



EMPLOYMENT TRIBUNALS

Claimant: Ms I Cetin

Respondent: 1. Mr D.E
2. Mr B.C
3. A Limited

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Watford Employment Tribunal
On: 18 March 2025
Before: Employment Judge French

Representation

Claimant: In person
Respondent: No attendance

JUDGMENT

1. The claim is dismissed pursuant to rule 28 of the Employment Tribunal Procedure Rules 2024.

REASONS

Introduction

1. The matter was listed before me pursuant to Rule 28 of the Employment Tribunal Rules of Procedure 2024 (ET rules). On 4 September 2024, notice was sent to the parties indicating that the Judge was considering dismissing the claim under what was rule 27 but what is now rule 28 (as there has been an update to the rules since the notice was sent.) I explained to the claimant that the rule number had changed, but its substance had not.
2. The effect of that rule is that, if the Tribunal considers that there is no jurisdiction to consider the claim or part of it, or that the claim or part of it has no reasonable prospects of success, it must set out its reasons in a notice, which was done on 4 September 2024. The notice gave the parties an opportunity to respond, and Ms Cetin replied on 9 October 2024. Following receipt of the claimant's representations, this hearing was fixed for the purposes of determination of that issue.
3. The respondents did not attend the hearing and were not required to do so.

4. Oral reasons were given at the hearing and in accordance with rule 60 the claimant requested written reasons of the decision. I have therefore issued the Judgment with those written reasons. I apologise for the delay in providing the reasons owing to a period of leave.

Evidence

5. I had a bundle prepared from the claimant consisting of 105 pages. I also had a skeleton argument that she had prepared which consisted of 14 pages. I had regard to the same and I also had regard to the written representations that she sent in originally on 9 October 2024.
6. During the hearing I heard further oral submissions from Ms Cetin. I also asked her some questions to help me to better understand her position where clarification was needed.

Background

7. By way of a very brief history (because the history is extensive and need not be repeated fully here for the purposes of my decision), the claimant made a claim against these respondents under case number 3325658/2019 which was dismissed. She later issued another claim against a different employer (case number 2200219/2020) in which she named the respondents in these proceedings. She issued a further claim against these respondents under case number 3311537/2002. The claimant was unsuccessful in both claims made against these respondents.
8. In both previous claims, restricted reporting and anonymity orders were made. The claimant maintains that these orders should not have been granted and has appealed the decisions.
9. This claim primarily concerns two complaints; that is the respondent reporting the claimant to the police for breach of those previous anonymity orders; and secondly that enforcement action was taken against Ms Cetin in the County Court relating to a costs order made in previous proceedings.
10. The claimant states that these two acts are victimisation, harassment on the grounds of sex and race and breach of contract and brings this claim on that basis.
11. In clarifying the victimisation complaint as a preliminary point in these proceedings, the claimant relies on issuing the previous claim against the respondent as a protected act and says that the new acts by the respondents (as outlined in paragraph 9) are ongoing acts of victimisation. In addition, she states that her appeal to the Employment Appeal Tribunal in relation to the previous claims constitutes a further protected act, which has led to the additional acts of victimisation.
12. I am otherwise satisfied that her complaints are outlined fully in her ET1 and in her response to the notice sent on 4 September 2024.

The law

13. Rule 28 of the ET rules states as follows:

28.—*(1) If the Tribunal considers either that it has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, it must send a notice to the parties—*

(a) setting out the Tribunal's view and the reasons for it, and

(b) ordering that the claim, or the part of it, is to be dismissed on such date as is specified in the notice unless before that date the Tribunal has received written representations from the party advancing the claim explaining why the claim, or part of it, should not be dismissed.

(2) If the Tribunal has not received written representations before the date specified in the notice under [paragraph \(1\)\(b\)](#), the claim is dismissed without further order and the Tribunal must write to the parties to confirm what has occurred.

(3) If the Tribunal receives written representations before the date specified under [paragraph \(1\)\(b\)](#), the written representations must be considered by the Tribunal, who must either permit the claim, or part of it, to proceed or fix a hearing for the purpose of deciding whether it should permit the claim, or part of it, to do so. The party responding or replying to that claim may, but need not, attend and participate in the hearing.

(4) If the claim or any part of it is permitted to proceed, the Tribunal must make a case management order.

Burden of proof

14. Section 136(2) Equality Act 2010 provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred; and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision.

15. In the case of Igen Ltd v Wong [2005] ICR 931, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place (on the balance of probabilities). If so proven, the second stage is engaged, whereby the burden then 'shifts' to the respondent to prove on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground. The consequence is that the claimant will necessarily succeed unless the respondent can discharge the burden of proof at the second stage. However, if the claimant fails to prove a "prima facie" case in the first place then there is nothing for the respondent to address and nothing for the Tribunal to assess Ayodele and Hewage.

No reasonable prospect of success

16. In relation to 'no reasonable prospect of success' outlined in rule 28 above, this test also applies under the strike-out provisions in rule 38 of the ET rules. As such the case law applicable to strike out provisions are also relevant to the

determination under rule 28. It is not enough to say that the claim is unlikely to succeed. There must be 'no' reasonable prospect of success Short v Birmingham City Council and ors EAT 0038/13.

17. In Anyanwu and anor v South Bank Student Union and anor (Commission for Racial Equality intervening) 2001 ICR 391, HL, the House of Lords emphasised how important it was not to strike out discrimination claims, except in the most obvious cases, because they are generally fact-sensitive and require full examination to make a proper determination. The Court of Appeal in Ezsias v North Glamorgan NHS Trust 2007 ICR 1126, CA stressed that it will only be in an exceptional case that an application will be struck out as having no reasonable prospect of success when the central facts are in dispute.
18. It is recognised that an employment tribunal's power to strike out is a draconian measure, and case law in this area has repeatedly emphasised that the power should be exercised only in rare circumstances. That said, there are cases where a strike-out order will be appropriate. In Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT, the EAT observed that 'no-one gains by truly hopeless cases being pursued to a hearing'.

Breach of contract

19. The contractual jurisdiction of employment tribunals is governed by S.3 of the Employment Tribunals Act 1996, together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623. A contractual claim can only be heard by a tribunal under these provisions where the claim arises or is outstanding on the termination of the employee's employment and relates to any of the following: (i) a claim for damages for breach of the contract of employment or other contract connected with employment; (ii) a claim for a sum due under such a contract; or (iii) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract — Article 3 of the Order and S.3(2) ETA.

Conclusions

Breach of contract

20. In relation to the breach of contract complaint, the claimant states that this is a breach of an ongoing duty of trust and confidence. The breach of trust is that the respondents have reported an alleged breach of the anonymity order to the police and taken enforcement action against the claimant in relation to the costs award made in the previous proceedings.
21. The claimant has taken me to the case of Onu v Akwiwu and others UK EAT/0283/12/RN. The claimant relies on that to suggest that there is an ongoing duty of trust and confidence which continues post-employment. I consider that case is relevant to a victimisation complaint in that it confirms that there can be ongoing acts of victimisation when the relationship between the employee and the employer has ended. This case does not establish that the Tribunal has jurisdiction to hear a complaint of breach of contract arising after the employment relationship ended.

22. The claimant's employment ended on 30 June 2017. The alleged breaches of contract occurred in November 2023 and March 2024. Therefore, even taking the claimant's case at its highest, that there has been a breach of trust and confidence in relation to the two complaints these were not arising on or outstanding at the time of termination because they occurred some years after the claimant's employment terminated.
23. In those circumstances the tribunal does not have jurisdiction to hear the complaint. I therefore dismiss this complaint under rule 28 on that basis.

Victimisation and harassment

24. In relation to the victimisation and harassment complaints, the acts complained of are the same two incidents identified above; that is reporting the claimant to the police for breach of the previous anonymity orders; and the enforcement of a costs order which relates to a costs order against the claimant that was made by a previous employment tribunal.
25. I have not been taken to any evidence in relation to the report to the police but take the claimant's case at its highest that this was made. She was informed of the complaint on 29 December 2023 and later discovered that it was made on 22 November 2023.
26. What is clear from the claimant's ET1, her written representations and during the course of the hearing today is that the claimant does not agree with the anonymity orders that are in place in relation to the previous proceedings and disagrees that they are enforceable in any way. She has taken me to a number of extracts where she says the Employment Tribunal has named the individuals subject to the anonymity orders either in judgments or orders which she says clearly supports her position that there cannot be a breach of those orders when the names are a matter of public record in any event.
27. The claimant has expressly invited me to make the finding that there cannot have been a breach in those circumstances and the respondent therefore had no reasonable grounds to report her to the police. In turn, this would support that the act was a further act of victimisation and/or harassment. I do not consider that it is necessary for me to make any such finding in relation to the determination of the matters before me because for the purpose of this Tribunal, even if the claimant disagrees with the previous orders, those orders stand. I understand that the claimant has appealed those orders to the Employment Appeal Tribunal and, indeed, the matter is now with the Court of Appeal.
28. Notwithstanding those appeals, the orders still stand and did so at the time the respondent made the allegation to the police. I consider that the respondent is entitled to report to the police any alleged breach of that order regardless of whether the claimant considers that there cannot be a breach in the circumstances she outlines. The simple fact is that the order stands.
29. The claimant points to the timing of the report to the police in support of the fact that this was an act of victimisation. She says the report to the police was made on 22 November 2023 which was the exact same date that the parties received an appeal hearing notice from the EAT with a listing for a hearing. The claimant states that her appeal to the EAT is her most recent protected act and therefore the timing of the police report supports that this was because of that protected

act.

30. I am not persuaded, even if the police report was made on the same day as the letter from the EAT with a hearing date, that that is evidence that the report was because of the claimant's protected act(s). That is because the claimant accepts that the respondent was aware of the appeal prior to the hearing notice sent on 22 November 2023 so it was not the first time that they became aware of it.
31. Indeed, in the bundle provided by the claimant for this hearing, at pages 69 to 71 I can see correspondence from the EAT which sets out to the parties their reasons for listing a hearing on arguable grounds back in June 2023 and therefore some months prior to the report to the police. In those circumstances, I am not persuaded that there is a close proximity between the protected act and the report to the police such that it supports the claimant's position that her appeal to the EAT was the reason the report to the police was made.
32. I conclude in those circumstances that there is no reasonable prospect that the Tribunal will decide that there are facts from which the Tribunal could conclude that the report to the police was motivated, even partially or subconsciously by any protected act, rather than being solely motivated by a desire that the terms of the previous anonymity order be adhered to.
33. I draw that conclusion, regardless of the claimant's view that the anonymity orders are ineffective because individuals in it are named in previous Judgments and orders. Even if those individuals are already named, in my judgment, it does not take away from the fact that the respondent's motivation here is to ensure that an order that is in force is adhered to. I am not satisfied on the claimant's case that there are any facts from which the Tribunal would conclude that the motivation was in fact the claimant's protected act (victimisation) or that the report to the police was made because of the claimant's race or sex (harassment). In those circumstances I am satisfied that the complaint has no reasonable prospect of success.
34. In relation to the respondent taking enforcement action against the claimant, the claimant states that her complaint is not that the respondents enforced the order, which she now accepts they were entitled to do and which would not therefore be an act of victimisation or harassment, but rather it was the manner of the enforcement that amounted to victimisation or harassment.
35. As to the enforcement itself in her ET1 and written representations the claimant took issue with the fact that enforcement action was taken prior to her appeal having been concluded. The fact that there was an ongoing appeal process however does not mean that the respondent is not entitled to take action on a Judgment of the Tribunal for costs. The order stands until it is successfully appealed.
36. The claimant further states that the enforcement action was done so fraudulently because the way the application was made meant that the costs order was enforceable in her favour; effectively it had been made in her name and as such she has since been able to have the order set aside. I consider that the circumstances around how that enforcement action was taken are matters for the County Court.
37. Even if the enforcement action was taken or dealt with in this way I do not

consider that the claimant has produced anything from which a tribunal would conclude that this act was done because of a protected act or any protected characteristic rather than the desire to enforce an order of a previous employment tribunal. In fact to the contrary, on the claimant's account the way the order was enforced has meant that she has been able to get the decision of the county court set aside. I cannot see how this would support that it was an act of harassment or victimisation when ultimately there has now been a favourable outcome for the claimant in relation to the enforcement decision.

38. In her ET1 she says this enforcement action was taken on 18 March 2024. The claimant's most recent protected act is said to be her appeal which was made in March 2023. The respondent had therefore been aware of the appeal for some time prior to taking the enforcement action. Even if every point stated by the claimant is factually correct, I conclude that there is no reasonable prospect of the claimant proving facts from which the tribunal would conclude that this was motivated even partially or subconsciously by any protected act or the claimant's sex or race rather than being solely motivated by a desire to enforce the costs award.
39. In those circumstances, I consider that there are no reasonable prospects of success in relation to the complaints of victimisation and harassment because I consider that even taking the claimant's case at her highest that those things were done, there are not facts from which the tribunal would conclude that those acts related either to any protected act or as acts of harassment due to her sex, or race.
40. I am satisfied that on careful consideration of the complaints, even if factually true, were no more than steps taken by the respondent following the course of litigation to enforce previous tribunal orders and in those circumstances conclude that the claim has no reasonable prospect of success. For those reasons, the claimant's claim is dismissed under rule 28.

Anonymity order

41. I will turn finally to the anonymity and restricted reporting orders in relation to these proceedings. These was made by Employment Judge Alliot on 10 December 2024
42. The claimant asked for reconsideration of Employment Judge Alliot's anonymity and restricted reporting orders in these proceedings and had expected it to be dealt with by me at the hearing. I can see that that application appears in the claimant's bundle at page 53 and is dated 14 January 2025. The application in the bundle is the is the first time I have had sight of it; it is not currently on the tribunal's paper file for reasons that I am not able to offer any insight in relation to save for it may be an administrative delay in terms of processing.
43. These are orders not a Judgment and as such I consider that re-consideration under rule 70 of the ET rules would not apply.
44. Rule 30 of the ET rules does allow me to look at a previous case management order and vary, suspend, or set aside where it is necessary in the interests of justice. To the extent that the claimant seeks to vary or set aside the case

management order pursuant to rule 30, the term 'necessary in the interests of justice' is interpreted as outlined in the case of Serco and Wells UKEAT/0330/15/RN.

45. In neither her written application nor her oral representations has the claimant suggested that there has been a material change in circumstances such that it is in the interests of justice to vary or revoke the order. The claimant appears rather to simply disagree with the reasons why the order was made.
46. If the claimant disagrees with the order, she may appeal the same to the EAT and she indicates that she has indeed already done so.
47. Separately, I have asked the administration team to forward the claimant's application to EJ Alliot for his separate consideration as a re-consideration request as he deems necessary albeit my comments at paragraph 44 are likely to remain relevant to this.

Approved by:

Employment Judge French

28 April 2025

JUDGMENT SENT TO THE PARTIES ON

29 April 2025

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FOR THE TRIBUNAL OFFICE