EMPLOYMENT TRIBUNALS

Claimant: **"A"**

Respondent: **The Chief Constable of North Yorkshire Police**

HELD at Teesside Justice's Hearing Centre **ON: 29 and 30 January 2024**

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: **In person**
Respondent: **Mr R Quickfall of Counsel**

JUDGMENT

1. Pursuant to Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the claimant's complaint that she was automatically unfairly dismissed for making a protected disclosure (contrary to section 103A of the Employment Rights Act 1996) is struck out on the grounds that it has no reasonable prospect of success.
2. Pursuant to Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the claimant's complaint of being subjected to detriments on the grounds that she had made protected disclosures (contrary to section 47B of the Employment Rights Act 1996) is struck out on the grounds that it has no reasonable prospect of success.

REASONS

1. By a claim form presented on 26 June 2023 the claimant brought complaints that she had been automatically unfairly dismissed for making protected disclosures and further that she had been subjected to detriments for making protected disclosures. The respondent defended the claims.
2. On 27 September 2023, Employment Judge O'Dempsey conducted a private preliminary hearing, the purpose of which was to identify the claims being brought by the claimant, to identify the issues (the questions which the Employment Tribunal would have to decide) arising from those claims and to make such case

management orders as were appropriate to ensure that the case was fully prepared for final hearing.

3. It is appropriate at this stage to set out a brief summary of the circumstances which led to those claims being brought before the Employment Tribunal.

4. On 11 May 2022 the claimant reported to North Yorkshire Police that she had been subjected to a serious sexual assault and to controlling and coercive behaviour. On 20 May 2022 the claimant was informed that the police's investigation into that allegation had been closed and that no further action would be taken. On 2 October 2022 the claimant made a formal Subject Access Request to the respondent. On 10 October 2022 the respondent replied to that request. On 17 October 2022 the claimant lodged a formal complaint with North Yorkshire Police about the conduct of their investigation into the claimant's allegations.

5. On 22 November 2022 the claimant applied for employment with the respondent, was interviewed for the role on 16 December 2022 and on 21 December 2022 was notified that her application was successful and that a conditional offer of employment would be made, subject to satisfactory vetting. The claimant's vetting application was submitted on 30 December, in which she provided a London address because she was in the process of moving house. That vetting application was successful and on 15 February the claimant was made a unconditional offer of employment and on 16 February 2023 a formal contract of employment was sent to the claimant for signature and return. The claimant signed and returned the contract on 18 February.

6. On 20 February the claimant was contacted by the respondent enquiring as to how she intended to carry out her role at North Yorkshire Police if she was living in London. The claimant explained about her moving address and was told that she would have to re-submit her vetting application with her new, local address. The claimant did so on 22 February and was told on 1 March 2023 that the second vetting application was also successful and that she could start work on 6 March 2023.

7. Throughout this period, the claimant continued to make numerous Subject Access Requests to the respondent in respect of the criminal complaint such that she was told on 9 March that her complaint was to be outsourced to Cleveland Police.

8. By a letter dated 19 April 2023 the claimant was informed that the respondent was withdrawing its offer of employment to the claimant. It has been the claimant's case throughout these proceedings that the decision to withdraw the offer of employment was in fact made by not later than 30 March 2023, when a meeting took place within the respondent's organisation at which meeting the draft letter withdrawing the offer of employment was produced.

9. At the preliminary hearing before Employment Judge O'Dempsey, it was decided that there should be an open public preliminary hearing at which the Tribunal would consider the following issues:-

    9.1. Whether the claimant was at the time of making any alleged qualifying and protected disclosures, an employee or a worker for the respondent, within the definition set out in section 43K or 230 of the Employment Rights Act 1996.

    9.2. If so, when did the claimant become a worker/employee and when did that relationship between the claimant and the respondent come to an end.

9.3. Whether what the claimant alleges was said by her or written by her to the respondent amounted to a qualifying disclosure within the definition set out in section 43A and B of the Employment Rights Act 1996.

9.4. Whether any of the claims should be struck out as having no reasonable prospect of success, pursuant to Rule 37 of the Employment Tribunals (Constitution and Rules and Procedure) Regulations 2013.

10. The open public preliminary hearing was listed to take place over 3 days from 29 to 31 January 2024 at Teesside Justice Hearing Centre. Orders were made for the preparation of hearing bundles and witness statements.

11. When the open public preliminary hearing convened on the morning of Monday 29 January, the Tribunal spent some considerable time explaining to the claimant the legal intricacies of the claims she had brought to the Tribunal and the basis upon which the respondent's strike out application had been made. During the course of those discussions, Mr Quickfall for the respondent conceded that on 18 February 2023 when the claimant signed and returned the contract of employment, the claimant would satisfy the definition of either "employee" or "worker", if that was a legally binding contract. The respondent's position was that the contract was void for mistake or came to an end on 20 February 2023 (before it came into force) because a condition precedent (the successful completion of the vetting process) was not then satisfied.

12. The Tribunal enquired of the claimant as to when she maintained that any contract of employment which may have existed, did in fact come to an end. In response to that question, the claimant maintained that her contract of employment had never been terminated and that she in fact remained an employee of the respondent as at today's date. I then enquired of the claimant as to how she intended to present a complaint of unfair dismissal, if she did not accept that she had in fact been dismissed or that the contract of employment had been brought to an end. The claimant then stated that she had in fact been dismissed and that the effective date of termination of her employment was on 16 June 2023, that being the date when her appeal against the withdrawal of the contract of employment, had been dismissed. I asked the claimant to state the nature of the decision against which she was appealing and she accepted that her appeal was against the withdrawal of the contract of employment, which amounted to a dismissal. The claimant confirmed that her case was that the decision to withdraw the contract had been made by 30 March 2023.

13. We then moved on to the alleged qualifying/protected disclosures. The Tribunal explained to the claimant that the law in this rather complicated area would require the claimant to have made any qualifying disclosures during the period of time when she satisfied the definition of employee or worker and that accordingly any such disclosure would have to be made between 18 February 2023 and 30 March 2023. Furthermore, any detriments other than the dismissal, would have to have taken place after the making of the protected disclosure which led to the imposition of the detriment. The Tribunal was satisfied that the claimant fully understood those principles.

14. The claimant was then asked to identify each alleged protected disclosure upon which she sought to rely and to provide the information required by Employment Judge O'Dempsey at paragraph 60 of the case management summary of the hearing on 27 September 2023. The claimant would have to establish the following:-

14.1. The date of any disclosure of information.

14.2. The information that was disclosed on each occasion, identifying the words used and whether the information was conveyed orally or in written form.

14.3. To whom each disclosure of information was made.

14.4. The basis on which the claimant believed the disclosure of information was made in the public interest.

14.5. The basis on which she believed tended to show that:

(a) A criminal offence had been, was being or was likely to be committed.

(b) A person had failed, was failing or was likely to fail to comply with any legal obligation.

(c) A miscarriage of justice had occurred, was occurring or was likely to occur.

(d) The health or safety of any individual had been, was being or was likely to be endangered or

(e) Information tending to show any of these things had been, was being or was likely to be deliberately concealed.

14.6. In relation to each disclosure the basis on which she says that the disclosure was made to her employer.

15. The claimant was asked to identify where in the agreed document bundle for this hearing she had carried out that exercise. The claimant referred to an email dated 19 February 2023, which appears at page 264 in the bundle and the transcript of a telephone call she made on 12 April 2023, which appears at page 394-405 in the bundle. When asked how many separate disclosures of information she had made, the claimant stated that there were some 40 separate disclosures. It was then explained to the claimant that it was not for the Tribunal to sift through the transcript of the phone call and to try and extract from that any alleged protected disclosures. The claimant was again reminded of what had been said by Employment Judge O'Dempsey and what was contained in paragraph 60 of his case management summary. After some discussion between the Tribunal, the claimant and Mr Quickfall for the respondent, it was agreed that the claimant would be given some time to go through the single email and the single telephone call and to prepare a list of the alleged protected disclosures, identifying precisely where they appeared in either the email or the transcript of the phone call.

16. Having informed the Tribunal that she had been given sufficient time to do so, the claimant then returned to the hearing and stated that there were in fact only 5 protected disclosures upon which she sought to rely and that each contained information to show that a miscarriage of justice had occurred, was occurring or was likely to occur contrary to section 43B(c). When asked to identify when and how these disclosures were made, the claimant stated that the disclosures were contained in the email from her dated 19 February 2023 which appears at page 264 in the bundle and in the telephone call made by her on 12 April 2023, a transcript of which appears at pages 394-405 in the bundle.

17. The Tribunal again reminded the claimant that it was for her to state exactly what factual information was disclosed by her, either in the email of 19 February or

during the telephone call on 12 April. The claimant confirmed that there was one qualifying disclosure in the email of 9 February, and the others were in the telephone conversation of 12 April. The Tribunal reminded the claimant that it was not for the Tribunal or the respondent to attempt to extract from the email or the transcript of the telephone recordings, those parts which may amount to a disclosure of information. The transcript of the telephone conversation dated 12 April begins at page 394 in the bundle and confirms that the telephone conversation lasted 33 minutes and 38 seconds. The claimant confirmed that she had highlighted in yellow those parts of the transcript which she believes contained protected disclosures. The highlighted parts are almost the entire page on page 396, over half the page on 398, the entire pages on 399, 400, 401 and over half the page on page 402.

18. The claimant was asked to specify which parts of which page contained the relevant qualifying and protected disclosures. The claimant identified them as follows:-

    18.1. Page 396 "He initially, he sort of said he would review the VRI and then based on that decide whether to allocate an OIC who I would then expect would request the evidence if that made sense, however he then said he decided he wanted to request the evidence himself."

    18.2. "Don't expect me to believe that he sat there and watched two and a half hours of a VRI, like what's he done sat there and watched something he's got no interest in investigating when he has clearly got priorities as he said, so I was just confused."

    18.3. (Page 398) "Something came to like err and I don't know in terms of like the links between PSD and Fulford Station, err do you think that the inspector overseeing an investigation should be kind of contacting the inspector in PSD whose processed the complaint, is that normal?"

    18.4. (Page 399) "Basically Warren had phoned the Inspector Paul Groves and told him I think I believe this was at the start of February – that the calls were recorded, and probably a few other things, not particularly nice I'm guessing … and Paul had then sort of I assumed had mentioned this to the investigator as a sort of head's up and obviously the investigator gone a little overboard with kind of being encouraging about the … and yeah so they would have spoken back in the start of February so and Warren has mentioned it recently to me, more sort of accidentally mentioned it through probably irritation I should think, that he was aware of that."

19. The claimant was asked to explain how those extracts could amount to qualifying disclosures. The claimant's explanation was that she had been telling Chief Inspector Aldred that Warren Peters had decided to do an investigation himself into the claimant's complaint, having told the claimant that he would get someone else to do it. The claimant stated that by doing so, Warren Peters would then get his desired outcome about the claimant's complaint and that this amounted to a miscarriage of justice.

20. The information on page 398 was that Warren Peters (who had been handling the claimant's crime report) was in touch with the Inspector (Paul Groves) who had accelerated the claimant's complaint about the police investigation to the police staff investigator. The claimant said that by doing so, he had compromised the

investigation into her complaint. This amounted to a miscarriage of justice in respect of both the crime report and the police complaints.

21. The information on page 399 was that Warren Peters had telephoned the inspector. The information on page 404 was the claimant stating that Inspector Warren hated her due to her police complaint and therefore was not investigating it to the best of his ability. The information on page 400 was the claimant informing Chief Inspect Aldred that Paul Groves had informed another inspector that the claimant had been recording telephone calls between her and the police.

22. The claimant clearly stated that these were the 5 alleged protected disclosures upon which she now sought to rely, one of which was in the email of 19 February and the 4 in the telephone call of 12 April.

23. Mr Quickfall for the respondent then drew the Tribunal's attention to the claimant's claim form ET1, the relevant extracts of which appear at pages 31 and 32 in the bundle. At page 31 the claimant states, "… the offer was withdrawn on the basis of safeguarding due to my complaint against the police." At page 32 in the claim form the claimant states, "I don't feel safe working there in light of the internal bullying that removed my offer of employment due to my crime report and a complaint against the police." That complaint was lodged on 17 October 2022 long before the claimant could possibly have satisfied the definition of a "worker", which was at the earliest, when she signed and returned the contract of employment.

24. Mr Quickfall then referred to the claimant's application to amend her claim which was contained in her letter of 29 June 2023, which appears at page 37 in the bundle. That letter states as follows:-

    "The amendment I wish to make to the application is under the heading "Type in Details of Claim". I have on the original form submitted selected "I was unfairly dismissed". I have also selected "I am making another claim which the Employment Tribunal can deal with" and has stated what the nature of that claim is. In addition to these two options I selected, I need to ask whistleblowing as I believe my claim falls under this category too, from what I have deciphered from the reason given by my employer. If details are required for this to be added, these should be as follows:-

    My future employer was aware that I had gathered evidence regarding misconduct of officers in the process that removed my offer of employment. Those same officers who participated in removing my job were also involved in the handling the crime report I made to North Yorkshire Police for which I also had an ongoing complaint against police due to failures in the initial handling of this report, both of which (the complaint and crime report) were made to the organisation prior to being offered a job there."

25. Again, Mr Quickfall pointed out that if the alleged qualifying disclosures were made before the claimant was offered employment, then she could not at that time have satisfied the definition of "worker or employee".

26. Mr Quickfall submitted that today was the first time that the respondent had learned that these 5 alleged qualifying disclosures were those upon which the claimant sought to rely. Mr Quickfall pointed out that none of these had been pleaded in the original claim form and that accordingly the claimant would have to apply to the Tribunal for permission to amend her claim so as to include those alleged qualifying disclosures.

27. The Tribunal explained to the claimant what are known as the "Selkent principles" which would apply to any application to amend. The Tribunal explained that the Tribunal would take into account the following matters:-

    (a) The length of the delay.

    (b) The reason for the delay.

    (c) Why the new claims had not been included in the original claim form.

    (d) Why they had not been raised before Employment Judge O'Dempsey.

    (e) What was the prejudice to the claimant in not being allowed to amend the claim.

    (f) What was the prejudice to the respondent in having now to respond to those claims.

28. Mr Quickfall informed the Tribunal that he was not today in a position to deal with that application to amend, as it had not been expected, nor had he been able to obtain meaningful instructions on it. Mr Quickfall did not believe that the respondent could fairly be expected to deal with that application today. Mr Quickfall pointed out that he had three witnesses present today who had provided witness statements to deal with the question of the claimant's employment status and that he was in a position to deal with the respondent's strike out application.

29. The Tribunal enquired of the claimant as to whether she had any challenge to the factual evidence given by the respondent's witnesses as to what actually happened on which dates. The claimant confirmed that she did wish to challenge the respondent's witnesses in respect of everything said in their statements.

30. Having taken into account the basic principles in the Overriding Objective (to deal with the case justly) the Tribunal was satisfied that all of the issues before the Tribunal could properly be dealt within the next 2 days. The Tribunal was satisfied that the hearing should be adjourned so as to enable the claimant to submit a formal, written application to amend her claim so as to include the allegations of automatic unfair dismissal and being subjected to detriment for making the protected disclosures upon which he now sought to rely. The claimant was ordered to make that application in writing and that it must be submitted to the Tribunal and the respondent by not later than 9.30 on the morning of 31 January. The hearing would resume at 10.30 on 31 January, at which time the respondent would inform the Tribunal as to whether it was in a position to proceed to deal with the claimant's application to amend.

31. On the morning of the 30 January, the claimant submitted a document headed "Protected Disclosures – case reference 2501608/2023". That document was a list of 4 qualifying disclosures, 3 of which were allegedly contained in the telephone discussion on 12 April 2023 and 1 contained in the email dated 19 February 2023. The claimant states in the document, "On 1 November 2023 in accordance with the Orders for voluntary disclosure I submitted to the respondent my voluntary protected disclosures page 265-326. This document contained 39 protected disclosures which I believe at the time of submitting to the respondent were protected disclosures. I now understand that of this content, there contains only four qualifying disclosures because my offer of employment was rescinded on 19 April 2023. I had not identified these prior to the hearing on 29 January 2024

because I misunderstood when the contract ended, despite being aware that the contract was ended by a breach".

32. The claimant failed to specifically deal with the Selkent principles which had been described to the claimant the previous day.

33. Mr Quickfall submitted to the Tribunal that the claimant's document of today's date reiterated 4 disclosures which had been contained in the original 39 which had been referred to yesterday and which had been disclosed by the claimant on 1 November 2023, following the Orders made by Employment Judge O'Dempsey. Mr Quickfall pointed out that the claimant's document of 1 November contained over 60 pages, allegedly containing 39 allegations and that it had been impossible for the respondent to extract from the document exactly what was the claimant's case. Similarly, the email of 19 February which is included in the bundle at page 265, does not contain any information which could amount to a qualifying disclosure, nor could it possibly be in the public interest. Mr Quickfall pointed out that only yesterday had the claimant identified those parts of the transcript of the telephone call dated 12 April which might amount to a qualifying disclosure.

34. Mr Quickfall continued that one of the protected disclosures upon which the claimant now seeks to rely is not included in the yellow highlighted area in the transcript of the telephone conversation which was referred to yesterday by the claimant. Furthermore, the claimant now sought to rely upon an alleged "breach of a legal obligation", whereas yesterday the claimant sought to rely upon an alleged miscarriage of justice. Mr Quickfall submitted that the claimant persisted in "moving the goal posts" at every opportunity to such an extent that it was unfair and unjust on the respondent to try to respond meaningfully.

35. The Tribunal again explained to the claimant the requirements of a qualifying/protected disclosure – namely the disclosure of specific, factual information which tended to show either a miscarriage of justice or breach of a legal obligation. It remains for the claimant to establish those points.

36. At this stage, the claimant accepted that there was nothing contained in the email dated 19 February 2023 which could amount to a qualifying/protected disclosure and that accordingly that particular allegation would be withdrawn. The only qualifying disclosures upon which the claimant now relied are those 3 contained in the telephone discussion on 12 April. The claimant maintained that all of those amount to a miscarriage of justice.

37. The Tribunal enquired of the claimant as to what was the specific information disclosed in the extract which appears at page 398 and 399 in the bundle. The claimant stated that she had been disclosing that Police Officer Warren Peters had spoken to Police Officer Groves in Professional Standards and told him that the claimant had been recording telephone calls between herself and the police. The Tribunal enquired of the claimant as to whether she alleged that any detriment to which she had been subjected was because the police had learned that she had been recording those telephone calls, or because she had complained about Officer Peters telling Officer Groves that she had done so. The claimant's clear and unequivocal response was that the reason why her offer of employment had been withdrawn was because the police had learned that she had been recording those telephone calls. The Tribunal pointed out to the claimant that if that was her case, then any detriment imposed could not have been because her complaint of one officer telling the other amounted to a qualifying/protected disclosure.

38. Having had that explained to her, the claimant accepted that she would not be able to establish that she had been dismissed or subjected to any other detriment because of that particular protected disclosure. The claimant confirmed that she wished to withdraw that complaint.

39. Mr Quickfall for the respondent then pointed out that it has always been the claimant's case that the decision to remove her offer of employment was taken at a meeting on 30 March 2023. The claimant's case was that the letter withdrawing the offer of employment was finalised at that meeting, having been drafted prior to the meeting taking place, but that the letter had not been sent until 19 April. When asked, the claimant confirmed to the Tribunal that this was her position. It was pointed out to the claimant that the detriment upon which she relied, namely the withdrawal of the offer of employment, had thus taken place prior to any qualifying/protected disclosure which may have been contained in the telephone conversation on 19 April.

40. The Tribunal again explained to the claimant the basic requirements of the claimant being subjected to detriment or being automatically unfairly dismissed because she had made qualifying/protected disclosures. Any disclosures would have to contain specific factual information in accordance with the definition in section 43B of the Employment Rights Act 1996. The Tribunal informed the claimant that those parts of the telephone conversation upon which she now relied, did not appear to contain information of sufficient, specific factual content. Furthermore, the detriment upon which the claimant seeks to rely appears to have taken place prior to the making of any such disclosures. The claimant having appeared to accept those principles, the Tribunal enquired of the claimant as to whether she now wished to withdraw her claims of automatic unfair dismissal for making protected disclosures or being subjected to detriment because she had made protected disclosures. The claimant stated that she did not wish to withdraw them and required the Tribunal to make a judgment as to whether or not they should be dismissed.

41. Mr Quickfall for the respondent reminded the Tribunal that the respondent still sought to have all other claims struck out, but not just on the grounds that the claimant had not established that she had made any qualifying/protected disclosures but also that any contract of employment between the claimant and the respondent was void for mistake.

42. The Tribunal was satisfied that it was not necessary to hear any argument on the validity or otherwise of the contract between the claimant and the respondent.

43. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states as follows:-

    (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 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;

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

44. What amounts to a "qualifying disclosure" so as to satisfy the definition of a "protected disclosure" has been considered by both the Employment Appeal Tribunal in **Cavendish Munro Professional Risk Management v Geduld** [2010 IRLR 38] and by the Court of Appeal in **Kilraine v London Borough of Wandsworth** [2018 – Civ – 1436]. The general principle is that, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity which is capable of intending to show one of the matters listed in subsection (1). Whether an identified statement or disclosure in any particular case does meet that standard, will be a matter of evaluative Judgment by the Tribunal in the light of all of the facts of the case. It is a question that is likely to be closely aligned with the other requirements set out in section 43B(1), namely that the worker making the disclosures should have the reasonable belief that the information that he discloses does tend to show one of the listed matters. This has both a subjective and objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such as it is reasonably capable of intending to show that listed matter, it is likely that his belief will be a reasonable belief.

45. There is no definition of "public interest" in the Employment Rights Act 1996. No statutory or non-statutory guidance as to the meaning of the phrase has been published. Until recently there were no cases which specifically defined what is meant by "public interest" or what is or is not in the public interest. In **British Steel Corporation v Granada Television [1981 AC 1096**] the House of Lords commented that "there is a wide difference between what is interesting to the public and what is in the public interest to make known." In the Freedom of Information Act 2000, the Information Commissioners office issued guidance on the meaning of the public interest in that context, stating:-

> "The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interest of society. Thus for example there is a public interest in transparency and accountability to promote public understanding and to safeguard the democratic processes. There is a public interest in good decision making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial computation in the mixed economy."

In **Chesterton Global Limited v Nurmohamadee** [Court of Appeal July 2017] Lord Justice Underhill said:-

> "*It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the number of persons sharing that interest. That in my view is the ordinary sense of the phrase "in the public interest". There may be many types of case where it is reasonably to be thought that a disclosure was or was not in the public interest. The question falls to be identified by the Tribunal on a consideration of all the circumstances of the particular case."*

46. It is clear from the claimant's pleaded case and submissions in this case, that she feels most strongly about the manner in which her original report to the police was investigated. The claimant's original claim was that anything contained in that complaint must amount to a qualifying/protected disclosure. Only when required by the Tribunal to identify each individual disclosure, did the claimant state that there were approximately 40 disclosures. Once the claimant began to understand what was meant by a "qualifying disclosure" was that number reduced to 5, then to 4, then to 3. Having been required to focus on those remaining disclosures, the claimant was still unable to properly identify the specific factual information which is required. Furthermore, the claimant was unable to establish any causal connection between the making of any such disclosure and the sole detriment upon which she relied, namely the withdrawal of the offer of employment.

47. When applying the Employment Tribunals (Constitution and Rules of Procedures) Regulations 2013, the Tribunal must always take into account the overriding objective set out in Rule 2:-

    "The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable —

    (a) ensuring that the parties are on an equal footing;

    (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

    (c) avoiding unnecessary formality and seeking flexibility in the proceedings;

    (d) avoiding delay, so far as compatible with proper consideration of the issues; and

    (e) saving expense."

48. It has been said many times by the Higher Courts that only in the most obvious and plain cases should a discrimination claim be struck out. Caution is to be exercised in relation to pleadings; even a very badly pleaded claim may not be appropriate for striking out since it may not represent the final position, there may be other words of refining or defining the issues and the reverse burden of proof provisions may operate to assist a claimant. In any event, a two-stage process must be followed. The Tribunal must first ask itself whether the ground for striking out has been established (in this case whether there is a reasonable prospect of success) and then, even if that is established, at the second stage the Tribunal must ask itself whether it is just to proceed to strike out in all the circumstances.

49. The issue for consideration is whether there is any reasonable prospect of the claimant establishing at a full hearing that she made qualifying/protected disclosures and that the making of those had at least a material influence on the decision to remove the offer of employment. Having taken the claimant through each individual alleged qualifying disclosure, I am satisfied that none contained sufficient factual content and specificity so as to be capable of intending to show either a breach of a legal obligation or a miscarriage of justice. Furthermore, I am not satisfied that the claimant would be able to persuade a full Tribunal that there was a causative link between any such qualifying/protected disclosure and the

withdrawal of her offer of employment. Indeed, when each of these matters was individually put to the claimant, she accepted and acknowledged that she could not do so.

50. I am satisfied that this is one of those cases which satisfies the requirements of Rule 37. I am satisfied that the claims of automatic unfair dismissal for making protected disclosures and alternatively being subject to detriment for making protected disclosures have no reasonable prospect of success. Those claims are struck out and are dismissed.

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Employment Judge Johnson

Date: 8 March 2024

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/