



# EMPLOYMENT TRIBUNALS

**Claimant:** Ross Terrebonne

**Respondent:** NM Telecom Ltd

**Heard at:** Exeter **On:** 24 June 2019

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person  
**Respondent:** Madan Mohan, director  
**Interpreter:** Ms A Kaur

# JUDGMENT

1. The response is struck out and judgment entered for the claimant in respect of all his claims, as set out in the case management order of 07 January 2019.
2. The case will be relisted for a remedy hearing.

# REASONS

1. This hearing was to consider whether the respondent had met the terms of an order made on 26 April 2019 by Employment Judge Roper. It was an “unless” order in the following terms:

*“On the Tribunal’s own initiative and having considered any representations made by the parties, Employment Judge Roper ORDERS that –*

*The respondent is ordered (i) to confirm to the claimant and to the tribunal whether it continues to dispute for the purposes of the claimant’s public interest disclosure and race discrimination claims that Mrs Mohan was an employee or agent of the respondent at the relevant times; and (ii) that if it does dispute this, to provide the claimant with copies of Mrs Mohan’s Samsung login records between the dates of 1 November 2017 and 31 March 2018*

***Unless by 4:00pm on 7 May 2019 the respondent complies fully with this order then the respondent's response to the claimant's various claims will be struck out without further order, and judgment will then be entered for the claimant.***

*The respondent will then be entitled to notice of any hearings and decisions of the Tribunal but will only be entitled to participate in any hearing to the extent permitted by the Employment Judge.*

*The Judge's reasons for making this Order are by reference to the Order in paragraph 2.1 of the Case Management Order dated 11 March 2019 in respect of which the respondent remains in default."*

2. Paragraph 2.1 of the order of 11 March 2019 was:

*"2.1 By the 25 March 2019 the Respondent shall (a) confirm to the Claimant and to the Tribunal its position regarding paragraph 2.1.1 of the Order dated 10 January 2019 and (b) if it continues to dispute for the purposes of the Claimant's public interest disclosure / race discrimination claims that the Mrs Mohan was an employee or agent of the Respondent at the relevant times it shall also by 25 March 2019 provide to the Respondent (only) a copy of Mrs Mohan's Samsung login / records for the period between 1 November 2017 and 31 March 2018."*

3. This refers to para 2.1.1 of the order of 10 January 2019, which was:

*"2.1 By the 11 February 2019 the Respondent shall provide the Claimant (and the Tribunal but only where indicated below) with the following :-*

*2.1.1 (to the Tribunal and the Claimant) whether it accepts that (a) Mrs Mohan was an employee or agent of the Respondent for the purposes of the Claimant's public interest disclosure / race discrimination claims and if not why not (b) any disclosures by the Claimant were qualifying and protected public interest disclosures and if not, why not and (c) whether the Claimant made a protected act and if not, why not."*

4. The respondent maintained that Nidhi Mohan was not an agent or employee of the respondent at the relevant times. The respondent failed to comply with the second limb of the order. The managing director of the respondent resubmitted the email tendered by him previously referring to the Samsung account of his wife which did not give the login records, as required.
5. Mr Mohan's evidence to me, given through a Hindi interpreter, was that his wife, Nidhi Mohan, to whom he is happily married, was no part of his business. She had her own business in Reading. Both his and her businesses were Samsung franchises, dealing with both warranty and non warranty repair work on Samsung phones. She was nothing to do with his business.
6. Mr Mohan speaks little English. He said that at the relevant times his wife had not started her business. She was on hand in Plymouth to help with communication. She was in effect his interpreter. Mr Terrebonne observed that Mr Mohan had previously not accepted that she had any involvement in his business. Mr Mohan said there was no reason for him to provide her log in details, as they related to her business not his. He accepted that both she and he had Samsung log in details.
7. Mr Mohan said that Samsung would not give him her details as they related to

another business.

8. Asked whether he had made a such a request Mr Mohan said that he had not asked them.
9. I enquired why he had not asked her to provide the details to comply with the order. Taking what he said entirely at face value, plainly she could obtain such information without difficulty. Mr Mohan said that was related to her own business. She was busy in her business and he in his. He could ask but why should he ask how many log ins she had?
10. Asked if he might explain why it was that he had not asked his wife, as she could obtain them and then he could provide them, Mr Mohan changed his account and said that his wife was very annoyed at the whole thing: the public interest disclosure allegations were about her brother. She would have nothing to do with the matter. Mr Terrebonne explained that he was the manager to whom Mr Terrebonne reported. He (Mr Terrebonne) had raised the issue with Mr Mohan, through Mr Mohan's wife, as that was how they communicated.
11. Mr Mohan then said that it was denied that any such disclosure had ever been made.
12. Mr Terrebonne had provided printouts of the chats in a WhatsApp group for the Plymouth shop where he had worked. They show Nidhi Mohan as an integral part of that working environment. Mr Mohan accepted that they were as they were said to be my Mr Terrebonne.
13. From this evidence I conclude that the respondent is simply seeking to evade the issue. First he had not asked his wife. Then Samsung would not provide those details. Then he accepted that he had not asked them. Then he did not see why he should ask his wife, who was busy with her own business. Then his wife was annoyed and would not help, and finally no such disclosure had ever been made. The email provided was from Simon Wood, who is a representative for Samsung in the Plymouth area. It was not sufficient before and was not compliant with the order made.
14. It is abundantly clear from the oral evidence of Madan Mohan that Nidhi Mohan was at the time fully involved in the running of the respondent's shop in Plymouth where the claimant worked, and the denial of it by Mr Mohan is simply an attempt to use the technicality that she is said not to have been an employee as a ruse to evade the claim.
15. Accordingly, since the crystal clear terms of the unless order have not been complied with, in my judgment deliberately, the only appropriate course is to strike out the response and to enter judgment for the claimant.

Employment Judge

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Date 24 June 2019