



EMPLOYMENT TRIBUNALS

Claimant: Sandra Messi

Respondent: (1) Sonia Brosnan (R1)
(2) Christopher Brown (R2)
(3) Matthew Clarke Bibendum Limited (R3)

Heard at: London South, by CVP

On: 20 September 2024

Before: EJ Rice-Birchall

Representation

Claimant: Mr Robertson

Respondent: R1 no appearance
Ms Kight, counsel, for R2 and R3

RESERVED JUDGMENT

The claim is struck out under Employment Tribunal Rule 37(1)(b) because the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.

REASONS

The issues

1. This was a public preliminary hearing to address the following issues, as set out by EJ Chudleigh at a preliminary hearing on 21 March 2024:
 - a. Whether the claimant was disabled at the material time namely between 7 July 2023 to 7 August 2023 within the meaning of the Equality Act 2020 (EqA). This will require the tribunal to consider:
 - i. Did she have a physical or mental impairment: namely depression, depressive disorder panic attacks, and back impairment?
 - ii. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
 - iii. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

- iv. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - v. Were the effects of the impairment long-term? The Tribunal will decide: did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?
 - b. Whether the claimant an employee of any of the respondents within the meaning of section 83 of the EqA?
 - c. If the claimant was not an employee any of the respondents, whether any of the complaints should be struck out (and in particular, the complaint about equal pay)?
 - d. Whether all or any of the claimants claims should be struck out as having no reasonable prospect of success or alternative a deposit order made on the basis that all or any of the claims have little reasonable prospect of success?
 - e. Case management for any future hearing.
2. By a letter to the parties dated 15 July 2024, EJ Leith confirmed that an additional ground for strike out, that the claimant's conduct in the manner in which the proceedings are being conducted is unreasonable and vexatious, would also be considered at the preliminary hearing.
3. In the circumstances, and given that my decision was reserved on the issues a-d above, and on the issue set out at 2 above, it was agreed that there was no benefit in making further case management orders at this hearing. I decided to deal with the issue in paragraph 2 above first.
4. I mentioned at the outset that I had previously worked with Ms Kight but that I saw no need to recuse myself on that basis. No objection was raised by Mr Robertson.

The claimant's application for strike out

5. The claimant also made an application for the response to be struck out. This was included in the claimant's submissions sent in on the morning of the preliminary hearing at 812am as follows: "The respondents and their representatives on 2 occasions also deliberately failed to comply with CMO and I have made an application to have their response strike out for non compliance, costs awarded in my favour due to the manner they have conducted themselves throughout the proceedings which is scandalous, vexatious and dishonest. (Sent this on 15.7.2024, 30.7.2024, 31.7.2024, 16.9.2024 to the attention of EJ Omar Khalil."

The claim

6. The claimant brought her claim on 7 August 2023 following a period of early conciliation between 22 and 25 July 2023.
7. Her claim relates entirely to a period commencing on 7 July 2023 when the claimant was assigned by Zoom Recruitment Limited to work at R3 as a warehouse administrator. She worked two shifts for R2, on 9 and 10 July 2023, and then was sick from 11 July 2023 and never returned to work.

8. The claimant submitted a grievance to Zoom Recruitment Limited on 20 July 2023, copied to R2.
9. On 20 July 2023, R3 requested a DSE assessment for the claimant and also asked her to provide further information about the back support she said she needed.
10. On 21 July 2023, the claimant alleges that she made a disclosure to HSE/EHRC/ICO/Employment Tribunal alleging a failure to make reasonable adjustments. On 22 July 2023 the claimant alleges that she made a disclosure to the CEO of R3 and to ACAS. The claimant relies on these as “protected acts” in respect of the victimization complaint.
11. On 24 August 2023, the claimant’s employment was terminated.
12. It was acknowledged during the hearing that the claimant has presented at least 19 other claims to the employment tribunals. In fact, there are at least 23 publicly available judgments in relation to Tribunal claims brought by the claimant. The claimant is not recorded as having been successful in any complaint in any of those judgments. The most positive outcome revealed by any of them is, probably, the claimant persuading of the Tribunal not to strike out the whole of her claim. There are a further 62 claims recorded on the Tribunal’s case management system. Whilst the fact of the claimant pursuing so many claims unsuccessfully does not, of course, prove that the claims, or the claimant’s conduct of them, are vexatious, it is relevant to a consideration of whether the claimant’s conduct of this claim is vexatious, not least because it is evidence that the claimant has very considerable experience of Employment Tribunal proceedings.
13. The claimant is currently in receipt of universal credit.

The issues in the claim

14. The issues in this case were set out by EJ Chudleigh in the Record Of A Preliminary Hearing of 21 March 2024. I do not repeat them here save to set out the heads of claim, namely:
 1. Direct race discrimination
 2. Harassment related to race
 3. Equal pay against R3
 4. Failure to make reasonable adjustments; and
 5. Victimisation.

The respondents

15. R1 was not represented at the hearing. Following the preliminary hearing on 21 March 2024, the claim was re-served on R1 on 6 June 2024, but no response has been received. It is understood that, at the relevant time, R1 worked for Zoom Recruitment Limited, but that her employment with them ceased on 10 August 2023.
16. R2 is a manager to whom the claimant reported when she attended shifts at R3. R2 and R3’s solicitor is referred to as R’s solicitor in the judgment.

The hearing

17. I was in receipt of written submissions from both the claimant and the respondent. Ms Kight made some additional oral submissions as did Mr Robertson. Both urged me to read the written submissions. The claimant's submissions were lengthy and attached an additional 14 documents but seemed to be largely cut and paste from other documents. They had no relevance to the respondent's application to strike out the claim due to the claimant's conduct of the case. There was some reference to strike out but in the context of whether the claim had reasonable prospects of success and of her own application to strike out the respondent's response.
18. As the claimant was not present, Mr Robertson asked twice for a brief break in order to take instructions. His request was granted on both occasions.
19. I had a Bundle of Documents running to 1368 pages, though little of that content was referred to by the parties.

Findings of fact relevant to the issues

The claimant's correspondence

20. Following the first preliminary hearing in this matter, which took place on 21 March 2024, the claimant corresponded, inter alia, as set out below. I take the very unusual step of listing and setting out, in some detail, the voluminous communications sent by the claimant, as I consider that to be relevant to the issues before me. It is not suggested that this is an exhaustive list of the claimant's communications. Where relevant and for context, I have added in italics further information about the claim. The relevant correspondence is as follows:
- a. 10 April 2024 at 15:00 sent to the Tribunal and copied to R2 and R3's solicitor (referred to as R's solicitor in this judgment), R1, Claudia Webb, Kareena Prescott, Elle Louise Tucker; the respondent's counsel; Nathan MacPherson; Payroll; and Optimum Payroll solutions. The subject of the email was FOR PH on 18.9.2024- VERY URGENT FAO EJ Chudleigh 2304116/23 Messi v others-still not received CMO as per PH on 21.3.3034-10am, Confirmation that R1 Sonia Brosnan has been reserved- in addition providing further submissions objecting the respondents a..." In the body of the email the claimant set out some law and cases as regards her submission that she was an employee rather than a worker; and some cut and paste information about equal pay;
 - b. 16 April 2024 at 1428 sent to the Tribunal and copied to R's solicitor, R1, Claudia Webb, Kareena Prescott, Elle Louise Tucker; and Nathan MacPherson. The subject was as above and the email attached some judgments on strike out and deposit orders and as regards the Acas code not being followed and also set out some general information about dealing with the disability status issue;
 - c. 17 April 2024 at 1127 to the Tribunal and copied to respondent's solicitor, R1, Claudia Webb, Kareena Prescott, Elle Louise Tucker; and Nathan MacPherson. The subject of the email was: "MAKING AN APPLICATION FOR A PH IN PUBLIC TO ESTABLISH

DISABILITY STATUS IN ACCORDANCE WITH THE PRESIDENTIAL GUIDANCE THAT WAS NOT COMPLIED BY ET-FOR PH on 20.9.2024-VERY URGENT FAO EJChudleigh 2304116/23 Messi v others -providing further submissions". The claimant made "an application for a PH in public to establish disability status" and provided "additional written submissions with case authorities and judgements and written submissions for the PH on 20.9. 24". There followed five pages of small type reference to case law which appears to have been cut and paste from other documents;

- d. 20 April 2024 at 1124 to the Tribunal and copied to respondent's solicitor, R1, Claudia Webb, Kareena Prescott, Elle Louise Tucker; and Nathan MacPherson. The subject of the email was "URGENT-2304116/2023-MAKING AN APPLICATION FOR A PH IN PUBLIC TO ESTABLISH DISABILITY STATUS IN ACCORDANCE WITH THE PRESIDENTIAL GUIDANCE THAT WAS NOT COMPLIED BY ET-FOR PH on 20.9.2024-VERY URGENT FAO EJ Chudleigh 2304116/23 Messi v others -providing f...". This email attached a judgment in relation to equal pay the claimant wanted to refer to on 20 September 2024 and was in relation to the claimant's alleged disability;
- e. 5 May 2024 at 945 to the Tribunal and copied as in d above and with the same subject matter and this time sending information "to support my application for a PH in public to determine disability status and referring to case law on the burden of proof;
- f. 8 May 2024 at 1238 an email to the Tribunal and R's solicitor copying and pasting information about the Presidential Guidance and the determination of disability status in a public hearing; strike out; continuing acts and so on. Again the information was cut and paste information and was not tailored to the specific facts of the claimant's case;
- g. 8 May 2024 at 1657 to the Tribunal and R's solicitor following an email from the respondent confirming that the issue of disability had already been listed, to say "This is not correct" and also: "I also made a finding that their counsel Rosie Kight @ kings chambers is also a part time judge and was deceptive in her evidence to the judge;
- h. 10 May 2024 at 1331 to the Tribunal, R1 and R's solicitor sending case law "in regards to false statements";
- i. 12 May 2024 at 1108 to the Tribunal, R1 and R's solicitor. The subject of the email was: "URGENT FAO EJ Burge -2304116/2023-Messi v Bozena- Client submission and please to update for application to have the hearing with a panel under rule 55". The email was some cut and pasted information about equal pay and attached information about **Ahmed v BBC**;
- j. 13 May 2024 at 1045 to the Tribunal and copying in R1. The subject of the email was: "FAO EJ Chudleigh URGENT URGENT Application for a default judgment because R1 despite being reserved twice have

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not complied with CMO orders and not been participating in the proceedings-2304116/2023- Messi v others-“. The claimant was applying for a default judgment against R1;

- k. 15 May 2024 at 1028 to the Tribunal, R1 and R’s solicitor adding further detail to her claim and referring to case law;
- l. 17 May 2024 at 15.11 to the Tribunal and R1. The subject of the email was: “FAO EJ Chudleigh URGENT URGENT Application for a default judgment because R1 despite being reserved twice have not complied with CMO orders and not been participating in the proceedings-2304116/2023- Messi v others-“. The email said: “Again requesting update on this.”
- m. 20 May 2024 at 9:01 to the Tribunal, R1 and R’s solicitor. The subject of the email was “Urgent FAO Burge-2304116/2023-Messi v others-claimant application for an update to have the hearing with a panel under rule 55”. The email attached an article from a barrister about strike outs.

NB on 21 May 2024 at 1045 the Tribunal wrote to the claimant to inform her that evidence and argument for the preliminary hearing listed for 20 September should be managed in line with the case management orders and that she should not send the Tribunal evidence and argument at this stage of the process.

- n. 21 May 2024 at 1106 to the Tribunal and R1. The subject of the email was: Urgent FAO Burge-2304116/2023-Messi v others- claimant application for an update to have the hearing with a panel under rule 55. The email asked for an update on the claimant’s application for a default judgment.
- o. 21 May 2024 at 1115 to the Tribunal; the legal officers and to R1. The subject of the email was: URGENT Application for R1 for default judgment for not serving a response as Per CMO and for non compliance-Urgent FAO Burge-2304116/2023-Messi v others-claimant application for an update to have the hearing with a panel under rule 55” asking for an update on the default judgment.
- p. 25 May 2024 at 1209 to the Tribunal, the legal officers, R’s solicitor and R1. The subject matter of the email was : Urgent For PH 20.9.2024 – URGENT Claimant medical records and impact statement URGENT FAO EJ Burge- 2304116/2023 – Messi v Bozena – Client submission and please to update for application to have the hearing with a panel under rule 55.” The email contained information about the claimant’s disability.
- q. 29 May 2024 at 916 to the Tribunal, the legal officers and R1 again requesting an update as regards the default judgment.

NB the claim was reserved on R1 on 6 June 2024. The claimant was informed on the same day.

- r. 6 June 2024 at 1616 to the Tribunal, the legal officers, R1, the EAT and R’s solicitor. The subject of the email was: FAO EJ Burge-

URGENT URGENT CLAIMANT WILL NOW APPEAL THIS - 2304116-2023. The claimant said that she would now take the matter to the EAT because she had requested a default judgment three times and the Tribunal had thereby breached rule 21.

- s. 6 June 2024 at 1638 to the Tribunal, the legal officers, R1 and R's solicitor. The subject of the email was: URGENT FAO EJ Burge-URGENT URGENT Application for a default judgment because R1 despite being reserved twice have not complied with CMO orders and not been participating in the proceedings- 2304116/2023- Messi v others asking again for a judgment against R1.
- t. 7 June 2024 at 1155 to the Tribunal, the legal officers, R1 and R's solicitor, R's counsel, hradvice, R2; and other recipients at candcgroup alleging that in its response to the Tribunal setting out its position on disability, "the respondents did NOT attached everything I have sent in regards to my disability and in fact are concealing it" and setting out that she had appealed about the lack of a default judgment to the EAT.
- u. 8 June 2024 at 1518 to the Tribunal, the legal officers, R1 and R's solicitor attaching information about universal credit.

On 10 June the respondent wrote to the Tribunal, inter alia, as follows: "Despite various requests to stop doing so, the Claimant repeatedly copies and blind copies employees of the Respondent and the Respondents' Counsel into emails regarding this case and others. This is evidenced in the email below (with reference to 7 June email). The Claimant has also copied in the writer to various emails regarding other claims and communications with the SRA (examples attached). We are unsure of the Claimant's motivation in respect of the above, but we are concerned that the Claimant's conduct is vexatious and designed to cause disruption and intimidate. We therefore ask that the Tribunal at the PH also considers a further ground for strike out, namely that the Claimant's conduct in the manner in which the proceedings are being conducted is unreasonable and vexatious. In the meantime, we would be grateful if the Tribunal could give the Claimant specific instruction to: Only communicate with the Respondents' solicitor in respect of these proceedings; Immediately refrain from copying or blind copying the Respondents' current or former employees into correspondence regarding the claim; Immediately refrain from copying or blind copying the Respondents' barrister, Rosie Kight, and/or her clerk or anybody at Kings' Chambers into correspondence regarding this claim; Only send emails to the Respondents' solicitor regarding matters that are relevant to this claim. We contend that this application furthers the overriding objective of dealing with cases in a manner that is proportionate to the complexity and importance of the issues and ensuring that the parties are able to participate fully in the proceedings. We confirm that we have provided the Claimant with a copy of this application and in doing so remind the Claimant that an objection to the application should be sent to the Tribunal (with a copy to us) as soon as possible.

- v. On 10 June 2024 at 1201, and in response to the email set out above, the claimant wrote to the Tribunal, the legal officers; R's solicitor and R1 stating that copying in the respondents and their representatives did not make her vexatious, unreasonable; alleging that the respondents and their representatives had breached SRA principles

by “being dishonest and by making false statements during proceedings; that she had provided evidence of this to SRA and that her rights were reserved “should the respondent’s representative continue to make false statements.”

- w. On 10 June 2024 at 1210 to R’s solicitor, R2, addresses at candcgroup and copied to R1 and the Tribunal, the claimant wrote, “ I am putting you on notice that should you continue to make any statement/s which are deemed to be libelous, that I will sue you for defamation of character and slander.”
- x. 10 June 2024 at 1910 to the Tribunal, the legal officers, R1 and R’s solicitor. The subject matter of the email was: “URGENT CLAIMANT APPLICATION FOR COSTS TO BE DEALT WITH ON 20.9.2024- UNDER RULE 76 (b) and ©”. The claimant accused the respondent of sending three emails and of acting unreasonably and said that their response has no reasonable prospect of success;
- y. 10 June 2024 at 2110 to the Tribunal, the legal officers; R1, R’s solicitor, R2 and three addresses at “candc group” the claimant wrote: “I am putting you on notice that should you continue to make any statement/s which are deemed to be libellous, that I will sue you for defamation of character and slander.”
- z. On 12 June 2024 at 1853 to the Tribunal, the legal officers, R’s solicitor and R1, referring to R’s solicitor as “vicariously liable”.
- aa. On 16 June 2024 to the Tribunal; the legal officers; to R’s solicitor; to addresses at candcgroup, R1, R2, Elle Louise Tucker (Zoom), R’s counsel; Optimum payroll solutions; Kareena Prescott and others. The subject of the email was: “Evidence 1-Contempt of court application-Case Number: 2304116/2023- Messi v R1 Sonia B, R2 Christopher Brown, R3 Matthew Clark Bibendum.” And the email was headed “Contempt of Court Application”. The claimant made an application “in relation to ALL respondents. “And seeking appropriate fine and/or any other punishment applicable by law against all respondents their representatives... and all parties... on the basis that all respondents has undermined the authority of the Tribunal, the administration of justice, and/or attempted to prejudice the Claimant’s claim on multiple occasions by providing deliberate or reckless false and/or misleading statements in their written statements, applications to the ET, and submissions to the Tribunal throughout the proceedings thus far in the attempt to mislead the Tribunal.”
- bb. 16 June 2024 at 7:19, copied as above, which added some additional points including: “He [R’s solicitor] has continuously abused his power not to administer justice and have use SLAPPS to harass, intimidate and try to silence me so that I am deprived of a fair hearing. He has made applications to the ET to strike out my claims by making false statements and allegations that I am vexatious and unreasonable just because I am standing up for my rights and raising concerns to the SRA of him breaching SRA principles. He has tried to silence me because I have approached my MP and police

because of past judges decisions that have struck out my claims without hearing evidence , which is a must in whistleblowing and discrimination claims and because of lawyers like him concealing and making false statements and misleading the ET in their evidence.

- cc. 16 June 2023 at 1935 to the same recipients and saying “FYI”.
- dd. 16 June 2024 at 1939 to the same recipients stating “More evidence of the respondents conduct during proceedings in which SRA aware with evidence in their approach during litigation as abusive, dishonest, unreasonable and dishonest.”
- ee. 16 June 2024 at 1953 to the same recipients and stating “Bundle and CMO in which I intend to continue to comply and will send more evidence as per EJ Chudleigh CMO Dated 21.3.2024.”
- ff. 18 June 2024 at 1230 to the same recipients and attaching without prejudice correspondence which the claimant alleges R’s solicitor was “using..inappropriately..”
- gg. 18 June 2024 at 1311 to the Tribunal, R’s solicitor and R1 to confirm her position that R’s solicitor’s conduct was “dishonest and unreasonable” and referring to the SRA and her MP.
- hh. 4 July 2024 at 1232 to the Tribunal;, the legal officers, “JCIO General Enquiries” “headoffice2; The ET President’s support office; R’s solicitor, R1; Kareena Prescott; Elle Louise Tucker; Garteh Johnson; Jim Dickson, MP; Whistleblowing; Falknerk@parliament.uk; Gareth Johnson, MP. It included a list of “everything I want in the bundle even if it harms your client response” and included, inter alia, “All emails I sent objecting strike out applications and case authorities” and “all emails I sent to my MP, police, SRA”.
- ii. 4 July 2024 at 1254 to the Tribunal, the legal officers, JCIO General enquiries (judicial conduct) the Judicial ombudsman and the President’s office and his support office and cc’d R’s solicitor, R1, Kareena Prescott, Elle Louise Tucker, Gareth Johnson; Jim Dickson MP Whistleblowing Gareth Johnson MP R2 R’s counsel and other individuals stating, inter alia, that all parties are vicariously liable and that R’s solicitor “ has acted unreasonable and dishonest during proceedings..”.
- jj. 5 July 2024 at 1914, recipients as above stating that she did not receive documents as per CMOs.
- kk. 5 July 2024 at 2203, recipients as above attaching text messages and stating “they have been deceiving the ET..”.
- ll. 8 July 2024 at 1121 to the Tribunal and to the legal officers and copied to: R’s solicitor, R1, a number of addresses of individuals and otherwise and candcgroup; the EAT; GDPR, R’s counsel and other individuals. The subject of the email was: FAO Chudleigh URGENT Application for unless order under rule 38 to order the respondents to disclose all documents by 19.7.2024 because and as per CMO because The respondents and their representatives did NOT comply with the CMO and is OMMITTING LIST O.” The claimant complained

that the respondents had not complied with the CMO to provide a list of documents and asking for strike out of the response.

NB On 10 July 2024 the respondent wrote to the Tribunal to state that it had sent a bundle and was unclear why the claimant was requesting an unless order, and stating that it was becoming increasingly difficult to deal with the claimant as she was seeking to mislead the Tribunal, for example by alleging that the respondent had not complied with the case management orders when that was clearly not the case; that every time the respondent writes to the Tribunal is followed by a complaint to the Tribunal and/or SRA and/or the respondent is accused of harassment; and that, despite repeated requests not to do so, the claimant continued to copy in counsel and staff members to correspondence.

On 15 July EJ Leith wrote to parties as follows: "Parties are reminded of the following principles regarding correspondence relating to these Tribunal proceedings: Where a party has a representative on the record (such as is the case with the second and third respondents), correspondence should be sent to the representative only. Any correspondence to the Tribunal must be copied to the other party, via their representative (subject to the exception in rule 92 of the Employment Tribunal Rules of Procedure). Correspondence to the Tribunal should only be sent when replying to a request from the Tribunal or seeking a specific action. Correspondence between the parties should not be copied to the Tribunal.

mm. On 15 July 2024, and sent to the Tribunal and the legal officers.

The email was copied as follows:

- i. R1;
- ii. R's solicitor;
- iii. Whistleblowing<whistleblowing@equalityhumanrights.com>;
- iv. icocasework <icocasework@ico.org.uk>;
- v. Phso Enquiries <Phso.Enquiries@ombudsman.org.uk>;
- vi. jim.dickson.mp@parliament.uk;
- vii. Gareth Johnson <garethjohnsondartford@gmail.com>;
<gareth.johnson.mp@parliament.uk>;
- viii. ProtectWhistle <whistle@protect-advice.org.uk
- ix. Elizabeth Gardiner <elizabeth@protect-advice.org.uk>;
- x. kramers@parliament.uk kramers@parliament.uk
- xi. <Adam.Jones@judicialombudsman.gov.uk>;
- xii. Presidents Office Employment E&W
- xiii. <headoffice@judicialombudsman.gov.uk>;
- xiv. <general.enquiries@judicialconduct.gov.uk>;
- xv. Etpresidentsupportoffice

The subject of this email was: URGENT Asking for reconsideration to have the PH with a panel under rule 55 (public interest for whistleblowing and discrimination claim & an update on my application for an unless order for disclosure by the respondents and their representatives." The email stated that the claimant had contacted the police in regards to perjury, false statements, contempt of court, preventing the administration of justice by the respondents and their representatives during proceedings. She said that evidence was all in the bundle which she would provide to the police in due course.

nn. 18 July 2024 (3 attachments) (Tribunal cc'd into an email to the Lord Chancellor alleging that the claimant was retaliated against for taking matters to the police, her MP and the Tribunal);

oo. 25 July 2024 at 1703 to the Tribunal (not copied to the respondents) asking about postponement.

The bundle was sent to the claimant via a onedrive link, by the respondent, on Friday 26 July.

pp. 30 July 511pm to the Tribunal, R1 and R's solicitor explaining that she was making her application for an unless order on the basis that the respondent had not complied with its obligation under the cmo and stating that she found it "very difficult to understand why everytime I make an application in relation to the respondents the ET always seems to be unable to trace it..".

In response to correspondence from the claimant (27 July 2024) and from the respondent (26 July 2024), AREJ Khalil wrote to the claimant as follows: It is far from clear what issue the claimant is facing regarding receiving the Bundle from the respondent. The claimant is asked to clarify, succinctly, what problem she is facing about the format of receiving this. Please reply in 7 days....The Tribunal is also unclear in what respect the claimant seeks an Unless Order. Given the current lack of clarity, any such application at this stage has no prospect of being granted....The claimant should not copy in any other party when corresponding with the Tribunal, save for the respondent's representative.

On 6 August 2024, Mr Robertson came on the record as acting for the claimant in the proceedings.

qq. On 16 September at 729 the claimant wrote to the Tribunal to request a postponement of the preliminary hearing listed for 20 September 2024.

rr. She wrote again on 16 September at 1456 to attach the postponement request from July 30.

ss. She wrote again on 16 September at 1805 (4 attachments) regarding the postponement.

tt. On 17 September 2024 at 937 the claimant's representative wrote to the Tribunal to say that he would be in court in Manchester Crown Court and would not have time to prepare properly for the hearing and requested postponement.

uu. On 17 September at 1024 the claimant wrote to the Tribunal seeing in an OH report. She did not copy in the respondents other than R1.

vv. 17 September 2024 at 1025am (2 attachments) to thank her legal representative for writing to the Tribunal and sending in an OH report and to confirm that she had complied with all CMOs;

On 18 September 2024 the application to postpone was refused by the Tribunal.

ww. On 18 September 2024 at 1809, and to the Tribunal, legal officers, and a named tribunal member of staff and copied into R1, R's solicitor, R's counsel and two other previously unknown recipients to say that she had removed her "litigation friend" "who

mentioned he cannot attend due to being in court this Thursday and Friday and this was overlooked by EJ Khalil”.

- xx. On 18 September 2024 at 1929, to the Lord Chancellor, and copied to the Tribunal, an MP, to an address in parliament to the EAT, to the President's support office, to the Equality and Human Rights Commission and others, the claimant wrote: “In regards to concerns raised to Dame Sue Carr's, President Barry Clarke and my MP in the past in regards to my claims not being heard by impartial judges and constant breach of article 6- right to a fair hearing and Article 10-freedom of speech. I look forward to hearing from you soon in regards to these concerns I raised in the public interest and I was retaliated against by Neal Mellor (respondents representative for taking matters to the police, my MP and the ET who breached SRA principles and used SLAPPS to intimidate and threaten me since I took matters to the ET which I am entitled to do.
- yy. The same day, the claimant was able to submit an appeal to the Employment Appeal Tribunal (EAT) and sought leave to make written submissions.
- zz. 19 September 2024 at 934am (a further email to the Lord Chancellor copying in the Tribunal asking for “urgent intervention” due to a breach of the overriding objective;
- aaa. 19 September 2024 at 949 and to the Tribunal and copied only to R1: “Will the details on courtserve will be released today so members of the public can request to observe it?”;
- bbb. 19 September at 326pm (the claimant wrote to the Tribunal and the respondents with a without prejudice attachment which had been sent to ACAS);

The EAT rejected the claimant's appeal and stated that it was “totally without merit”.

- ccc. The claimant emailed the Tribunal and the respondents to say: “I have spoken to the EAT and will seek permission to appeal this to the court of appeal and will provide evidence that I am on benefits in regards to fees exemption.”

The preliminary hearing

- 21. On the morning of the hearing, at 812am, the claimant sent in her written submissions by email, with 14 attachments. The submissions were lengthy and comprised material which had largely been cut and pasted from other documents as well as a long list of documents in the bundle which the claimant said supported her claim.
- 22. The claimant had not cooperated with the respondents in preparing for the hearing, including by failing to disclose relevant documents related to her employment status, despite requests on 8 July 2024 and 17 July 2024, failing to produce a list of documents and instead choosing to send documents in a haphazard fashion via email.

LAW

Strike out

23. Rule 2 of Schedule 1 of the Employment Tribunal Rules of Procedure (the Rules) sets out the overriding objective of the Tribunal to deal with cases fairly and justly. When exercising any power given to it by the Rules, the Tribunal must seek to give effect to the overriding objective. This includes ensuring so far as practicable that the parties are on an equal footing, dealing with cases in a manner which is proportionate to their complexity and importance and avoiding delay.
24. Rule 37(1) of the Rules provides that: 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 or response on any of the following grounds: (a) that it is scandalous or vexatious or has no reasonable prospect of success; (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious; (c) for non-compliance with any of these Rules or with an order of the Tribunal; (d) that it has not been actively pursued; (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
25. The power to strike out a claim is a draconian measure, and great care is to be taken in deciding whether to exercise it and if so to what extent (see ***Anyanwu & another v South Bank University & South Bank Student Union [2001] ICR 391; Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684¹; Smith v Tesco Stores [2023] EAT 11***).

The approach generally

26. When deciding whether to strike out a claim, a Tribunal must:
- First consider whether any of the grounds set out in Rule 37(1)(a) to (e) have been established;
 - Secondly decide whether to exercise its discretion to strike-out.
27. A Tribunal should bear in mind the overriding objective of dealing with cases 'fairly and justly' when considering whether to strike out. This includes, among other things, ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance, and avoiding delay. The overriding objective means that the proportionality of the sanction must be at the forefront of the Tribunal's mind.

37(1)(b): the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious

28. In this context, "Scandalous" means irrelevant or abusive of the Tribunal (***Bennett v Southwark London Borough Council [2002] ICR 881***). Sedley LJ explained the term as follows at [27]: The trinity of epithets "scandalous,

frivolous or vexatious" has a very long history which has not been examined in this appeal, but I am confident that the relevant meaning is not the colloquial one. Without seeking to be prescriptive, the word "scandalous" in its present context seems to me to embrace two somewhat narrower meanings: one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process. Each meaning has lexicographical and legal support, the first in the principal Oxford English Dictionary definitions of "scandal" and "scandalous", which have to do with harm and discredit; the second in "scandalising the court", a historical form of contempt; and both in Daniell's entry in Byrne Dictionary of English Law (1923) cited by Ward LJ in his judgment at paragraph 53. These considerations are not of course exhaustive, but they are enough to make it plain that "scandalous" in the rule is not a synonym for "shocking". It is a word, like its sibling "frivolous", with unfortunate colloquial overtones which distract from its legal purpose: see the remarks of Lord Bingham of Cornhill CJ in **R v Mildenhall Magistrates Court, Ex p Forest Heath District Council** (1997).

29. A "vexatious" claim is one that is pursued not with the expectation of success but to harass the other party or out of some improper motive. The Employment Appeal Tribunal held as follows in **ET Marler Ltd v Robertson** [1974] NIRC 72 in the context of an application for costs: "If an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously, and likewise abuses the procedure. In such cases the tribunal may and doubtless usually will award costs against the employee. The exercise of the discretion by tribunals along these lines is illustrated in a number of decisions to which the court was referred during the course of argument." Whilst not directly relevant to the manner in which proceedings are conducted, it is relevant to consider the meaning of vexatious in this context.
30. Subsequently, in **Attorney General v Barker** [2000] 1 FLR 759 Lord Chief Justice Bingham said that the hallmarks of a vexatious proceeding were that it had: "...little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process." Again, it is useful to understand the meaning of vexatious.
31. A Tribunal may strike out for "unreasonable" conduct if the party's conduct has involved deliberate and persistent disregard of procedure or has made a fair trial impossible. In either case, the striking out must be a proportionate response (**Blockbuster Entertainment Ltd v James** [2006] IRLR 630, CA).

Conclusions

32. I have set out above an outline of the claimant's very brief employment with R3. As noted above, she worked just two shifts for R3 and did not

work again. This is important as it forms the context.

33. I have also noted the claimant's extensive number of claims and the fact that she is an experienced litigator in the employment tribunals.
34. The voluminous correspondence set out above points strongly to the claims being scandalous (ie a misuse of the privilege of legal process in order to vilify others) and/or unreasonable and/or vexatious (ie having the effect of subjecting the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue, and involving an abuse of the process of the courts). The nature of the correspondence overall indicates an approach to litigation by the claimant, which is to resist resolution of the simplest of matters and to be offensive and accusatory in correspondence.
35. I find that the chronology, correspondence and facts set out above shows that the claimant:
- a. Failed to co-operate with R's solicitor in preparing for this hearing, including by:
 - i. failing to disclose relevant documents related to her employment status, despite requests on 8 July 2024 and 17 July 2024;
 - ii. failing to produce a list of documents;
 - iii. failing to provide details of documents which she says were missing from the hearing bundle; and
 - iv. sending documents in a haphazard fashion via email, all causing those acting for R2/R3 to incur significant additional time and expense which was entirely disproportionate to the issues. By way of example, the claimant's email of 4 July 2024 states that the respondent should include in the Bundle: "All emails I sent objecting strike out applications and case authorities" and "all emails I sent to my MP, police, SRA". I find the claimant's conduct of the proceedings in this way to be unreasonable and vexatious as it has subjected R2/3 to inconvenience, harassment and expense out of all proportion to any gain likely to accrue, and involving an abuse of the process of the courts.
 - b. Failed to co-operate with the Tribunal, by:
 - i. similarly sending documents and information in a haphazard fashion (such as on 8 May 2024 and 17 September 2024); and
 - ii. ignoring the Tribunal's specific and clear instructions (for example that of EJ Leith on 15 July 2024 when he wrote: "*Any correspondence to the Tribunal must be copied to the other party, via their representative (subject to the exception in rule 92 of the Employment Tribunal Rules of Procedure).*") The claimant wrote to the Tribunal again on 25 July 2024 asking about postponement without copying in R's solicitor and also on 17 September 2024.) The claimant has also, despite requests not to do so, persistently copied vast quantities of email correspondence to R2/R3 despite them being represented (16 June 2024; 18 June 2024, 4 July 2024).

I find that the manner in which proceedings have been conducted in this regard to be scandalous in that it is a misuse of the privilege of legal process; and unreasonable as it involves deliberate and persistent disregard of procedure.

- c. Is willing to criticise the Tribunal and involve the EAT and others (such as the Lord Chancellor and the President's office) without good cause, for example on 6 June 2024 when the claimant, copying the EAT, said that she would take the matter to the EAT because she had requested a default judgment three times and the Tribunal had thereby breached rule 21. The claimant also indicated that she would appeal the EAT's decision to uphold the Tribunal's decision not to postpone the preliminary hearing to the Court of Appeal. The manner in which the claimant has conducted these proceedings in this regard is scandalous as she is giving gratuitous insult to the court in the course of the proceedings whenever she does not get the response she wants or as quickly as she wants it. The claimant demonstrates no respect for the Tribunal process.
- d. Has persistently and without good cause accused R's solicitors of committing various criminal and/or civil offences in their entirely appropriate conduct of these proceedings, including on:
 - i. 10 June 2024 when the claimant wrote, " I am putting you on notice that should you continue to make any statement/s which are deemed to be libelous, that I will sue you for defamation of character and slander."
 - ii. 16 June 2024: "And seeking appropriate fine and/or any other punishment applicable by law against all respondents their representatives... and all parties... on the basis that all respondents has undermined the authority of the Tribunal, the administration of justice, and/or attempted to prejudice the Claimant's claim on multiple occasions by providing deliberate or reckless false and/or misleading statements in their written statements, applications to the ET, and submissions to the Tribunal throughout the proceedings thus far in the attempt to mislead the Tribunal."
 - iii. 16 June 2024: "He has made applications to the ET to strike out my claims by making false statements and allegations that I am vexatious and unreasonable just because I am standing up for my rights and raising concerns to the SRA of him breaching SRA principles. He has tried to silence me because I have approached my MP and police because of past judges decisions that have struck out my claims without hearing evidence, which is a must in whistleblowing and discrimination claims and because of lawyers like him concealing and making false statements and misleading the ET in their evidence;
 - iv. 18 June 2024 at 1311 to the Tribunal, R's solicitor and R1 to confirm her position that R's solicitor's conduct was "dishonest and unreasonable" and referring to the SRA and her MP;
 - v. 4 July 2024 and copied into an MP; Whistleblowing; R2 and R's counsel and other individuals stating, inter alia, that all parties are vicariously liable and that R's solicitor " has acted unreasonable and dishonest during proceedings..".; and

- vi. 18 July 2024 when the Tribunal was copied into an email to the Lord Chancellor alleging that the claimant was retaliated against for taking matters to the police, her MP and the Tribunal.

I find that these examples demonstrate the misuse of the privilege of legal process in order to vilify others, and that the manner of conducting proceedings in this way is scandalous.

- e. has made repeated unwarranted threats to report and has in fact made unwarranted reports about R's solicitors to the SRA, the Police and other regulatory authorities, for example in the email of 15 July 2024 in which the claimant stated that she had contacted the police in regards to perjury, false statements, contempt of court, and preventing the administration of justice by the respondents and their representatives during proceedings. I find this demonstrate the misuse of the privilege of legal process in order to vilify others, and that the manner of conducting proceedings in this way is scandalous.
- f. persistently copied vast quantities of email correspondence to individuals/organisations including members of parliament, the Prime Minister and solicitors involved in other proceedings, including on 15 July 2024 and 19 September 2024, despite repeated requests not to. Even before being asked not to, the claimant copying in multiple recipients is indicative of an approach to litigation which is unco-operative and seeking to maximise inconvenience to others. I find that it is an abuse of the process of the tribunal and that the manner in which the claimant has conducted proceedings is, in this regard, vexatious. It is noteworthy that the claimant was put on notice by R's solicitor's email of 10 June 2024, that her conduct in this regard was considered vexatious and could cause the basis of an application for strike out. R's solicitor set out: "*The Claimant has also copied in the writer to various emails regarding other claims and communications with the SRA (examples attached). We are unsure of the Claimant's motivation in respect of the above, but we are concerned that the Claimant's conduct is vexatious and designed to cause disruption and intimidate. We therefore ask that the Tribunal at the PH also considers a further ground for strike out, namely that the Claimant's conduct in the manner in which the proceedings are being conducted is unreasonable and vexatious*". Despite this further unwarranted emails were sent to multiple inappropriate recipients including on 16 June 2024; 18 June 2024; and 4 July 2024. I find that these threats to report R's solicitor to the SRA, the legal ombudsman and the Court/Tribunal and the multiple emails copied to the Tribunal, to the respondents, to the SRA and others were an attempt by the claimant to intimidate, cause worry and deter the appropriate defence of the claims. Again, the Tribunal finds that the manner in which the claimant has conducted proceedings, in this regard, is unreasonable and vexatious.
- g. Has made an unwarranted application for an unless order and/or to strike out the respondent's response on the basis that it has not complied with case management orders and yet has been unable, despite specifically being requested to do so by AREJ Khalil and during this preliminary hearing, to specify with any clarity what the alleged breach is. This is a misuse of the privilege of legal process

and is designed to cause the maximum inconvenience to the respondents and others.

36. For these reasons, I find that the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable and vexatious. The effect of the claim has already been to subject the respondents to considerable inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant. I have concluded that the claim involves an abuse of the process of the court, in other words that the Tribunal process is being used for a purpose or in a way which is significantly different from the ordinary and proper use of the Tribunal process.

Strike out

37. I have considered whether to exercise my discretion to strike the claim out, considering, as I have done so, that the power to strike out a claim is a draconian measure, and that great care is to be taken in deciding whether to exercise it. I must consider whether a fair trial is still possible and whether striking out is a proportionate response.

38. I have concluded that I should exercise my discretion to strike out the claimant's claim. I have concluded that there is no factor to which significant weight should be attributed which suggests that I should not strike it out. By contrast, the manner in which I find the proceedings have been conducted weighs heavily in favour of striking it out.

39. In light of the claimant's persistent conduct of this claim, I do not consider that a fair trial could be possible. There is no evidence whatsoever to suggest she won't continue to conduct her claim in a similar manner. Although the claimant has had a representative on record since 6 August 2024, there is no evidence to suggest that he has any influence over the claimant's conduct of the claim. Indeed, the communications set out above after 6 August 2024 included those sent to the Lord Chancellor. The fact that the claimant was represented also did not prevent the claimant appealing the refusal to postpone this hearing to the EAT, and indeed threatening to appeal to the Court of Appeal. In any event, Mr Robertson come off the record at any time. The respondents cannot be recompensed by costs as the claimant is on universal credit.

40. The manner in which the proceedings are conducted is worse because of the claimant's significant experience in the employment tribunals. In my view, that is a further factor which weighs in favour of strike out.

41. The overriding objective means that the proportionality of the sanction must be at the forefront of the Tribunal's mind. Nonetheless, I conclude that the balance of prejudice weighs heavily in favour of striking it out.

The claimant's application for strike out

42. For completeness, I have found there to be no merit whatsoever in the claimant's application for strike out of the respondent's response for failure to comply with case management orders. Despite requests to do so, including at this hearing, the claimant was unable to specify what the

alleged breach was. The application fails.

Other applications

43. The remaining applications have not been considered as the claim is struck out.

Employment Judge Rice-Birchall
Dated: 5 December 2024

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