EMPLOYMENT TRIBUNALS

Claimant: Ms O A Ajiga

Respondents: Northampton General Hospital NHS Trust

RECORD OF A PRELIMINARY HEARING

Heard at: Cambridge (in public) **On:** 27 March 2025

Before: Employment Judge Tynan (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Mr D Brown, Counsel

PRELIMINARY HEARING IN PUBLIC JUDGMENT

(1) Employment Judge Tynan declines to recuse himself from continuing to be involved in the proceedings.

(2) The Claimant's claim is struck out pursuant to Rule 38(1)(a) and (b) of The Employment Tribunal Procedure Rules 2024 because the claim has no reasonable prospect of success and because the manner in which the proceedings have been conducted has been scandalous and unreasonable.

REASONS

1. Of my own initiative, I directed that there should be a public preliminary hearing to consider whether the claim should be struck out, alternatively whether the Claimant should be ordered to pay a deposit as a condition of continuing with the claim or any part of it. As I explained to the Claimant at the start of today's hearing, I was troubled by aspects of her conduct on 4 October 2024 and by comments she has made in subsequent correspondence and documents submitted to the Tribunal. It has raised questions in my mind as to the merits of the claim.

2. As on 4 October 2024, the Claimant was late joining today's hearing. I invited Mr Brown to make his submissions first so that the Claimant would have the opportunity to hear what the Respondent had to say in the matter. The Claimant complained early on in the hearing that I had permitted Mr Brown to make two lots of representations without hearing from her. Her concerns are not well-founded. Mr Brown started by indicating how he intended to structure his submissions, which I summarised back to the Claimant, before he went on to develop his submissions in more detail. I did not therefore give him an advantage over the Claimant. Indeed, the Claimant was afforded slightly more time than Mr Brown for her submissions and, of course, had the benefit of hearing what he had to say before she set out her own position.

Recusal

3. During the hearing on 4 October 2024 I declined to recuse myself from the proceedings. The Claimant has never asked for written reasons of that decision. She renewed her application today. It is not necessary in the interests of justice that I re-visit my previous decision. The only suggested material change of circumstances since last year is that the Claimant has appealed against my decision on 6 January this year (communicated to the parties on 23 January 2025) to refuse her request for the final hearing to be by CVP or in a hybrid format to facilitate her remote attendance.

4. The leading case on the test for bias is the House of Lords judgment in Porter v Magill 2002 2 AC 357, HL. Impartiality requires not only that the Tribunal is independent and free from actual bias but that it must also be free from apparent bias. In that regard, the Tribunal must consider whether the circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the Tribunal was biased. An informed hypothetical observer is someone in possession of the relevant facts and circumstances. The fact of an appeal is not in and of itself reason for a judge to recuse themselves from a case – Locabail (UK) Ltd v Bayfield Properties Ltd and other cases 2000 IRLR 96, CA – though, as I have done previously in respect of the other matters raised by the Claimant, faced with a recusal application, a judge clearly must engage with any specific allegations of bias or appearance of bias. The Claimant makes various assertions in her application for a CVP or Hybrid hearing, including:

> "Venue and location of et venue in Cambridgeshire county, is to me a county of silent subtle evils and I want to stay clear of this from my in-person experiences since 2021 and my encounters with people there til date."
>
> "The et judges obviously hate me and I am concerned for my life that they are bent on exterminating me from their antecedents …"
>
> "… I am increasingly concerned for the safety of my right to live life in a bid to appear at Cambridgeshire et by judges who don't consider me to be a human being with equality of rights with Caucasians".

The latter comment can only refer to me, since I am the only judge to my knowledge who has listed an in-person hearing in Cambridge.

5. In the same application, the Claimant referred to an in-person hearing at Cambridge as an "ambush" and inferred that my decision to list it in-person was part of a conspiracy involving, amongst others, the "deep state" (paragraph 17 of her application). In the course of today's hearing, the Claimant also asserted that it was "very discriminating of you to ask about my mental health".

6. The Claimant's various assertions are just that, bald assertions unsupported by facts or evidence. The Claimant pointedly refused to say whether I am one of the lying judges referred to in her application who she says obviously hate her.

7. A fair-mined and reasonably informed observer would conclude that there is no basis whatever for me to recuse myself, that I have not done or said anything that might reasonably lend an appearance of bias or give rise to a real possibility of bias. They would also regard as fanciful the Claimant's suggestion that I am part of a conspiracy. As regards the suggestion that I don't consider the Claimant to be a human being with equal rights to Caucasians, I believe an observer would regard the allegation as entirely without merit.

Strike out

8. As I have noted already, Mr Brown submits that the claim should be struck out on two grounds, namely, that the manner in which the proceedings have been conducted has been scandalous or vexatious or unreasonable (Rule 38(1)(b)), alternatively because the claim has no reasonable prospect of success (Rule 38(1)(a)). I shall deal with these matters in the same order.

9. 'Scandalous' in the context of the predecessor to Rule 38(1)(a) has been said to mean the abuse of the privilege of legal process in order to vilify others or give gratuitous insult to the Court – Venice v Southwark London Borough Council 2002 ICR 881 CA. A 'vexatious' claim has been described as one that is not pursued with the expectation of success but to harass the other side or out of some improper motive – ET Marler Ltd v Robertson [1974] ICR 72 NIRC – though includes anything that is an abuse of process. In Attorney General v Barker [2001] FLR 759 QBD (Civ Div), Bingham LCJ said that the hallmark of vexatious proceedings are that they have little or no basis in law, and the effect of which is to subject a defendant to inconvenience, harassment and expense out of proportion to any gain to be derived to the Claimant. The expressions effectively have the same meaning under Rule 38(1)(b), though a claim may additionally be struck out pursuant to Rule 38(1)(b) where the proceedings have been conducted unreasonably, even if there are arguable issues to be determined by the Tribunal.

10. Regardless of whether a party's conduct is scandalous, vexatious, or unreasonable, save in very limited circumstances, the Tribunal must

additionally ask itself whether a fair trial is no longer possible and, if so, whether strike out would be a proportionate response to the conduct in question – Bolch v Chipman [2004] IRLR 140, adopted by the Court of Appeal in Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684 in which Sedley LJ described the power as a draconic one, not to be readily exercised. He described Mr James as "difficult, querulous and uncooperative in many respects" before going on to observe,

> "The Courts and Tribunals of this Country are open to the difficult as well as compliant, so long as they do not conduct their case unreasonably".

11. In my judgement, the Claimant's conduct of these proceedings has been scandalous and unreasonable. My record of the hearing on 4 October 2024 confirms that the Claimant conducted herself unreasonably on that occasion. I described her conduct as disruptive and rude, and that she directly challenged my authority, including by talking over me. Her sweeping statement that people in the UK are dishonest and lie could be said to be scandalous. Her conduct today was particularly egregious and went beyond Sedley LJ's description of Mr James in the Blockbuster Entertainment case as a difficult, querulous and uncooperative individual. As the hearing progressed, the Claimant embarked upon what can only reasonably be described as a tirade. By the point at which I insisted upon taking a break at approximately 11.15am, the Claimant was shouting at me. Her conduct of the hearing had become unpleasant and abusive. She pointedly referred to me, Counsel, the Respondent's representatives and others as white or Caucasians. As I say, she asserted that I was discriminating against her without providing any explanation as to why that might be the case, and referred to me a number of times as an "activist judge". She referred to Employment Judge L Brown as a "racist, Caucasian judge" and accused the judge of having "lied against me". She was giving gratuitous insult to the Tribunal and using today's hearing as a platform to vilify and heap further abuse upon Employment Judge L Brown who has not been involved in these proceedings.

12. The Claimant's conduct extended to Mr Brown and his instructing solicitors. She accused Mr Brown of pulling faces. The allegation was entirely without foundation. Mr Brown's conduct of the hearing was impeccable. She directed entirely gratuitous comments towards him as to the quality of his brief and advocacy, and she accused him of "Caucasian privilege". I regard her various comments as scurrilous.

13. As regards Mr Brown's instructing solicitors, the Claimant asserted without foundation that technical issues she had experienced in trying to access today's hearing bundle were caused deliberately by the solicitors and she attributed this to the fact they were Caucasian. She asserted that "liars become lawyers". Mr Brown drew my attention to an email from the Claimant to the Tribunal dated 26 February 2025, but addressed to Mr Cerutti of his instructing solicitors in which she had accused Mr Cerutti of having,

> "undue control of the uk Caucasian judges knotted to your apron strings."

She went on to say in her email:

> "Where your rights ends, mine begins. You can't subvert the trite principles of natural justice, fair hearing, fairness, equity and good conscience by the very fact that you are a Caucasian. Being a Caucasian is not the Rule of Law."

14. The Claimant's conduct today reflects how she has expressed herself in documents and correspondence. Mr Brown took me to paragraphs 1, 4, 13, 14, 16, 17, 19 and 20 of the Claimant's application dated 11 October 2024, in which she asserts that: my decision to list the final hearing in-person is because of her "status as a NIGERIAN/AFRICAN claimant in-person"; UK judges falsely accuse her of talking over them and "lie against claimants in-person and me in my status as a Nigerian immigrant"; ET judges have a hatred of her; I have tagged her as having mental health issues because she has pursued complaints to the JCIO; Employment Judge L Brown lied by falsely accusing her of using words she had not used and was guilty of "unethical wickedness" in denying her an interpreter in other proceedings; there was no gainsaying that she would not have been denied a CVP hearing had she been Caucasian.

15. In an email to the Tribunal dated 23 January 2025, the Claimant asserts that I am "hell bent on harming" her and that my decision to list an in-person final hearing was malicious.

16. I agree with Mr Brown that were the Claimant to use the language and labels she has deployed in these proceedings in a work setting, it would amount to race harassment. She created an unwanted, hostile environment for all those who attended today's hearing.

17. This is an exceptional case in which the Claimant's conduct has been so egregious that it is not strictly necessary for me to ask myself whether a fair trial is no longer possible and, if so, whether strike out would be a proportionate response to the conduct in question. Nevertheless, I shall address those further considerations for completeness. In my judgement, a fair trial is no longer possible. The Claimant's conduct today and on 4 October 2024, as well as in the intervening period, evidences both that she is unmanageable and that she will continue to behave in this way at the final hearing if it goes ahead. During today's hearing the Claimant pointedly refused to answer a number of my questions. As to whether she was asserting that I am one of the "lying" judges referred to in numbered paragraph 13 of her application of 11 October 2024, she was emphatic that she would not address this until I submitted to her questions of me. She has shown herself to be disruptive and rude, indeed belligerent and abusive. She either has no insight as to her conduct or does not care: she said today that she does not "give a hoot whatever anyone thinks of me". I find that extends to believing that she is unaccountable for her behaviour or any offence she causes. I noted following the hearing in October last year that the Claimant had exclaimed "Jesus Christ!". She issued the same words, in a similarly angry fashion today when I took a 10 minute break at 11.15am. It shows that she will not take on board what is said to her and moderate her behaviour accordingly. I have no

confidence at all as to her future conduct, indeed I am certain that she will continue to behave scandalously and unreasonably if she is permitted to continue with her claim. I do not think the judge, members, counsel or any witnesses should be expected to endure such behaviour at the final hearing. I cannot see how the judge in particular, will be able to effectively manage the hearing, amongst other things in a way that ensures that witnesses are not abused or intimidated or subjected to a hostile, degrading and offensive environment, and that the Tribunal's authority is respected and upheld.

18. Regrettably, I cannot identify a less draconian alternative to striking out the claim. In my judgement, no orders I can make will address the impact of the Claimant's conduct to date and likely future conduct. I cannot offer the Respondent, its representatives or witnesses any assurances in respect of the Claimant's future conduct. On the contrary, she will almost certainly continue to act impulsively, unpredictably and abusively, as she demonstrated today.

19. I have given thought to whether the Respondent's witnesses might give their evidence remotely by CVP, but this will not protect them against the Claimant's belligerent approach or her use of abusive and discriminatory language.

20. I have considered whether it would be proportionate to prevent the Claimant from cross examining the Respondent's witnesses, or to limit her to asking them questions that have been submitted in writing in advance. Whilst cross examination provides a party with the opportunity to test the evidence of a witness, it is equally an opportunity for that witness to establish their credibility and veracity in the eyes of the Tribunal. Limiting cross examination in the way I have described might serve to undermine both parties' fair trial rights. In any event, such an approach will still not prevent the Claimant from acting as she has done since 4 October 2024 at the final hearing.

21. Short of striking out the claim on the grounds that the Claimant's conduct has been scandalous and unreasonable, the only other power obviously available to me would be to make a deposit order with a view to deterring the Claimant from pursuing allegations and arguments with little reasonable prospect of success. However, given what I have observed to date in terms of the Claimant's conduct and that she does not give a hoot what others think, I think it highly unlikely that a deposit order would prevent or deter similar conduct in the future, any more than my case management order of 4 October 2024 succeeded in persuading the Claimant to reflect on how she was conducting the proceedings.

22. Furthermore and in any event, in my judgement the claim has no reasonable prospect of success rather than merely little reasonable prospect. I agree with Mr Brown that the Claimant's conduct of the proceedings strikes at the heart of her credibility and, more pertinently, at the heart of her claim to have been discriminated against. As today's hearing starkly illustrates and the Claimant's email of 11 October 2024 evidences, the Claimant is pre-occupied with her own and others' race, and is inclined to immediately attribute a racial motive to anything that is disagreeable to her, including for example my enquiries as to

her mental health and wellbeing. Her documents and correspondence are littered with gratuitous references to race. She evidently believes that there is something bigger in play, namely that lying Caucasian judges are conspiring with a government establishment and the so-called 'deep state' to deny her justice as a claimant of Nigerian/African racial origin. That assertion has no real-world basis to it. I am of the view that her claims against the Respondent are unfounded for the same reasons. It is not necessary in that regard for me to speculate further as to whether her perception as to how she was treated by the Respondent, what she referred to a number of times during the hearing as "her reality", is the manifestation of a mental health condition. Whatever her reasons for making the allegations that she does, they have no reasonable prospect of success. Any adjustments that I or another judge might reasonably seek to make to accommodate any health issues affecting the Claimant (which she adamantly denies) will not result in any change to how she conducts these proceedings.

23. For all these reasons the claim shall be struck out.

Approved by:

Employment Judge Tynan

Date: 28 March 2025

Sent to the parties on:

1 May 2025

For the Tribunal: