EMPLOYMENT TRIBUNALS

Claimant: **Mr Nickque White**

Respondent: **SE Trains Limited**

Heard at: London Central (by CVP) **On:** 5 & 6 June 2025

Before: Employment Judge Emery
Dr J Holgate
Ms M Pilfold

REPRESENTATION:

Claimant: In person
Respondent: Mr M White (counsel)

JUDGMENT

The unanimous judgment of the Tribunal is that the claim is dismissed under Rule 47 of The Employment Tribunal Procedure Rules 2024

REASONS

1. This hearing was listed to take place for 6 days, on 5, 6, 9, 10, 11 & 12 June 2025. The majority of the morning of the first day was spent by the tribunal reading case-related documents (pleadings, witness statements and other relevant documents) and the various applications of the parties.

2. In the afternoon, we discussed adjustments the claimant may need for the hearing, on the basis that he describes himself as disabled. The main issue for the claimant was acute pain following a car accident, for which he is on medication and has difficulty walking and travelling. The tribunal suggested regular breaks (at least every hour); also, if the claimant needed a break he

should ask, and it would be given. The claimant said he was happy with these adjustments, and there were breaks including one on his request during the afternoon session.

3. We discussed the parties' applications. The first was an application by the respondent for anonymity of two individuals who were not witnesses but who are relevant, the respondent says, to the issues in the claim: one of the individuals had made sexual misconduct allegations against the claimant. The anonymity application succeeded for reasons which were given at the hearing, and an Anonymity Order has been sent to the parties.

4. We next addressed the claimant's various applications. They are:

    a. An application to strike out the respondent's defence on the basis the respondent had not complied with the Tribunal's Orders on disclosure

    b. An application that the respondent be refused to rely on its witnesses' statements on the basis that they were served late,

    c. An application that the respondent not be allowed to adduce evidence in relation to an alleged act of sexual misconduct at work (which the respondent says was one of the reasons the claimant was dismissed), on the basis that related criminal proceedings were subject to an appeal by him to the Court of Appeal and he would be prejudiced in this case if the respondent's defence to the claim were allowed.

5. The applications failed for the following reasons:

<u>Respondent's witness statements:</u>

6. The principal reason given by the claimant is that the respondent did not comply with an order for disclosure of statements by 20 March 2025; in fact, statements were not given by the respondent until 29 May 2025.

7. The respondent says that the claimant did not contact its lawyers at all between 20 March 2025 and 29 May 2025. It wrote to the tribunal explaining this. It says that it sought to agree a date for exchange of statements, but the claimant did not respond. When he did, on 29 May 2025, it served its statements.

8. The tribunal accepted that it appeared the main reason why statements were not exchanged is because the claimant did not cooperate with the respondent who was corresponding with the claimant on this issue during this period. The respondent was entitled to await the claimant's response on exchange of statements. We see little prejudice to the claimant, who is fully aware from the disciplinary process what the various witness's involvement was. He failed to

engage in the witness statement exchange process. He has the statements for 5 working days prior to this hearing. This application fails.

Alleged disclosure failings by the respondent

9. The claimant relies principally on an email he sent to the respondent dated 13 September 2024 seeking "all emails" sent to his work and personal email address from April 2019 to date.

10. The respondent says it had complied with its disclosure obligations to disclose relevant and potentially relevant documents, whether helpful or unhelpful to its case (see the terms of the "Documents" Order sent to the parties on 25 September 2024).

11. We accept that the claimant's email of 13 September 2024 engages in what lawyers call a 'fishing expedition', that the claimant's email seeks all documents which referred to him, whether or not they are relevant to the issues in the case.

12. The Tribunal explained to the claimant in some detail which documents the respondent was obliged to disclose, that unless the claimant can point to specific disclosure he requires – i.e. documents he thinks exist and are relevant – he is not entitled to request 'all emails'; that the test for disclosure is not whether documents may refer to him, but their 'relevance' to the issues in the case.

13. The claimant could not point to an actual document relevant to his claim which he believes exists and has not been disclosed. We accept that the respondent appears to have complied with its disclosure obligations. This application therefore fails.

The issue of the alleged sexual harassment

14. We reserved our position on this application, saying the Tribunal would consider it at the end of the first day's hearing and give our decision the next day. We made our decision that evening.

15. In the event the claimant did not turn up the next day, saying he was "withdrawing under protest" to seek a judicial review of the Tribunal's conduct of the hearing to date, on which more below.

16. In the claimant's absence we gave our reasons for refusing his application. An employer must be entitled to defend any claim 'on the facts' as that employer seems them. In this case, the respondent says that the facts are that an employee now subject to the Anonymity Order, Ms X, made allegations against the claimant of sexual harassment, that these were corroborated in part by a witness, Mr Y, who had been shown an intimate video of Ms X by the claimant. This allegation

led to the claimant's suspension and the initiation of disciplinary proceedings. Ms X made a complaint to the police.

17. The claimant's case is that his suspension and the disciplinary proceedings were a sham, were made up allegations, and documents have been falsified. This is therefore a very significant issue in the claim.

18. On the claimant's own case, he was arrested because of Ms X's allegations to the police about his conduct, and he was prosecuted. It appears from the claimant's submissions that the related criminal case against him has been concluded. Given he has appealed, we presume he was convicted, although the claimant never made this clear.

19. The claimant submitted an appeal to the Court of Appeal in March 2025, and he says that he has received a Court of Appeal reference number.

20. In our judgment, on the claimant's case, his criminal case has concluded – he was prosecuted and these proceedings ended we believe with his conviction. It is now subject to an appeal, which appears to be at the sift stage. This means that the criminal proceedings are over, unless and until the Court of Appeal decides otherwise.

21. The claimant was unable to say how the respondent being allowed to proceed with its defence could cause prejudice to him in the Court of Appeal. The claimant has given no evidence as to how this would cause prejudice, he makes an assertion only.

22. Even if the criminal case has not concluded, we see no prejudice to the claimant in allowing this defence to proceed. The reason: the respondent's defence is not seeking to prove that the claimant engaged in sexual harassment, or even that it had a reasonable belief this was the case. For a discrimination case, it has to show that it had a genuine belief that there was a potential disciplinary case to answer, and that this merited the claimant's suspension, and that this was the reason he was suspended, that it was not a decision tainted by discriminatory factors.

23. This factor means that the claimant will not need to give evidence as to whether these acts of alleged sexual harassment occurred. The claimant's case is that key documents were manufactured, that he did not harass Ms X. We consider that he can say so in his evidence without any prejudice to his application to the court of appeal.

24. We see no prejudice to the claimant in the respondent's defence to this claim and this application is refused.

Day 2 – The claimant's "formal application to withdraw from [the] … proceedings under protest".

25. The claimant's application comprised a 6-page application, a "legal supplementary statement" and other documents, including a medical letter.

26. The application states that he is withdrawing from the claim under protest and that he will submit an application for judicial review of the conduct of this hearing on the following basis, in summary:

    a. a bundle of documents he had provided on the first day had been 'falsified' by the tribunal
    b. there had been 'bias and unprofessional conduct' by the Judge
    c. that has been a wider pattern of mistreatment, including being abused by a judge in an earlier hearing, his unlawful arrest, his computer being hacked by the respondent's legal team, his document requests being ignored
    d. the above treatment amounts to discrimination arising from disability, breach of the Article 6 right to a fair hearing and Article 14 prohibition of disability-based discrimination "in clear violation of my rights."

27. The claimant also provided medical reasons, including the medication he was on, the stress he was under. He provided a medical letter dated 13 September 2024, which stated that he had difficulty walking and travelling and would find it difficult to attend a court hearing. Medical evidence from March 2025 states that the claimant may have difficulty attending an in-person hearing. There was no reference to any mental health issues which may hinder his attendance at this cvp (video) hearing.

28. On careful reading of the papers, the Tribunal concluded that the claimant's application did not appear to be an unambiguous withdrawal by him of his employment tribunal claim, instead it appears to be a conditional withdrawal based on the outcome of a potential judicial review.

29. We discussed the claimant's non-attendance with the respondent's representative at the outset of day 2. The Tribunal decided that the best course of action was to write to the claimant seeing his attendance.

30. The Tribunal therefore wrote to the claimant by email sent by the Hearing Clerk stating that it did not appear there was a medical reason for his non-attendance; if there was he should provide evidence of this; that absent any medical evidence the claimant would be expected to attend the hearing at 2.00 to discuss his application to withdraw from the proceedings; his application for anonymity; the issue of the claimant's documents and case management and timetable for the rest of the hearing.

31. In this email, I accepted that I had made an error in saying on the first day of the hearing that he had disclosed only 26 documents the day before, when in fact he had disclosed 163 documents; that this was an error – a count of the attachments and not counting links within the email - rather than evidence of deceit or bias.

32. We also stated that the respondent had stated that it would seek dismissal of the claim under Rule 47 if the claimant did not attend, and our letter quoted Rule 47 in full.

33. At just before 2.00 pm the claimant sent a further email, reiterating that he was submitting an appeal, and was therefore "withdrawing" from the claim under pressure. While he reiterated that he was ill, he did not say that there was a medical reason for his non-attendance.

34. The tribunal discussed this email; we concluded that the claimant appears to be under a misapprehension, that he believes the way to deal with any dispute about this hearing is to seek a judicial review. We believe this to be incorrect, that the proper course of action would be to seek a review, or appeal to the Employment Appeal Tribunal of any judgment made by the Tribunal. We considered, based on our legal knowledge, that any application for a judicial review was bound to fail; not on the basis of any underlying merits to the claimant's application, but because it was being brought in the wrong legal forum.

35. We decided that we needed to bring this to the attention of the claimant and informed the respondent that this is the approach we would take. We accordingly adjourned again, and an email was sent to the claimant at 2.38 pm, stating:

> "Dear Parties,
>
> EJ Emery responds to your email below. The Tribunal considers that we should point out to you the following: we believe that you are acting under a mistaken belief that you have a right to challenge the Tribunal's acts or decisions by way of a judicial review.
>
> We do not believe that you have a legal right to challenge the Tribunal by way of a judicial review. This is not a comment on the merits of any application you may make. This is simply to say we do not believe, from our legal understanding, that a judicial review is the appropriate legal jurisdiction for such a challenge.
>
> This is information which we consider you should be aware of before making a final decision on whether you will attend today's hearing.
>
> In fact, the way to challenge a judgment or order of the employment tribunal, on the grounds you mention, is to (i) seek a review of the decision and/or (ii) appeal to the Employment Appeal Tribunal, after a decision or order has been made. This means that you can challenge any Order made yesterday by instituting an appeal or a review. You can challenge any adverse judgment the same way. But this does not mean that the hearing can or should be halted in the meantime.

We say this not to provide you with advice, but to ensure that you are clear about what your legal rights are on appeal/review, and of the consequences of deciding not to attend the hearing today. If you do not attend, the respondent's application will be heard under Rule 47, in which they will seek a 'dismissal' of your claim.

You are therefore asked to attend today's hearing at 2.45 pm."

36. In the event, because our email was sent later than expected, we waited to 2.50 pm to start the hearing, and informed the respondent that should the claimant attend, we would address his applications.

37. We heard nothing further from the claimant until the end of the hearing at 3.20 pm.

Respondent's application under Rule 47

38. The respondent put forward a written skeleton argument on this application, a copy was sent to the claimant. It argues that the claimant has failed to attend the hearing, and that in the circumstances outlined above the Tribunal should exercise its discretion to dismiss the claim on the basis that there is prejudice to the respondent if the claim is allowed to proceed. The respondent argues that if the claim is not dismissed and is instead adjourned:

    a. There is prejudice to the respondent in having to address events going back to 2019 at a later hearing, as well as the prejudice of additional costs for another hearing;
    b. The claimant has not been straightforward, and has been an unreasonable litigant
    c. The respondent's witnesses have allegations against them that they have conspired to fabricate allegation of a crime and have fabricated documents in doing so – serious allegations on which they are entitled to a fair hearing within a reasonable timescale
    d. The claimant's conduct of this hearing has shown that even with "proper consideration" shown by the Tribunal and the respondent and its legal team, the claimant has not acted reasonably
    e. The medical evidence suggests there is no impediment to the claimant attending this remote (cvp) hearing, instead his focus appear to be that the hearing to date has been unfair and he wishes to pursue a judicial review

39. The tribunal adjourned to consider this application. We concluded the following: that had the claimant's applications on disclosure and witness succeeded on 5 June 2025, he would have attended the hearing on 6 June. It was because these applications failed that he has decided to absent himself from the proceedings so he can start a judicial review process. There was no medical evidence which gave him reason not to attend. We concluded that despite our attempts to persuade the claimant to attend the hearing, he has decided not to do so.

40. We accept that there is a balancing exercise. We consider that the claimant's conduct was to deliberately refuse to attend the 2nd day of the hearing, even having been given reasons why he should do so. We believe he is acting under a legal misconception in taking this decision. We consider that we have made reasonable enquiries as to the reasons for his non-attendance.

41. We conclude that the claimant's failure to attend the hearing, in these circumstances, is deliberate and unreasonable conduct. We do not accept that the claimant has good reason not to attend. We consider that the claimant could have attended but has chosen not to do so.

42. In these circumstances, we accept that it is in the interests of justice, including the overall fairness to all the parties, to dismiss the claim.

Claimant's anonymity application

43. The claimant also submitted an additional 163 documents and made other applications: for the press to be excluded from the hearing; an application for his anonymity in the proceedings. In the absence of the claimant, we considered that we could only deal with the anonymity application.

44. The rights to an anonymity order may be granted to protect the identity of any alleged victim of sexual harassment, and to protect the rights of someone charged but not convicted, of any offence. Neither is the case with the claimant.

45. Instead, the claimant suggests that because Ms X and Mr Y have been granted anonymity, he should also. We disagree; as the claimant appears to have been convicted of an offence, he accordingly has no right to anonymity in relation to the same issues being addressed in a civil jurisdiction.

46. The principle of open justice demands that someone convicted of an offence should not be granted immunity on the basis requested by the claimant, and that this application fails.

Approved by:
Employment Judge Emery
29 August 2025

Judgment sent to the parties on:
5 September 2025
……
For the Tribunal:
……