way to the Tribunal file when, on 3 June 2024, he forwarded it to Londoncentralet@justice.gov.uk and asked for the Tribunal to acknowledge receipt of it. He did not copy his 3 June 2024 email to the Respondents.

49. The parties agreed that the amendment application was an amendment to bring unfair dismissal, notice pay and holiday pay complaints.

50. The Respondent accepted that the Claimant sent his emails of 9 May 2023 at 23.56 and 23.59 and the attachments to them to LondonCentralCaseManagement@justice.gov.uk

51. The Claimant did not copy either of his 9 May 2023 emails or his 3 June 2024 email to any of the Respondents. There was no evidence that he attempted to send them in hard copy, or to any email address for the Respondents.

52. Under r30 ET Rules of Procedure 2013, which were in force at the time, "(1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the Tribunal (2) Where a party applies in writing, they shall notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible."

53. There was no evidence that the Claimant's email of 9 May 2023 23.56, or his amendment application, came to the attention of the Respondents at any time before 10 December 2024, when there was a case management hearing in the case.

Amendment Law

54. In deciding whether to allow an amendment the Employment Tribunal is guided by the principles set out in *Selkent Bus Company v Moore* [1996] IRLR 661. In deciding whether to grant an application to amend, the Tribunal must balance all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. Relevant factors include the nature of the amendment: applications to amend range, on the one hand, from correcting clerical and typing errors and the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to and, on the other hand, the making of

entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action.

55. Other factors include the applicability of time limits: if a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended. Other factors to be considered include the timing and manner of the application: an application should not be refused solely because there has been a delay in making it, as amendments can be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made, for example the discovery of new facts or new information appearing from the documents disclosed on discovery.

56. By s111 Employment Rights Act 1996

"(1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.

(2) [Subject to the following provisions of this section], an [employment tribunal] shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

57. The reasonable practicability test also applies in relation to notice pay and holiday pay claims.

58. In *Prakash v Wolverhampton City Council* UKEAT/0140/06/MAA, the EAT decided that it is possible to add a new claim by way of amendment in relation to matters which have only arisen after the presentation of the ET1 form. That applies, as the Appeal Tribunal stated at paragraph 62 of the judgment in that case, "even if the original cause of action is bad".

59. Where a claim is out of time, regarding prejudice faced by a Respondent by extending time, in *Miller and Others v The Ministry of Justice and Others* UKEAT/0003/15/LA at §§12-13 Laing J said:

"12. … There are two types of prejudice which a Respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses...
13. … DCA v Jones also makes clear (at paragraph 44) that the prejudice to a Respondent of losing a limitation defence is "customarily relevant" to the exercise

of this discretion. It is obvious that if there is forensic prejudice to a Respondent, that will be "crucially relevant" in the exercise of the discretion, telling against an extension of time. It may well be decisive. But, as Mr Bourne put it in his oral submissions in the second appeal, the converse does not follow. In other words, if there is no forensic prejudice to the Respondent, that is (a) not decisive in favour of an extension, and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts; and the facts are for the ET..." .

60. In *Galilee v Commissioner of Police of the Metropolis* [2018] ICR 634 the EAT said at para 109 "109 (a) Amendments to pleadings in the employment tribunal, which introduce new claims or causes of action take effect for the purposes of limitation at the time permission is given to amend and there is no doctrine of "relation back" in the procedure of the employment tribunal.

Decision not to Permit Amendment

61. I did not permit the Claimant to amend his claim to include complaints of unfair dismissal, notice pay and holiday pay.

62. I decided that the Claimant's application to amend his claim, to include complaints of unfair dismissal, notice pay and holiday pay, was a substantial amendment, making entirely new factual allegations which changed the basis of the existing claim.

63. While the Claimant had purported to bring those claims in his original claim in October 2022, he had not been dismissed at that date and was not dismissed until 10 February 2023.

64. He could not, in law, bring complaints arising out of a dismissal which had not happened in October 2022.

65. The facts, including the relevant dates, of the unfair dismissal, notice and holiday pay claims, were necessarily different in February 2023, compared to October 2022. While the true reason for dismissal is disputed, it was not in dispute that the Respondent's purported reason for dismissal – the Visa expiry – had not occurred until December 2022.

66. The application to amend had not been brought within the 3 month time limit for bringing claims, as at the date of this hearing.

67. I had to consider whether it was reasonably practicable for the Claimant to have brought the complaints in time.

68. I considered that he did not bring the complaints in time, in any event, even if I considered the application to amend as at 9 May 2023.

69. This was because he sent his 9 May 2023 email, timed 23.56, to an address to which he had been told by the Tribunal not to send correspondence.

70. He must have been aware of the correct address for Tribunal correspondence because, not only was it contained in the Tribunal's email to him of 3 January 2023, but he had also typed that email address in Word format in the title of his email attachment.

71. The 9 May 2023 23.56 email was not processed by the Tribunal and was not put on the Tribunal file. Neither was his email sent 3 minutes later to the same address.

72. It was telling that, when the Claimant forwarded his 9 May 2023 23.59 email to the correct email address in June 2024, it was received and was put on the file.

73. The Claimant did not copy his amendment application to any of the Respondents , in breach of rule 30 ET Rules of Procedure 2024. While the claim had not been served at that point, the Claimant did not appear to have made any effort to draw the amendment application to the Respondents' attention.

74. I considered that it was reasonably practicable for the Claimant to have made his application to the correct address – of which he was clearly aware – within the 3 month time limit. He sent his application within the 3 months time limit – but, perhaps because he left it so late (3 minutes before the deadline) - he did not send the email to the inbox which is monitored for correspondence by the Tribunal.

75. As it was reasonably practicable for him to send it in time, but he did not, he presented the claims for unfair dismissal, notice pay and holiday pay, out of time.

76. If he had sent the email to the correct address on 9 May 2023, but I was considering the application to amend as at today's date, I would have said that it had not been reasonably practicable for him to present it in time, because there is necessarily a delay between receipt of the application and the date on which the ET considers application, but none of that additional delay is in the Claimant's control.

77. However, even if he had sent the email to the correct address within the 3 months, I would not have granted the amendment, applying the balance of hardship and injustice.

78. I did acknowledge that there would be very considerable hardship to the Claimant in not allowing his unfair dismissal claim to proceed. It will not be heard at all. The other claims could still be brought in the county court, so there would be little hardship to him caused by refusing those amendments.

79. However, I considered that there would also be very considerable hardship and injustice to the First Respondent if the amendment were allowed. The Respondent would it have hardship of having to meet a claim which would otherwise have been defeated by a limitation defence. While the Respondent might be able to defend the claims on its merits, the extreme length of the delay in the application to amend being brought to the First Respondent's attention means that there will inevitably be some forensic prejudice caused by such things as fading memories, loss of documents, and losing touch with witnesses. I did not consider that it was necessary for the First Respondent to produce specific evidence of this – the

reason for the dismissal itself is in dispute – and that will inevitably require examination of what was precisely in witnesses' minds regarding an event which happened 1 year and 9 months before the First Respondent even had notice that a claim was being pursued. The final hearing will be even longer away.

80. As I have indicated, in this case, the First Respondent was not even aware of the amendment application until 10 December 2024. The Claimant had made no effort to copy it to the Respondent. That is a discretionary factor. There was no good reason put forward for the Claimant's failure in this regard.

81. Given that these would be entirely new claims, on new facts, brought out of time, and, even if they had been brought in time, had not been notified to the Respondent for 1 year and 9 months after the dismissal, for no good reason, the balance of hardship and injustice indicated that the amendment should be refused. The Claimant does have other claims which are continuing in the Tribunal, so there is some reduction in hardship to him.

Strike Out and/or Deposit Order

82. I heard submissions from both parties.

83. Mr Davies for the Respondents initially argued only for a deposit order in relation to the Claimant's race discrimination complaints. However, before the Claimant made his own submissions, Mr Davies changed his argument to seek strike out of the Claimant's race complaints because, when the Claimant had clarified his race claim, Mr Davies said that the Claimant was unable to articulate any arguable claim race.

84. The Respondents sought deposit orders in to the Claimant's complaints against individual Respondents because the Respondents said that they were brought out of time.

85. They did not seek strike out or deposit orders in relation to the Claimant's whistleblowing or victimisation complaints because they conceded that these complaints were fact sensitive and needed to be decided at a final hearing.

86. I had defined the issues in the claim, with the Claimant at the previous hearing 10 December 2024 and the parties addressed all these complaints in their submissions. They also addressed the Claimant's 'failure to allow the Claimant to be accompanied' claim.

Law on Strike Out – No Reasonable Prospects of Success

87. An Employment Judge also has power to strike out a claim on the ground that it is scandalous, vexatious or has no reasonable prospect of success under *Employment Tribunal Rules of Procedure 2024, Rule 38(1)(a).*

88. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances, *Teeside Public Transport Company Limited (T/a Travel Dundee) v Riley* [2012] CSIH 46, at 30 and *Balls v Downham Market High School & College* [2011] IRLR 217 EAT. In that case Lady

Smith said: “The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word ‘no’ because it shows that the test is not whether the Claimant’s claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral recessions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospect”.

89. A case should not be struck out on the grounds of having no reasonable prospect of success where there are relevant issues of fact to be determined, *A v B* [2011] EWCA Civ 1378, *North Glamorgan NHS Trust v Ezsias*, [2007] ICR 1126; *Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly* [2012] CSIH 46.

90. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010.*

91. In approaching the evidence in a discrimination case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

92. In *Madarassy v Nomura International plc* 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865 and confirmed that the burden of proof in a discrimination case does not simply shift where the Claimant proves a difference in protected characteristic and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

93. The EAT restated in *London Borough Of Islington v Ladele* [2009] IRLR 15 at [40] that it may be that the employer has treated the claimant unreasonably. “That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. As Lord Browne-Wilkinson said in *Zafar v Glasgow City Council* [1997] IRLR 229: 'it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee that he would have acted reasonably if he had been dealing with another in the same circumstances.'

Deposit Order Law

94. If, at a Preliminary Hearing, an Employment Judge considers that and specific allegation or argument in a claim or response has little reasonable prospect of success, he or she may make an order requiring that party to pay a deposit not exceeding £1,000 as a condition of continuing to advance the allegation or argument, r40(1) ET Rules of Procedure 2024.

95. When determining whether to make a deposit order, a Tribunal is not restricted to a consideration of purely legal issues but is 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, [2007] All ER (D) 187 (Nov). Although, as Elias J pointed out in that case, the less rigorous test for making a deposit order allows a tribunal greater leeway to take such a course than would be permissible under the test of no reasonable prospect of success, the Tribunal 'must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response' (para 27).

Decision - Strike out

96. I struck out all the Claimant's complaints in relation to his dismissal, including unfair dismissal, notice pay, holiday pay, redundancy pay complaints.

97. I struck out his complaints of , "Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work".

98. I struck out all his race discrimination complaints.

99. I struck out all the complaints in relation to dismissal because it is agreed that the Claimant had not been dismissed as at 31 October 2022, when he presented his claim. It is agreed that he was not dismissed until 10 February 2023. Seeing that all those claims arose out of a purported dismissal which had not happened, they have no reasonable prospect of success.

100. I struck out the "Labour abuse and exploitation; bullying and hatred; long working hours and overload; other staff not attending work" complaints, because they are claims which do not exist in law and/or they are claims over which the Tribunal does not have jurisdiction. While the Claimant contended that the *Working Time Regulations 1998* relate to hours of work, he has given no particulars of how his working hours might be in breach of any provision of the Working Time Regulations. In reality, his complaint is of generalized 'overwork', as indicated by the "overload" element of this head of complaint. A claim of 'overwork', on its own, does not exist in law before this Tribunal.

101. Regarding his race discrimination complaint, I gave the Claimant a very long time to articulate his case on race discrimination. I asked him repeatedly in what way he said that the alleged detriments were related to race - or nationality or ethnicity. The Claimant initially said that he did not have Jordanian nationality at all, contrary to what he had pleaded in his claim; instead, he argued that he was Palestinian, and was not relying on his Jordanian nationality. About 20 minutes later, he said that he had a Jordanian passport and was Jordanian.

102. When I asked the Claimant to explain how his claim related to race, he said, "We have 4 groups plus the manager who was Emirati. Only the manager was Emirati. … The majority are from 1 nationality. A number of people are from Sudan. From Egypt, maybe 3. There are others are inside the workplace. People's relatives were appointed in the workplace. There is one group of 4 who are running the workplace."

103. When I asked again how he said that he had been subjected to any detriment because of race, the Claimant said, “I do a good job . It is not acceptable for them - the 4 people. Because I am hired by them… not all of them… they are older than me and I have got a higher salary than them. I raised whistleblowing which is very serious for them. When I said whistleblowing, I did not target them. This is a group, they decide to be against me so they can get rid of me. I am a decision maker in the workplace. My job is to control £20 million. No one could be running the business if they were not trusted. It is my reputation. When I raised the whistleblowing they decided that this will affect us as employment. This means that someone … they start deciding to get me out. They want to get me out because I raised salary increment.

The Emirati wanted to hire me. They want to come together. The manager has to collaborate with them. It is public interests act and victimisation it is everything. I can’t say why they hate me this way.”

104. When I again asked what his case was to do with race, he said

“When it is self evident they hate me. They are using their colour to offend others. I sought legal advice when they fired me from the workplace.

They put paid suspension against me, why. They raised against me false allegation of discrimination and harassment, to make it easy to dismiss me.

There are 3 and 4 people against me. We are different ethnicity. They are from one group – Egyptian and Sudanese are one country. Their accent is one. The Manager is Emirati and 3 others are Sudanese.

When return to workplace from covid, Hamid was sensitive. These people are using their ethnicity to offend others. I am someone –who is very strong confident – I have good relationship with everyone.”

105. The Claimant had the assistance of an interpreter throughout.

106. I considered that there was no reasonable prospect of a Tribunal finding that the Claimant had been treated less favourably because of race, including nationality.

107. The Claimant’s case actually appeared to be that he had blown the whistle, was younger and better paid and popular in the workplace, and that those were the reasons that he was subjected to detriments.

108. Insofar as he mentioned race at all, on considerable prompting to do so, he said that others in the workplace were from a variety of different countries – United Arab Emirates, Egypt, Sudan, and others.

109. Insofas as he was describing any link to race, he appeared to be simply saying that the other were from a different race/ nationality to the Claimant.

110. He did not point to anything other than the facts that there were racial or nationality differences between him and the other people in the workforce.

111. There was therefore absolutely nothing other than the fact of racial/nationality difference, on which the Claimant relied, in saying that he was discriminated against because of race.

112. In *Madarassy v Nomura International plc* 2007 EWCA Civ 33, [2007] ICR 867, the Court of Appeal confirmed that the burden of proof does not simply shift where the Claimant proves a difference in protected characteristic and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

113. There is no reasonable prospect of the Tribunal finding that the detriments were because of race simply because the Claimant's colleagues were of different races/ nationalities to him.

114. This is all the more so because the Claimant also said, variously, that he had been singled out because he was of one nationality, on the basis that, of the other employees, Indian and Sri Lankan people were the same because they "used to be one region" - and that Egypt and Sudan are the same and "their accent is one".

115. I considered that there was no reasonable prospect of a Tribunal finding such a sweeping generalization to be correct about India and Sri Lanka, given the wide range of ethnicities and languages in both countries. I also considered that there was no reasonable prospect of a Tribunal finding such a sweeping generalization to be correct about Egypt and Sudan and the accents in Egypt and Sudan, even if, as a matter of colonial history, Egypt and Sudan may have been governed as one administrative entity before their independence.

116. It is certainly not the case that people from these separate countries have the same nationalities and it is nationality upon which the Claimant bases his case.

117. More generally, the Claimant was unable to articulate any coherent case as to why the treatment of him was related to race in any way. This is in the context of the undisputed background to the claim being an investigation into a misdirected payment of £83,000 when the Claimant was employed as an accountant. The Claimant's complaints started following the investigation into this misdirected £83,000 in 2021, although he had been employed since 2015.

No Other Strike Out or Deposit Order

118. I did not strike out, or make deposit order in relation to, any other of the Claimant's claims.

119. The Respondent had contended that any failure to allow the Claimant to be accompanied at disciplinary hearings under *s10 ERI A 1999* was misconceived because there was no recognised Trade Union in the workplace.

120. However, under the provisions of s10 ERI A 1999

"(1) This section applies where a worker—

(a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
(b) reasonably requests to be accompanied at the hearing.

[(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

(a) is chosen by the worker; and
(b) is within subsection (3).
…

(3) A person is within this subsection if he is—

(a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992,
(b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or
(c) another of the employer's workers. … "

121. The right to be accompanied is not dependent on a Union being recognised, but on certification and training by the relevant Union. There was no basis for strike out on the Respondent's contentions.

122. I did not order that the Claimant pay a deposit as a condition of continuing to advance his allegations against the individual Respondents.

123. The Claimant's case is that the 4 individuals were responsible for creating the victimising state of affairs / protected disclosure series of acts, which he says existed throughout the period of detriment. I considered that neither strike out, nor a deposit order, was appropriate in relation to his claims against them. Whether there was such a discriminatory state of affairs, or series of acts, created by them, needed to be determined at a final hearing, after hearing all the facts.

_____

Employment Judge Brown

Dated: 7 March 2025

JUDGMENT SENT TO THE PARTIES ON

12 March 2025

.....

.....
FOR THE TRIBUNAL OFFICE