



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Ramachandran

v

Bechtel Ltd

Heard at: Watford

On: 3 October 2022

Before: Employment Judge Bedeau

Appearances

For the Claimant: Mr A Korn, Counsel

For the Respondent: Ms A Mayhew, of His Majesty's Counsel

RESERVED JUDGMENT

1. The claimant's application for an anonymity order is refused.
2. The respondent's application for an anonymity order is refused.

REASONS

1. In his claim form presented on 2 November 2020, the claimant claims against the respondent unfair dismissal; direct race and religious discrimination; victimisation; public interest disclosure detriments and dismissal, as well as breach of contract. He worked for the respondent from the 20 February 2012 to 31 July 2020, and at all material times he was employed as a Senior Electrical Engineer/Supervisor.
2. He and the respondent have applied for a rule 50 order.

The evidence

3. I read the witness statement from the claimant who gave evidence and was questioned. The respondent did not call any witnesses.
4. In addition, I was referred to documents in a joint bundle comprising of 219 pages.

Background to the applications

5. The claimant describes himself as originating from Tamil Nadu State, South India, and is of the Tamil race, ethnic, national origins.
6. He states that the respondent operates an annual performance appraisal scheme and a performance related bonus linked to the outcome of the annual appraisal. Staff are advised of their overall assessment in March of the following year.
7. He asserts that following his “exceeding expectations” rating by his Project Supervisor, from 2015-2017, he received an annual bonus of £6,300. With his good performance assessments in 2015 and 2016, he expected his grade to increase from 27 to 28 but that was not the case. He accuses Mr Rajesh Narayan Athiyarath, Chief Electrical Engineer, of race discrimination for refusing to regrade him, instead he promoted Mr Balakrishna Ananthakrishnan to grade 28 in 2016, who, like Mr Athiyarath, is High Caste Hindu from Mumbai, North India.
8. The claimant alleges that in 2018, his performance was assessed by Mr Ananthakrishnan as they were working on the same project, Hail and Ghasha, who gave a rating of “meaningful impact-medium” whereas previously his ratings were “exceeding expectations”. His lower assessment meant that he received a lower bonus of £4,500. He claims that Mr Athiyarath influenced the assessment conducted by Mr Ananthakrishnan. He raised a grievance citing his assessment and reduced bonus as acts of race discrimination. It was not upheld, and his appeal was unsuccessful.
9. In July 2019 he was working on another project, Reliance India, under the direct management of Mr Athiyarath, who assessed him. On 12 March 2020, he was given the lowest appraisal assessment which negatively impacted on his bonus, in that, he received the sum of £3,800. He complains again of race discrimination, victimisation, as well as public interest disclosures. He submitted his second grievance on 19 March 2020 challenging his performance and complaining about the 2019 assessment.
10. On 20 March 2019, he was given 4 weeks’ notice of his removal from the project whereas others in the team worked after 20 April 2020. On 23 March 2020, his request to be transferred to a project he had previously been working on was refused. He claims again direct race discrimination, victimisation, and public interest disclosure.
11. His second grievance and appeal outcomes were unsuccessful.
12. On 11 May 2020, he was placed on furlough, and on 30 July 2020, he was made redundant. He claims that his dismissal was automatically unfair by reason of section 103A Employment Rights Act 1996, unfair dismissal under section 98(4) ERA, racial discrimination, and victimisation.

13. The claims and issues are set out in a schedule attached to the case management orders of Employment Judge Daniels, in respect of the preliminary hearing held on 6 January 2022.

The claimant's application

14. The claimant asserts that Hindu religious writings classified the population into 4 divisions in order of seniority: Brahmin; Kshatriya; Vaishya; and Shudra. They are, I am told, referred to as the Varna classification. Shudras are in the lowest caste and are meant to engage in work, such as, blacksmiths, metal workers, carpenters. As a Shudra, he belongs to a group that has been historically and presently been victimised by the higher caste groups. He produced reports of their treatment in India and in this country. Some of the reports in India are based on the treatment of the lowest caste which is not part of the Varna classification, that of the Dalits, or untouchables as they were formerly known.
15. I was not taken to any reports of the Shudra community in the United Kingdom being threatened with or being the victims of violence perpetrated by those belonging to the higher castes.
16. The claimant told me in evidence and here I make only these findings of fact, that his two sons attend a local school where some of the children can be described as from the upper Hindu castes. His sons are doing very well academically at school and have not been the victims of either threats of violence or actual violence because they are seen as Shudras. Neither his wife nor his children feature in this case.
17. His rule 50 application is to anonymise his name with the letters "AB" or "XY" when the final judgment is published in the public register. He asserts that those higher caste Hindus take advantage of any opportunity to suppress those of the lower caste including their workplaces, schools, and universities.
18. Mr Korn, counsel on behalf of the claimant, submitted that the application is under rule 50(3)(b) and Article 8 ECHR, the right to protect family life. As Tribunal judgments are online this poses a risk to the claimant and his family's health safety and welfare as Shudras. There is no authority on this specific issue Mr Korn has told me.

The respondent's application

19. Ms Mayhew KC clarified the position of the respondent. It is that the claimant is relying on 4 actual comparators in support of his direct race discrimination claims, who are:
 - 19.1 Mr Athiyarath;
 - 19.2 Jaldhi Shukla;
 - 19.3 Chandrashekar Shriyan; and
 - 19.4 Mr Ananthakrishnan.

20. The application is in respect of rule 50(1)(b) for Shukla, Shriyan and Ananthakrishnan, but not Mr Athiyarath who will be giving evidence.
21. Ms Mayhew submitted that the application is to anonymise the names of the three comparators by use of a code. They were employees of the respondent during the period of the claimant's claims. They are not parties to these proceedings and will not be called as witnesses. From the pleadings, witness statements, and documentary evidence, there is personal information relating to their race, identity including their caste. There is also employment information relating to their performance and assignments during the relevant period. Further, there is financial information relating to their earnings and bonuses covering the relevant period. One of them is no longer employed by the respondent.
22. Ms Mayhew further submitted that respondent seeks to protect the identity of the individuals rather than the information itself because, firstly, key to the claimant's claims is how the individuals were treated by the respondent in comparison to himself. For the tribunal to carry out the comparative exercise, it requires the underlying information, but the names of the individuals are not relevant to that exercise. The exercise can be properly carried out using codes for the individuals rather than their names. Secondly, the information is highly sensitive to the individuals. It includes special category personal data as well as financial and employment information that is confidential to them. Thirdly, the release of this information during the hearing and in court documents, including judgment entered on the public record, triggers and/or engages the privacy rights protected by article 8 of the European Convention on Human Rights and general principles relating to confidentiality. Fourthly, the nature of the information and the extent of it, if disclosed, will have a real impact on the individuals going forward. It is embarrassing to have sensitive and/or special category personal identifying data in the public domain especially where that revelation is linked to salary, bonuses and performance. The same provides an open window through no choice of their own.
23. Ms Mayhew further submitted that n considering the balancing exercise, it is proportionate to reduce interference with the individual's article 8 rights and to protect their confidentiality by making an order for coding to be used for their names. Interference with open justice and/or freedom of expression is minimal because any such coding will not impact on the ability of third parties to understand the tribunal's judgment and its impact. The information will remain in the public domain and subject to the scrutiny by the tribunal on third parties. The claimant would be able to bring his case relating to the individuals without interference including cross-examination of witnesses on the treatment of him against those individuals. Their names are not required for that exercise to take place. Press and reporting will not be impacted by the anonymisation or will be minimally impacted, where the information relevant to the claims remain in the public domain. By contrast the release of confidential and personally sensitive information linked to the individuals will detrimentally impact on them by intruding on their privacy. The release of this information will occur during proceedings of which the individuals

have no control or choice. This is a significant factor in determining the extent that the individuals, as non-parties to the litigation should be protected.

The law

24. Section 12(1) Employment Tribunals Act 1996 states the following:

“12 Restriction of publicity in disability cases

(1) This section applies to proceedings on a complaint under section 120 of the Equality Act 2010, where the complaint relates to disability in which evidence of a personal nature is likely to be heard by the employment tribunal hearing the complaint.”

25. Section 12(2) provides for regulations in making a restricted reporting order. A restricted reporting order prohibits the publication of any “identifying matter” in Great Britain, 12(7). An “identifying matter” is “any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order.”, 12(7).

26. Section 120 Equality Act 2010 is the Employment Tribunal’s jurisdiction.

27. Rule 50 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides:

“Privacy and restrictions on disclosure

50.—(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

- (d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.
 - (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
 - (5) Where an order is made under paragraph (3)(d) above—
 - (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person’s identification;
 - (b) it shall specify the duration of the order;
 - (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
 - (d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.
 - (6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998(22)."
28. Rule 50(1) provides that there are three situations which can justify the making of a rule 50 order. These are where the tribunal considers an order to be necessary:
- 28.1 In the interests of justice; or
 - 28.2 To protect Convention rights, or
 - 28.3 In any of the section 10A circumstances, such as the evidence is likely to be subject to statutory or other duties of confidentiality or, if disclosed, would cause substantial injury to any undertaking where the person works.
29. Rule 50(3) gives four examples of the kind of orders which a tribunal may make. The list is not exhaustive so a tribunal may make another type of order, if appropriate. A combination of orders, such as an anonymity and restricted reporting order, may be required in some circumstances.
30. Rule 50(3)(a) provides that an order may be made at a hearing that would otherwise be public, should be conducted in private.

31. Rule 50(3)(b) an anonymity order preventing by anonymisation or otherwise, disclosure to the public of the identities specified parties, witnesses, or other persons.
32. With regard to an anonymity order, the tribunal is the guardian of the private information. The information is not disclosed to the public or the media at all. This contrasts with a restricted reporting order where the information is aired but the public and the media have the responsibility of keeping it secret.
33. When making an anonymity order, consideration should be given to:
 - 33.1 Who should be specified in the anonymity order? Is it necessary to anonymise the respondent or any other persons to protect, for example, the claimant?
 - 33.2 The points in the process at which a party or other person requires anonymity, for example, during the course of a hearing, or in relation to the listing, the judgment, or other public documents.
 - 33.3 The duration of the protection, including whether the position may need to be reconsidered after promulgation of the judgment. An order for permanent anonymity, or an order permanently restricting reporting, is unlikely to be justified save only in exceptional circumstances, F v G UKEAT/0042/11.
34. Rule 50(3)(c), relates to orders for measures to prevent the identification of witnesses during a hearing.
35. Finally, a restricted reporting order is an order prohibiting the publication in Great Britain of an identifying matter in a written publication made available to the public, rule 50(3)(d).
36. Article 6 is the right to a fair trial. It states:

“.. everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”
37. Article 8, the right to respect for private and family life, states:
 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for

the protection of health or morals, or for the protection of the rights and freedoms of others.”

38. Article 10 on the right of freedom of expression, this provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or forming maintaining the authority and impartiality of the judiciary.”

39. The above rights were introduced into United Kingdom law by the Human Rights Act 1998.

40. In an application for rule 50 order, consideration must be given to the principle of open justice as set out in rule 50(2) and Convention rights. The default position is that hearings are in public, and that full decisions with the names of the parties are published and maybe reported. This reflects the general public interest and applies irrespective of the subject matter of the case, even if it does not raise issues of public interest in the wider sense, E v G.

41. Derogations from the principle of open justice will only be justified in exceptional circumstances, if and to the extent that the tribunal is satisfied that they are the minimum strictly necessary to ensure justice is done. The burden of establishing that a derogation is necessary, is on the person making it.

42. The tribunal must engage in a balancing exercise. A fact-finding proportionality approach must be carried out, with a focus on the importance of each of the specific rights being claimed and the justifications for interfering with or restricting each right. Clear and cogent evidence is required. The question to be considered is whether harm will be done by a public hearing or reporting, to the Convention rights of the person seeking the restriction, so as to make it necessary to derogate from the principle of open justice, BBC v Roden UK EAT/0385/14.

43. In relation to article 8, family and privacy rights, the mere publication of embarrassing or damaging material is not a good reason for anonymity or for restricting the reporting of the judgment, BBC v Roden. Tribunals can mitigate the risks of misunderstanding by making clear in a written judgment that they have adjudicated on the truth or otherwise of the damaging allegation. Where anonymity is being sought by a claimant, the fact that

they have chosen to bring proceedings is a significant factor to be considered, BBC v Roden. A witness with no interest in the proceedings has a stronger claim to be protected by the courts if he or she is prejudiced by publicity. Further, findings of dishonesty against the person seeking anonymity, it may be inimical for that person to be shielded from full publication of the judgment which includes those findings, BBC v Roden.

44. A third party, who is not a party in proceedings, is entitled to protection under rule 50, Piepenbrock v London School of Economics & Political Science [2022] EAT 119, a judgment by HHJ Shanks. However, in that case the third party for whom the derogation was sought, gave a witness statement in which she described “her horror at the publicity surrounding the High Court hearing and says that she had lived in constant fear that she would be identified and then publicly associated with Dr Piepenbrock’s “mortifying, false claims claims, which [she] feared would ruin [her] reputation and affect [her] professional standing.” She then describes coming upon the website I mention above and says that she was “distracted” and concerned that professional colleagues and contacts may find the website by searching her name online.”
45. I have also taken into account of the other cases referred to me by counsel.

Conclusion

46. In relation to the claimant’s application and the respondent’s application on behalf of the comparators for an anonymisation in order, there must be clear cogent, evidence to depart from the fundamental principle of open justice, Roden.
47. As regards the claimant’s application, I accept that Shudras being the lowest caste in the Varna designations, do face discrimination by those from the upper castes. I was not, however, persuaded by the information before me that the claimant and his family were in any way either threatened or harmed should his identity be disclosed in the judgment. I was not persuaded that Shudras in this country, suffer systemically from threats or acts of violence from those who belong to the upper castes. Most of the information provided are to do with the horrific treatment of Dalits in India.
48. The claimant’s two school-aged sons are doing very well in school academically and there is no evidence from him that they have been threatened, assaulted, or victimised by those from the upper castes. From his claim form, he does not state that he had been threatened or had been the victim of acts of violence from those whom he described as representing the upper castes.
49. I do not conclude that article 8 is engaged. The claimant has not provided clear, cogent and persuasive evidence to allow me to derogate from the fundamental principle of open justice. Accordingly, his application is refused.
50. A similar conclusion is reached in respect of the three comparators. The application is made by the respondent and, as far as I can tell, without reference to the named individuals. I did not have their witness statements, nor did they attend to give oral evidence in support of the application. I

accept that third party, who is not a party in a case, can apply for a rule 50 order, Piepenbrock. However, in that case, there was before the judge a statement provided by the third-party victim expressing her support for an anonymity order. I remind myself that the burden of establishing that a derogation is necessary, is on the person making it.

51. If the identities of the comparators should not be associated with personal and financial information for the reasons given by Ms Mayhew, the same information would be available to the public in respect of Mr Athiyarath who is also a comparator and who will be giving evidence.
52. There must be clear and cogent evidence which would allow me to derogate from the principle of open justice. I was not satisfied that the respondent, on behalf of the comparators, had discharged that burden. Accordingly, I refuse the application.

Employment Judge Bedeau

10 October 2022

Date:

Sent to the parties on:

12 October 2022

L TAYLOR-HIBBERD

For the Tribunal Office