EMPLOYMENT TRIBUNALS

Claimant: Mr A Naghdi

Respondent: (1) C Legal LLP
(2) Clintons LLP
(3) Andrew Myers
(4) Andrew Sharland
(5) John Seigal
(6) James Nethercott
(7) Victoria Wood
(8) Peter ButtonBerkeley Edwards

Heard at: London Central (by CVP) **On:** 13-14 March 2025

Before: Employment Judge Heydon

REPRESENTATION:

Claimant: Represented himself
Respondent: Mr A Robson (Counsel)

PRELIMINARY HEARING IN PUBLIC
RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Strike out of claim

1. The respondent's application to strike out the claim under Employment Tribunal Rule 38(1)(a), on grounds that it has no reasonable prospect of success, is refused.

Strike out of response

2. The claimant's application to strike out all or part of the Respondent's response under Employment Tribunal Rule 38(1)(b), (c) or (e), because the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious; and/or the respondent has not complied with the Tribunal Rules or a Tribunal order; and/or it is no longer possible to have a fair hearing in respect of it, is refused.

REASONS

The Respondent's strike out application

1. The Respondent applied to strike out the whole Claim on the grounds that it has no reasonable prospect of success.

2. In order to determine this question, the Tribunal must first determine whether the claim does, in fact, have no reasonable prospect of success. If it decides that it does, it must then decide whether to exercise its discretion to strike out.

3. In order to decide the first question, the Tribunal must avoid a mini-trial of the facts. The facts pleaded by the Claimant must be taken at their highest. It is a high threshold for the respondent to cross, particularly in a case which is fact-sensitive. However, the threshold will be met if there is a fanciful – as opposed to realistic – prospect of success.

4. The claimant brings complaints of direct discrimination, harassment, victimisation and protected disclosure detriments.

5. The Respondent argues that the core of the Claim is that the Claimant was discriminated about on grounds of his race or religion; and that on the basis of the facts that the Claimant has pleaded, he has no prospect of establishing any discrimination. In his oral submissions, Mr Robson argued that there is nothing in the pleaded facts or the disclosure that shows that any of the Respondents' alleged conduct was because of or related to race or religion. The Respondent also pointed to evidence which has recently come to light which they say prove conclusively that certain key facts pleaded by the Claimant cannot be true.

6. On the first point, the Claimant has pleaded facts which he says demonstrates a discriminatory workplace said to favour white and/or Jewish people. It is not my role at this preliminary hearing to determine these facts. However, if he is able to establish them, it is possible that some of those facts could be sufficient to allow the Tribunal to draw inferences sufficient to establish primary evidence of discrimination. If the Claimant can reach that bar, then the burden of proof will shift to the Respondent to prove a non-discriminatory reason for the conduct (if proven).

7. On the second point I cannot make a finding of fact at this stage. Even if I could, and even if the Respondent is correct that the Claimant will not be able to prove those particular facts, it does not necessarily follow that his claim will fail.

8. Without conducting a full fact-finding exercise – which is for the Tribunal at final hearing – I cannot find that the Claim has no reasonable prospect of success, and so I refuse the application.

The Claimant's strike out application

9. The Claimant applied to strike out the Response on various grounds. He argues that the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious; and/or the Respondent has not complied with the Tribunal Rules or a Tribunal order; and/or it is no longer possible to have a fair hearing.

10. In support of these contentions, he points to alleged failures to comply with the Tribunal's disclosure order, intimidation of a witness and falsification of evidence. I shall take each point in turn.

11. Regarding disclosure, the Claimant points to the Respondent's failure to disclose to him a 2014 judgment of the High Court which he says is highly relevant to the case because he says that it contains findings which go to the credibility of one of the Respondents. He also points to a failure to disclose correspondence relating to the cancellation of the PAC code for the Claimant's mobile phone, which he says is relevant to the question of whether he preserved evidence in the form of Whatsapp messages.

12. The Tribunal made orders to both parties to disclose all documents which are relevant to these proceedings. It is not uncommon in Tribunal proceedings for there to be disputes at the margins as to whether or not a document is relevant or not.

Relevance can also be a moving target as the issues and lines of argument develop as a case progresses.

13. Regarding the High Court judgment, it is perhaps not surprising that the Respondents did not consider a 10-year old to be relevant at the time. I find that this was not a breach of the Tribunal's order.

14. Regarding the PAC correspondence, I can see why it may not have appeared directly relevant to the issues as the claim was originally articulated, and I find that this was also not a breach of the Tribunal's order. However, it has since become relevant.

15. I move on to the allegation of falsification of evidence, as this overlaps with the allegation of incomplete disclosure. The Claimant relies upon the fact that the Respondent disclosed to him an incomplete version of the minutes of the meeting at which it was decided to expel him. It was incomplete in that various sentences and paragraphs from different parts of the document had been deleted. He subsequently became aware of this when a fuller version indirectly came into his possession.

16. The Respondent says that the document in question had been redacted as it contained parts which were covered by legal professional privilege. The Claimant does not agree that it was privileged. The shorter document contained no indication that parts had been redacted. Other partially-redacted documents disclosed by the Respondent consist of the original document with certain parts blacked out, so that the Claimant is aware that certain parts are being withheld.

17. The Employment Tribunal Rules do not contain any specific provision as to how redaction should be done. I note that in civil proceedings, the Civil Procedure Rules provide for parties to provide a list of all documents, including those which they are entitled to withheld, and to be transparent about the basis on which they say they are entitled to do so. The CPR do not apply in this Tribunal, but there is good reason why similar transparency is important.

18. The Tribunal's order was for the parties to disclose all relevant documents. Although it did not expressly say so, the Respondent was entitled to withhold documents, or parts of documents, which were protected by privilege. What it did instead was to withhold a whole document which was only partially privileged, and create a new one made up of (what it says are) the non-privileged parts of the original, which it disclosed. This was not in compliance with its disclosure obligation.

19. I turn to the allegation of witness intimidation. The Claimant alleges that the Respondent attempted to intimidate a former employee of the Respondent who the Respondent was aware was planning to give evidence in these proceedings on behalf of the Claimant. The former employee now no longer intends to appear as a witness. The Claimant says that there were two particular instances of intimidation. The first was a thinly-veiled suggestion that they might report the former employee to the SRA following a data subject access request by the former employee. The second was writing directly to the former employee after they had expressly asked not to be contacted, requesting that they preserve evidence for their use in this litigation which they might subsequently request be disclosed; and suggesting that they intended to give evidence which was untrue.

20. I can see why the former employee might have regarded both letters as unnecessarily aggressive and intimidating. The hint that they might report the former employee to the SRA was in my view an overreaction and poorly judged. The request to preserve evidence was a legitimate request, but again, done using heavy-handed language and unnecessary thinly veiled threats of regulatory action. I find that this did amount to unreasonable conduct. If a party believes that a witness might give evidence that is untrue, the proper manner to deal with that is to challenge it through cross-examination.

21. Having found that there was one breach of the Tribunal's disclosure order and an instance of unreasonable conduct, the Tribunal does have discretion under rule 38(1) to strike out the Response. I must decide whether to exercise that discretion, having regard to the overriding objective. In doing so, I consider whether to grant the very final remedy of strike-out would be proportionate to the prejudice suffered and whether a fair trial is still possible. I also bear in mind that strike out is not intended to be a punishment.

22. Regarding the redaction issue, I bear in mind that the Claimant has the full document available to him (albeit by chance) and so this will cause him no prejudice at the final hearing. Regarding the conduct in relation to the former employee, I bear in mind that it is not completely clear whether the former employee would definitely have given evidence had the Respondent conducted itself better. It appears from the correspondence that the former employee would prefer to put this matter behind them, although I accept that there is a real possibility that the Respondent's conduct will have had some bearing on their decision.

23. I also bear in mind that there are significant amounts of documentary evidence available in this case and that the former employee probably will not be the sole

source of the type of evidence that the Claimant would have hoped them to put forward.

24. Considering all of these factors, I conclude that a fair trial is still possible and that strike out would be a disproportionate response. I therefore reject the application.

Employment Judge Heydon
21 March 2025

Judgment sent to the parties on:

9 April 2025
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For the Tribunal:

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