EMPLOYMENT TRIBUNALS

Claimant: **Ms Thorn**

Respondent: **Nationwide Building Society**

Heard at: Bristol ET, via CVP **On: 22 October 2024**

Before: Employment Judge Murdoch

Representation
Claimant: In person
Respondent: Mr Michell, counsel

AMENDED JUDGMENT

1. The complaint of indirect race discrimination is struck out, as it is an abuse of process.

2. The claimant shall pay the respondent's costs in the sum of £13,406.30 by no later than 22 November 2024.

REASONS

1. This preliminary hearing took place on 22 October 2024.

2. There are six relevant claims so I will briefly set out the background to each.

Background to the first four claims original claims

3. In 2020 and 2021, the claimant raised four claims against the respondent under case numbers 1402955/2020, 1404843/2020, 2405619/2021 & 1404750/2021. I will refer to these as the 'original claims'. The third of which (alleging disability discrimination) was dismissed upon withdrawal.

4. As is set out in the respondent's skeleton argument, the original claims were drafted in whole or in part by the claimant's lawyers, and were determined at a final hearing from 9-27 January 2023. The claimant was represented by experienced counsel throughout the disclosure process, during witness

statement preparation, and at the final hearing. The claims raised in the original claims (excluding the withdrawn claim) were of direct race discrimination, victimisation, and unfair dismissal. In a judgment dated 26 January 2023, the Tribunal rejected all claims in the original claims save for the 'ordinary' unfair dismissal claim – in respect of which the respondent had in any event previously conceded liability – and a 90% Polkey reduction finding was made.

5. The claimant's reconsideration application was rejected by the Tribunal (Employment Judge Bax) on 8 March 2023. The claimant lodged an appeal to the Employment Appeal Tribunal (EAT). On 11 November 2023, the EAT Registrar rejected the appeal as out of time. On 10 October 2024, HHJ Tayler dismissed the claimant's appeal against that rejection. In so doing, and having reached his decision "irrespective of the merits of the appeal", HHJ Tayler opined that "the appeal appears to be misconceived."

6. The EAT notified the parties on 22 October 2024 (the day of this hearing) that it had refused permission to appeal to the Court of Appeal.

Background to fifth claim

7. On 8 February 2023, the claimant presented a fifth claim (600250/2023) for alleged victimisation of the claimant by the respondent during her employment (including her dismissal), and/or for unfair dismissal. At a preliminary hearing on 14 July 2023, Employment Judge King struck out the fifth claim as an abuse of process. Employment Judge King also ordered the claimant to pay costs in the sum of £14,542.40.

Background to sixth claim

8. On 13 September 2023, shortly after the strike out of the fifth claim, the claimant presented the sixth claim. In this sixth claim, the claimant claims race discrimination and unfair dismissal as well as whistleblowing detriment.

9. At a private preliminary hearing on 25 June 2024, Employment Judge Self clarified with the claimant that the only claim she sought to advance in the sixth claim was of indirect race discrimination. I checked that the parties agreed that this sixth claim related to indirect race discrimination only, and they both agreed.

10. Employment Judge Self ordered the claimant to provide further and better particulars of that claim by 23 July 2024, as the basis for it was unclear. The claimant supplied the further and better particulars on 23 July 2024.

Preliminary issues

11. The first preliminary issue I dealt with was reasonable adjustments. I noted that the claimant had written in her skeleton argument that she was neurodivergent, and had untreated ADHD, and was mentally disabled. I said that I had looked in the Equal Treatment Bench Book, which suggests reasonable adjustments, and I noted examples such as allowing pauses for the person to process what has been said, and increased short breaks to refocus. Ms Thorn was happy with these suggested adjustments. I asked

her if she had other suggestions or if anything else would make her feel comfortable. She said she was happy with those adjustments and that she felt in a good place. I encouraged Ms Thorn to let me know immediately if she needed anything, such as a break, or if she wanted an explanation about something, and she agreed. After Mr Michell's submissions on his application for strike out and a costs order, I gave the claimant a 20 minute break before making her submissions. Her submissions lasted 55 minutes. We then took a lunch break, and I gave oral judgment in the afternoon.

12. In terms of paperwork, I noted that I had received a hearing bundle of 383 pages and checked both parties had access to it. The claimant said she had access to this bundle but she was using her phone to attend the hearing and she would panic if she had to move between pages. I said that was no problem at all, and asked Mr Michell to read out the relevant part of a document if he was to refer to any page numbers in the bundle, which he agreed to do. I also checked that both parties had access to the claimant's skeleton argument, respondent's skeleton argument, respondent's costs schedule and the document (dated 22 October 2024 – date of the hearing) that showed the EAT's permission to appeal to the Court of Appeal had been refused. The parties agreed that they were in possession of the same paperwork and agreed those were all the documents that I needed to see for today's hearing.

13. The claimant apologised for not writing a witness statement but noted that her further and better particulars was a lengthy document. I acknowledged that her further and better particulars and skeleton argument set out her case in full.

Purpose of today's preliminary hearing

14. At a private preliminary hearing on 25 June 2024, Employment Judge Self listed this public preliminary hearing. He set out the purpose of this hearing as follows:

    a. To consider whether it would be just and equitable for time to be extended, it being agreed that the claim has been brought outside the statutory time limit by approximately 21 months.
    b. To decide whether or not the claim should be struck out because it is:
        i. Scandalous or vexatious;
        ii. Has no reasonable prospect of success;
        iii. That the manner in which the claim has been brought is scandalous or unreasonable or vexatious; or
        iv. An abuse of process pursuant to *Henderson v Henderson* / Res Judicata.
    c. To consider whether a costs order should be made against the claimant.
    d. To consider any further orders which are necessary.

15. Both parties agreed that this was the purpose of today's hearing.

16. In summary, the respondent argues that the sixth claim is frivolous/vexatious/an abuse of process, and/or has no reasonable prospect

of success, and that it is out of time and it is not just and equitable to extend time. The respondent seeks its costs for its work on this sixth claim, which is set out in the costs schedule and amounts to a total of £13,406.30. Mr Michell confirmed that he made this costs application under rule 76(1)(a) and (b) of the Employment Procedural Rules, as well as relying on a list of case law (such as *Henderson v Henderson* (1843) 3 Hare 100) that was set out in full in his skeleton argument.

17. In summary, the claimant argues that her claim is not frivolous, nor vexatious, nor an abuse of process, and has a reasonable prospect of success. She argues that although it is out of time, it is just and equitable to extend time. She noted that one of the delays was the Covid pandemic. She also said that she could not get her head around the material and that she did not delay on purpose.

18. As I had not seen any evidence on the claimant's ability to pay any costs award, I suggested that she may want to make oral submissions on that. I noted that relevant info includes the person's earnings, savings, other sources of income, debts, bills and necessary monthly outgoings.

Findings and conclusions on the strike out application

19. Mr Michell, counsel for the respondent, set out in detail in writing and orally why the sixth claim is frivolous/vexatious/an abuse of process, and/or had no reasonable prospect of success. In short, I agree with his submissions.

20. I find that the claimant is seeking to litigate or relitigate matters that were or could have been included in the original claims, or even the fifth claim. I therefore strike this claim out on the basis that it is an abuse of process.

21. The claimant has brought six claims against the respondent now. The case of *Henderson and Henderson* makes clear that it is an abuse of process where a party could, with reasonable diligence, have put forward the new claim at the original hearing. I find that the claimant could have put forward every aspect of her indirect race discrimination claim (as far as I understand it anyway) at the original hearing. Her complaints relate to issues such as applying for jobs and not getting them, which have all been fought and lost already as part of the Employment Tribunal's determination of her original claims.

22. The claimant seeks to place fault on her barrister during the hearing for the original claims. She says that he failed to represent her adequately and that he was a 'puppet' of the respondent. She alleges that he 'coerced' her, 'tricked' her, put her under 'immense pressure', and 'badgered' her over five months to drop the indirect race discrimination claim. These allegations of professional misconduct against a barrister are not something I am able to make a finding on at this preliminary hearing. But what I can and do make a finding on is the fact that the claimant was professionally represented throughout the proceedings of her original claims.

23. I strike this claim out as it is an abuse of process, but for the avoidance of doubt, my view is that the claimant's sixth claim also has no reasonable prospect of success as it is 21 months out of time. The claimant has not put

forward any persuasive written or oral submissions to show that it is just and equitable to extend time.

24. The claimant said that she just wants to be heard and for someone to listen. I did listen to her oral submissions and I read various background documents, including her written further and better particulars and skeleton argument. Most of the claimant's submissions were irrelevant to the issues that we had agreed we needed to resolve in today's hearing. But the parts that were relevant showed that her indirect race discrimination claim was made up of the same content as was part of her direct race discrimination claim.

25. The claimant said that she did not feel the Employment Tribunal had heard her, but the Employment Tribunal heard her direct race discrimination claim, and other claims, over a 12 day period. And Employment Judge Bax wrote a careful and thorough judgment, which was over 60 pages long, setting out detailed reasoning for the Employment Tribunal's decision.

26. The claimant then brought a fifth claim to the Employment Tribunal, which was struck out and a costs order awarded. It is surprising to me that the claimant was still not deterred from making a sixth claim.

27. A disproportionate level of Tribunal time has already been required in this case, which is not in the overriding interests of justice.

28. The claimant is repeating claims and content and allegations over and over. The respondent then needs to defend itself against these claims over and over again, which has been found in case law to constitute oppression and/or unjust harassment (*Agbenowossi-Koffi v Donvand Ltd (t/a Gullivers Travel Associates*) [2014] EWCA Civ 855).

Conclusions on costs

29. It is unusual to make a costs award but I have decided to make one in this case. This sixth claim should not have been brought. The claimant lost her original claims (save for unfair dismissal which the respondent conceded) and her fifth claim had been struck out.

30. Still, the claimant persevered, even after she saw what happened to the fifth claim, and heard why it had been struck out. The claimant would have also felt the financial consequences of this decision as there was a costs order of over £14,000 issued alongside the strike out judgment. I understand from the parties that, as the claimant has failed to pay the costs order, there is a charge of this sum over her property in Manchester.

31. I took into account the claimant's ability to pay any cost order. I accept her submission that a) she owns a property in Manchester, which she rents out and lives off that rental money; b) she is still on sick leave and is being paid 2-3 days of holiday pay every month, c) she is currently in receipt of benefits in the sum of about £90 a week but she is not entitled to universal credit as she is a property owner; and d) any costs order made against her will have significant financial consequences.

32. Whilst I accept the above, the claimant cannot continue to act in abuse of process and avoid the financial consequences. I therefore make a costs order in the sum of £13,406.30. This figure is extracted from the respondent's schedule of costs, which was not disputed. I make this order under rule 76(1)(a) and (b) of the Employment Procedural Rules on the grounds that the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing proceedings or conducting the proceedings, and that this sixth claim had no reasonable prospect of success.

Listing a remedy hearing in unfair dismissal claim

33. The claimant had requested a remedy hearing for the unfair dismissal finding in the original claims, notwithstanding the Tribunal's observations at paragraph 250 of its reasons that it is "highly unlikely that the claimant will receive any additional sum". I explained the nature of an unfair dismissal award, and how it is calculated like an equation, and how any award would be reduced by 90% in any event, and how the Employment Tribunal would take into account the £30,000 that she had already received. I explained to the claimant (on more than one occasion) that I was giving her a *second* judicial warning that if her unfair dismissal claim went to a remedy hearing, it is highly unlikely that she will receive any additional sum, and it is highly likely that the respondent will apply for another (third) costs order against her.

34. I gave the claimant a few hours over lunch (while I deliberated on the strike out and costs application) to consider her position as to the remedy hearing for the unfair dismissal claim. When we reconvened, Mr Michell had taken instructions and informed the claimant that if there was no remedy hearing, the respondent would not apply for a third costs order against her. After consideration, the claimant said she still wanted to proceed to a remedy hearing for her unfair dismissal claim. I told the parties that I would refer this matter back to Employment Judge Bax, who heard the original claim. I told the parties they could expect to hear from Employment Judge Bax about this in due course

Employment Judge Murdoch
22 October 2024
Amended: 21 October 2026

ORIGINAL JUDGMENT & REASONS
SENT TO THE PARTIES ON
14 November 2024

AMENDED JUDGMENT & REASONS
SENT TO THE PARTIES ON
09 November 2026