



EMPLOYMENT TRIBUNALS

Claimant: Mr Qiufeng Hu
Respondent: Recroot Ltd (1)
Seachill UK Ltd t/as Hilton Seafood UK (2)

Heard at: Tribunals Hearing Centre, 50 Carrington Street, Nottingham,
NG1 7FG

On: 7 July 2022

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person

For the respondent: Mr M Bloom, solicitor
Ms G Nicholls, Counsel

JUDGMENT

AND after hearing from the parties and considering the Tribunal's file and the hearing bundle

And after noticing that the respondents' names have never been formally corrected to show their legal name, and after considering it is appropriate to rectify the position of its own motion

IT IS ORDERED THAT

1. Of the Tribunal's own motion
 - 1.1. The First Respondent's name is amended to "**Recroot Limited**";
 - 1.2. the Second Respondent's name is amended to "**Seachill UK Ltd t/as Hilton Seafood UK**";
2. The respondents' applications that the claim be struck out for the claimant's non-compliance with the Tribunal's order of Employment Judge Butler that was sent to the parties on 8 June 2022 is dismissed;
3. The second respondent's application that the claim be struck out for the claimant's scandalous conduct of the claim is dismissed.

REASONS

4. On 28 June 2022 the second respondent (Seachill) applied for the claim to be struck out because they alleged the claimant (Mr Hu) had failed to comply with the order of Employment Judge Butler made on 26 May 2022 and sent to the parties on 8 June 2022. The first respondent (Recroot) on 28 June 2022 adopted the application as its own. The hearing today was originally listed as a private hearing to clarify the claims and give directions. In light of the applications, on 30 June 2022 I converted it to an open hearing to consider the applications.
5. At the hearing itself the second respondent also applied orally for the claim to be struck out because the claimant was conducting the matter scandalously. This arose after Mr Hu interrupted Mr Bloom and accused him of lying.

Hearing

6. Mr Hu represented himself. The Tribunal arranged for a Mandarin interpreter and Ms Poon attended to interpret throughout. I am grateful for her help.
7. Mr Bloom, Solicitor, represented Seachill. He made the primary submissions. Ms Nicholls, Counsel, represented Recroot. She adopted Mr Bloom's submissions and added a couple of observations relevant to Recroot.
8. There was a bundle of documents. These consisted of the correspondence, claims, responses and orders in the case but were in a convenient paginated form. There were also a few documents added. These were the agreement between Mr Hu and Recroot, and the judgment of Employment Judge Butler in Mr Hu v Nicholas Associates Group Ltd and Young's Seafood Ltd dated 16 March 2022 (and also contained his refusal of a reconsideration of that judgment). That claim bore striking similarities to this claim.
9. Mr Hu did not have with him the bundle. It was emailed to him on 5 July 2022 in the same email that sent it to the Tribunal. He claims not to have received it. However when I asked him about when and how he checked his emails he was evasive, and I had to ask repeatedly the same question to get an answer. He suggested it may have been too large for his email service. I do not accept he did not receive it because the email that sent it to him is the same one that sent it to the Tribunal, and because of his evasive answers. However I arranged for the Tribunal to print a copy for him and we paused while that done. This meant the hearing started properly about 45 minutes late. I was satisfied it was fair to continue because the documents are ones that either he wrote, signed or has been sent – it simply put them in a logical order.
10. We paused in the mid-morning because Mr Hu needed a break to accommodate his type I diabetes.

11. By agreement the respondents made submissions first and the claimant second. Mr Hu in his submissions did not find it easy to keep to what was relevant for today's hearing. Therefore I asked questions of him that covered the relevant matters, and allowed him an opportunity at the end to cover anything I had not asked about but which he believed was relevant. He did not want to add anything.
12. During Mr Bloom's submissions, Mr Hu alleged he was having heart palpitations caused by the fact that Mr Bloom was lying about him. However they subsided extremely quickly after I explained that Mr Bloom was simply making his submissions. Mr Hu did not request an adjournment and he declined a break when I offered that.
13. Because Mr Hu had travelled a long distance to be here and had had to set off from home early, and because of the fact that English is not Mr Hu's language and he would want a copy of the judgment, I decided to reserve my decision.
14. No party suggested to me it was an unfair hearing. I am satisfied it was a fair hearing. In particular I am satisfied that Mr Hu understood matters as they were translated. While he told me he understands written documents by pasting their contents into the online service Google Translate, and reminded me he was representing himself and not a lawyer, it is clear from his many references to statutes and regulations in his documents and from his previous claim, he has some understanding and experience of the law and Tribunal procedure. The internet allows his access to other resources like ACAS and the Equality and Human Rights Commission. He has cited many statutes and regulations to which I will come to and this suggests he has some ability to identify what laws he believes are relevant to the complaints he wants to make. He commented at the end that he felt he had been fairly listened to.

Background

15. Mr Hu commenced early conciliation on 11 October 2021 in respect of the first respondent (Recroot) and it ended on 21 November 2021. He commenced early conciliation on 12 October 2021 with the second respondent (Seachill) and it ended on 22 November 2021. He presented claims against them both on 19 December 2021.
16. He entered into a relationship with Recroot (who are an "employment business" as defined by the **Employment Agencies Act 1973 section 13(3)** according to the unsigned agreement between them and Mr Hu that supplies agency workers to industry) to be one of the people they supplied to industry to undertake work. Recroot dispute that the relationship between them and Mr Hu was one of employment.
17. Seachill hire people to work for them temporarily through Recroot. assigned him to work at Seachill, a fish processing factory. The dates are not quite agreed. However an approximation can be made from the papers and suffices for present purposes. The relevant dates therefore are as follows:
 - 17.1. from approximately 13 March 2021 Recroot hired the claimant to Seachill;

- 17.2. on approximately 13 August 2021 Seachill terminated Mr Hu's placement with them;
- 17.3. either about that time or about a month later, that is about 20 September 2021, the relationship between Recroot and Mr Hu ended.
18. The claims that he presented are unfortunately muddled and unclear. They are told in the style of a narrative that does not identify clearly which legal rights on which he relies apply to which bit of the narrative, do not follow a logical flow such as date order and does not clearly provide the information needed to allow the Tribunal or respondents to identify the issues. The Tribunal therefore cannot manage the case properly and the respondents do not know what case they have to respond to.
19. It is clear that he was employed from 15 March 2021 to 20 September 2021 as an operator. From the tick-box pro-forma in his claim form, it is apparent he alleges he was unfairly dismissed, and that he is claiming discrimination because of age, religion or belief, race and disability. It is not clear what type he alleges – for example direct, indirect, discrimination arising from a disability etc. A fair reading shows however shows no inclination of an indirect discrimination claim.
20. It is also clear from the claim form and narrative he alleges he is owed notice pay, arrears of pay and he is claiming "privacy harm". It is apparent from the further information provided and the claim itself, he also seeks to bring claims under the Protection from Harassment Act 1997, the Health and Safety at Work etc. Act 1974, the Personal Protective Equipment at Work Regulations 1992, the Human Rights Act 1998, the Data Protection Act 2018 and a claim for a redundancy payment.
21. He also alleged he was dismissed unfairly because the respondent did not follow a fair procedure (what I will call procedurally unfair dismissal – others sometimes call it "ordinary" unfair dismissal).
22. Finally that he alleges he was dismissed or subjected to a detriment for making protected disclosures.
23. In his claim he does not attempt to distinguish what Recroot might be liable for and what Seachill might be liable for. For example he has alleged Seachill unfairly dismissed him but they were never his employer.
24. As is usual in the Midlands East region, on presentation the Tribunal listed a case management hearing and at the same time booked a final hearing for 20, 22 and 23 February 2023 at Lincoln. This is done because if it becomes apparent at the case management hearing that the case requires a longer final hearing, the Tribunal can usually add days with no need to relist. If it left until later to do that, then will result in the case becoming even more delayed. For example if this case now required more than 3 days, the final hearing would have to be vacated and would most likely not be relisted before August 2023. The same time estimate would arise at other venues in the region and for hearings by video link.
25. Because Mr Hu needed an interpreter, the case management hearing was listed to take place by video link because that best accommodated the need

for an interpreter with the need to progress the case without unnecessary delay. It was listed before Employment Judge Butler.

26. In preparation for that hearing, every party sent in a case management agenda and sent them to each other. They correctly identified the parties' names but the Tribunal's records have not been updated to reflect the corrections. I have made that order of my own motion to correct the position. It does not of course have any effect on who is a party to the proceedings.

27. Question 2.3 of the case management agenda asks:

"2.3 Has any necessary additional information been requested? If not set out a limited, focused request and explain why the information is necessary. If requested, can the relevant information be provided for the PH? If so please do."

28. Recroot (the first respondent) wrote in their agenda in answer to the first question:

"1. What disability/disabilities are relied upon

"2. Regarding any alleged discrimination:

" - who is alleged to have carried out the discrimination

" - what is alleged to have taken place

" - when is it alleged to have taken place

" - where is it alleged to have taken place

" - who is it alleged was present

" - what type of discrimination claim it is – what protected characteristic is alleged to have been the reason for the treatment and what type of claim is raised by reference to the EqA

"3. What, if any disclosure is relied upon as a whistleblowing complaint

"4. What detriment is alleged to have been caused by any alleged disclosure (including dismissal if so alleged)

"5. What the basis for the claims to monetary payments are"

29. Seachill (the second respondent) wrote in their case management agenda in answer to question 2.3:

"Yes. Please refer to Second Respondent's Response."

30. The Tribunal's file and index to the bundle makes it clear that these agendas are properly attributed to the parties.

31. That response makes it clear that Seachill needs more information when at paragraph 16 it says

"16. The claimant is put to proof as to each act or acts of alleged discrimination and/or harassment upon which he complains by identifying the location of each act relied upon; the dates of each alleged act; the full names of each individual allegedly involved; the full particulars of each act.

Upon receipt of such information the second respondent shall seek leave to amend and or add to these particulars of its response”

32. Mr Hu did not attend the case management hearing before Employment Judge Butler, although he tried to. It was because of technical difficulties that could not be resolved. Employment Judge Butler adjourned the hearing and relisted it as the hearing before me. However he remarked:
- “8. It is clear from the claim form that some of the claims are lacking in detail to the extent that the Respondents cannot sensibly respond to them. I have made an order below to require the claimant to give further information.”
33. He then ordered:
- “3.1 The claimant must by 16 June 2022 reply to the request by the second respondent paragraph 2.3 of its completed agenda for this hearing for the further and better particulars of the claimants claims. The claimant’s response must be set out in the schedule recording the dates of the acts of discrimination complained of, when and where they occurred and who was involved. It would also be useful if the claimants also set out the other particularly requested in a schedule and sent to the Respondents copies of any written disclosures he says he made.
34. No party wrote to the Tribunal to request the hearing be relisted or for correction of the case management summary or orders.
35. The claimant produced 2 written documents of what he believes are clarification. They do not achieve that purpose however. They are narratives that again do not set out the necessary information to enable the respondents to understand the claim and the Tribunal to be able to identify the issues and manage the case. The two documents are almost identical but not quite. The second document contains a list of legislation at its end. Neither document says though whether for example a particular allegation alleged to be a detriment caused by making a protected disclosure, is discriminatory and if so whether it is an act of direct, indirect discrimination etc. or what protected characteristic is relevant to that particular allegation.
36. Finally I add this: the bundle contained the documents recording the agreement between Mr Hu and Recroot. I was not taken to any particular clauses to assist me to determine whether the relationship between them was one of employment or not. I did not hear any evidence on it either. I note however that in the forms that accompany the agreement and completed by Mr Hu, he is described as the “employee” and not, as in the written agreement, the “agency worker”.

Submissions of the parties

37. Seachill and Recroot say:
- 37.1. Mr Hu has clearly not complied with the order. His further information is not in a schedule format and if anything makes the claim even more difficult to understand;
- 37.2. The claim cannot sensibly be responded to by them. That is unfair to them and a fair hearing is not possible;

- 37.3. To allow the claimant an opportunity to clarify his claim would present a third opportunity. That would be unfair. He had a chance in his claim and he had a chance again under Employment Judge Butler's order;
- 37.4. A further opportunity is just setting him up to fail since he has demonstrated a refusal or unwillingness to set his claim out clearly;
- 37.5. As a result:
- 37.5.1. an unless order is not a suitable less draconian remedy because it is simply postponing the inevitable strike out and there is no reason to believe he will comply anyway;
- 37.5.2. a costs sanction would not solve that problem, and besides he is of limited means;
- 37.5.3. to continue the case results in increased costs to the respondents;
- 37.6. Therefore the claim should be struck out for failure to comply with the order.
38. As noted above, Seachill averred the claim should be struck out for scandalous conduct when, at the hearing, Mr Hu called Mr Bloom a liar.
39. Seachill suggested a deposit might be a suitable, lesser remedy but was unlikely to work for the same reasons: Mr Hu had shown he was not going to comply.
40. Recroot also added that Mr Hu was never an employee of theirs.
41. Mr Hu argued:
- 41.1. He had done his best to supply information to clarify his claim;
- 41.2. He does not speak English;
- 41.3. He is not a lawyer and so some allowance should be made for that;
- 41.4. He has made serious claims that he should be allowed to pursue.
42. In discussions between Mr Hu and me he accepted that he cannot sue Seachill as an employee. He accepted also that a number of claims (that I deal with below) cannot proceed because the Tribunal does not have the jurisdiction to determine them.

Law on strike out

43. The **ET Rules of Procedure** provide (so far as relevant) the Tribunal may strike out a claim or part of a claim in the following circumstances:
- “37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim ... on any of the following grounds— ...

“(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant ... has been scandalous, unreasonable or vexatious;

“(c) for non-compliance with any of these Rules or with an order of the Tribunal;...

Manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious.

44. “Scandalous” means irrelevant or abusive of the other side or the Tribunal’s process: **Bennett v Southwark LBC [2002] ICR 881 CA.**
45. For conduct to be considered “unreasonable”, it must either :
 - 45.1. deliberate and persistent disregard of required procedural steps, or
 - 45.2. have made a fair trial impossible;see **Blockbuster Entertainment Ltd v James [2006] IRLR 630 CA.**
46. In **Bennett** the Court said, when considering a representative’s conduct:
 - 46.1. it is not simply the representative’s conduct that needs to be characterised as scandalous but the way in which he or she is conducting the proceedings on behalf of his or her client;
 - 46.2. the tribunal must therefore consider: (a) the way in which the proceedings have been conducted, (b) how far that is attributable to the party the representative is acting for, and (c) the significance of the “scandalous” conduct;
 - 46.3. what is done in a party’s name is presumptively, but not irrefutably, done on his or her behalf. When the sanction is the drastic one of striking out the whole of a party’s case, there must be room for the party to disassociate him or herself from what his or her representative has done.
47. However even if the criteria are satisfied, the Tribunal must still consider if a fair trial is possible: **De Keyser Ltd v Wilson [2001] IRLR 324 EAT; Bloch v Chipman [2004] IRLR 140 EAT; Blockbuster Entertainment Ltd; Bennett.** If it is then the case should be permitted to proceed except in exceptional circumstances. Even if a fair trial is not possible, the Tribunal must consider if a lesser remedy is appropriate.

For non-compliance with any of these Rules or with an order of the Tribunal;

48. I must be clear about what the order provided. To assist me, I derive the following principles from the cases of **Johnson v Oldham Metropolitan Council [2013] EqLR 866 EAT, Uwhubetine v NHS Commissioning Board England UKEAT/0264/18 EAT, Klukowska v Bridge of Weir Leather Company UKEATS/0038/18 EAT(S) and Wentworth-Wood and Others v Maritime Transport Limited UKEAT/0316/15:**
 - 48.1. in deciding whether it not there has been compliance, the Tribunal has to consider the order itself which may need careful construction of the terms of the order both as to what was

- required and the scope in terms of the consequence of non-compliance;
- 48.2. if there is ambiguity in the order, I should be facilitative rather than punitive;
- 48.3. if there is still ambiguity, I must resolve it in favour of the party who is required to comply – in this case the Claimant. Words should be construed in context. What I cannot do however is re-draft the order or construe it to have a meaning that it will not bear;
- 48.4. the test to be applied is whether there has been material non-compliance. That is a qualitative rather than a quantitative test;
- 48.5. where the order required some further particulars to be given, the benchmark is whether the particulars have sufficiently enabled the other party or parties to know the case they must meet. The Tribunal is not concerned with the legal or factual merits of the case advanced but only whether or not sufficient particulars have been given. Parties and the Tribunal are required to read documents in a way that it is realistic and not be overly technical or prescriptive. As long as it materially complies that is all that is required.
- 48.6. I must apply the overriding objective.
49. If there has been non-compliance, I must consider whether to strike out the claim in light of the overriding objective. The relevant factors are:
- 49.1. the magnitude of the non-compliance;
- 49.2. whether the default was the responsibility of the party or his or her representative;
- 49.3. what disruption, unfairness or prejudice has been caused;
- 49.4. whether a fair hearing would still be possible; and
- 49.5. whether striking out is proportionate or some lesser remedy would be an appropriate response to the disobedience.

see **Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371 EAT**. Also **De Keyser Ltd; Bloch; Blockbuster Entertainment Ltd; Bennett**.

Conclusions

Strike out of claims for which the Tribunal has no jurisdiction

50. With Mr Hu's agreement I strike out the following claims because the Tribunal does not have jurisdiction to hear and determine them. If such claims have any merit to them, then it is another court that must hear and determine them:
- 50.1. **Protection from Harassment Act 1997;**
- 50.2. **Health and Safety at Work etc. Act 1974;**
- 50.3. **Personal Protective Equipment at Work Regulations 1992;**
- 50.4. **Human Rights Act 1998;** and the

50.5. **Data Protection Act 2018.**

51. Even if Mr Hu had not agreed, I would have struck them out for the same reason: no jurisdiction.
52. I strike out the following claims because Mr Hu was not employed by either respondent for a period of 2 years as required by the **Employment Rights Act 1996 section 108** (in the case of unfair dismissal) or **section 155** (in the case of redundancy). He sought to argue he would have been had the claim not been dismissed. That argument is flawed because one cannot claim for the loss of being able to acquire a legal right.
- 52.1. a claim for a redundancy payment;
- 52.2. the dismissed unfairly because the respondent did not follow a fair procedure (what I will call procedurally unfair dismissal).

Strike out for scandalous conduct

53. I refuse the application to strike out Mr Hu's claim for scandalous conduct in the Tribunal when he called Mr Bloom a liar while Mr Bloom made submissions.
54. I agree it was irrelevant and abusive. Therefore it was scandalous. However I note:
- 54.1. it was not persistent – rather it was a one-off and a small part of the hearing;
- 54.2. it had no effect on Seachill except to give them an additional ground to seek a strike out of the claim;
- 54.3. it did not make that hearing unfair and I cannot see how it makes a fair trial impossible;
- 54.4. while it was significant in that it was a serious accusation, in the wider context of the case and hearing generally, its significance was quite minor.
55. Mr Hu however must take note of this: it is unacceptable to call other people liars simply because one disagrees with what they are saying, or even believes what they are saying is wrong. Outbursts in future hearings are less likely to be tolerated. If hearing something he thinks is a lie is enough to cause him heart palpitations, he should consider now how to control that reaction (perhaps speaking to his doctor for advice) because otherwise he may unwittingly make such spontaneous, unfounded accusations in future and risk a Tribunal striking out his claim. If the case continues he is going to hear a lot said that he considers wrong. He must therefore consider how to prepare to deal with it in a way that does not affect his health.

Strike out of the claim against Recroot because he was not an employee

56. I refuse this application. There was no application based on the grounds that the claim has no reasonable prospects of success. Besides it is an issue that in any case requires consideration of all of the evidence, including oral evidence. The evidence I have seen is ambiguous in its terminology that it uses to describe the relationship. In effect it is a factual question that must await a hearing at which the parties can present evidence.

Strike out for non-compliance with the order of Employment Judge Butler in paragraph 3.1

57. I have a great deal of sympathy for the respondent's position. The claims are unclear and cannot sensibly be responded to. The Tribunal cannot properly manage them. I have doubt that Mr Hu will present them in a clearer format if given a third chance. Allowing him a further chance is going to increase their costs because they will have to consider the responses. I recognise also that allowing the claims to proceed would mean in practical terms the final hearing would have to be postponed and relisted in August 2023.
58. However, after careful consideration and re-reading the papers, I have decided it would be wrong to strike the remaining claims out at this stage. My reasons are as follows:
- 58.1. In order to determine whether or not Mr Hu has complied with Employment Judge Butler's order, I must begin by identifying what was ordered.
- 58.2. Employment Judge Butler ordered the provision of information requested by the **second respondent**, Seachill, in paragraph 2.3 of their case management agenda. Seachill's case management agenda paragraph 2.3 simply refers the reader their grounds of response. In turn the only paragraph that requests information is paragraph 16;
- 58.3. It may well be that Employment Judge Butler may well have meant to refer to paragraph 2.3 of Recroot's case management agenda which has clear questions in relation to all potential claims. That would explain the reference to the "other particulars requested" in the order. It is clearly though not what the order said. No party sought to have that paragraph corrected. I cannot be satisfied that it is a plain and obvious error that means the reasonable party in the case would reasonably be expected to read the reference to "second respondent" as "first respondent" since either interpretation points to a request for information, but in different forms.
- 58.4. Mr Hu of course was not present and so can only reasonably go by what is in the order itself. That also means I must proceed on the basis it was a deliberate reference to paragraph 2.3 of the second respondent's agenda.
- 58.5. Therefore I can proceed only on the basis that, objectively, Mr Hu had to provide the information sought in paragraph 16 of the second respondent's response.
- 58.6. While paragraph 16 is not a series of questions it seems to me it is reasonably interpreted as seeking the following information:
- 58.6.1. identifying the location of each act relied upon;
- 58.6.2. the dates of each alleged act;
- 58.6.3. the full names of each individual allegedly involved;

58.6.4. the full particulars of each act.

The initial references in paragraph to discrimination/harassment are not in my opinion reasonably interpreted as requests for information, but rather as introductions to what follows.

58.7. The information requested in paragraph 16 does not require Mr Hu to identify the type of discrimination (direct, indirect etc.) or the protected characteristic relied on.

58.8. I am also not satisfied that “schedule” is unambiguous. I suspect the learned judge had in mind a document like a Scott Schedule, with a table which contained information in columns. However Schedule can easily cover for example a list, or information under headings: see e.g. entry 2(c) in **OED Online, Oxford University Press, June 2022, www.oed.com/view/Entry/172288**. While Mr’s Hu’s document may not be in the format anticipated but I believe that it could be described as a schedule.

58.9. I believe the words “full particulars” are also ambiguous. “Particulars” conveys the sense of details and so “Full Particulars” means no more than “full details”. The document appears to do that, albeit I agree that it is not in a form that can be legally understood or sensibly responded to on even the most generous and reasonable interpretation.

58.10. It means that Mr Hu has done what was asked, but sadly what was asked and what he provided have not taken the case any further forward.

58.11. Finally I comment on the words “It would be useful”. In my opinion the use of those words means that what followed them cannot on any reasonable interpretation be read as an order that Mr Hu must do what follows them. Any allegation of non-compliance in respect of what follows those words cannot be said to be a breach of the order.

59. Therefore in my opinion I do not have the jurisdiction to strike the claims out for non-compliance with the order because as properly construed, Mr Hu has complied even if the compliance has not taken the case any further forward.

60. I will issue case management directions separately to progress the case.

Addendum

61. After writing my judgment but before I signed it off, Mr Hu sent to the Tribunal by email a number of documents. Many of them are unopenable on the Court’s IT system because it seems they are corrupted or unsupported file types. One was labelled “EMPLOYMENT TRIBUNALS1107申诉.pdf” and was openable. I have read it.

62. It appears to raise some concerns about the hearing. Rather than restructure the above I have decided to take account of them here in a post-script.

63. I have not invited the respondents' views on them because I am satisfied that nothing Mr Hu says affects my decision. Much of it I have already dealt with and do not propose to address further. The only matter that I think I should address is as set out below.
64. Mr Hu raises the question of whether it was appropriate for me to hear the case given my connection with the previous case. I am satisfied it was. In the previous case my involvement was case management. My involvement is mentioned in Employment Judge Butler's order. Employment Judge Butler made the order relevant to these proceedings. His order was in the bundle which I am satisfied Mr Hu had had an opportunity to consider. In any case Mr Hu had had a copy of that order separately and ought to have known of my previous involvement in his other cases because he appeared before me.
65. In my view the claimant should have raised the objection at the hearing. He had all the knowledge to enable him to make an informed choice whether to do so. He did not.
66. The Court of Appeal in **In re AZ (a child) [2022] EWCA Civ 911 CA [2022] WLR(D) 292** helpfully reviewed the case law on bias and recusal at [54]-[56] (including citing **Porter v Magill**; **Lawal v Northern Sprint Limited**; **Locabail (UK) Ltd v Bayfield**).
67. Therefore considering
- 67.1. the case as a whole (including the result),
 - 67.2. that "the fair-minded and informed observer 'will adopt a balanced approach' and 'is neither complacent nor unduly sensitive or suspicious'"; and
 - 67.3. that the "the mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection",

I do not believe that my involvement in case management of a previous case where I made no determinations would even have come close to a fair-minded and informed observer concluding there that was a real possibility of bias. I therefore would have refused the application.

Employment Judge Adkinson

Date: 13 July 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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