EMPLOYMENT TRIBUNALS

Claimant	**AND**	**Respondent**
Mr R V Mighton		London Underground Limited

Heard at: London Central **On**: 17 August 2017

Before: Employment Judge Wade

Representation
For the Claimant: In person
For the Respondent: not present or represented

JUDGMENT AT A RULE 27 PRELIMINARY HEARING

1. The judgment of the Tribunal is that the claims are not permitted to proceed under Rule 27 and 37 because they have no reasonable prospect of success.

REASONS

The claimant's application for EJ Wade to be recused

1. At the start of the hearing the following was said to the claimant by the Employment Judge:

"1.1 I wanted to explain to you why I have decided that it is appropriate for me to conduct this hearing. I have read the more than 15 emails which you have sent to the Tribunal since the Rule 27 Notice dated 19 July was sent to you.

1.2 You have described me as "Wicked Judge Wade" and have cursed me, saying you will let the devil deal with me. You have also said that I am racist and biased and that another judge should be allocated to this hearing. I have three main reasons why, having discussed your application for me to be removed from

the case with the Regional Employment Judge, I have decided not to recuse myself:

> 1. My conscience is clear. I have never been found to be racist or guilty of bias and I am satisfied that I have applied the correct legal principles throughout my conduct of your cases. The appeal courts say that judges should not recuse themselves unless there is a real danger that justice will not be seen to be done. I do not think that that is the case here.
>
> 2. You yourself were indeed pleased with my involvement in your case when I made a decision in case 3202079/2016 in your favour. I declined to strike that claim out. I am afraid to say that you have turned against me after I found against you. I have shown myself capable of finding in favour of both sides.
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> 3. The EAT dismissed your appeal against my decision in 2208049/2016, and indeed the earlier Judge's decision in 32020792016, as "Totally without merit". Therefore, there is appeal level confirmation that these decisions are unimpeachable.

In those circumstances, it would not only be unnecessary but actually wrong for me to step away from this hearing.

1.3 I also wanted to say that on a personal level I would have been pleased not to have been involved in this hearing. On the last occasion, when I struck out your claims, you were very angry and I felt alarmed and intimidated by you. I know that you feel very strongly about this case but please remember that I too am a person as well as a judge, one who, as they say, is "just doing her job" and, if you can, please will you try to treat me with respect. I am sure that you do not want to intimidate me as that is no way to achieve justice. Those who get the outcome they want through bullying have not actually achieved justice at all, as I am sure you will agree."

Communicating the decision

2.1 After an adjournment to consider my decision I began to communicated to the claimant. He interrupted, making a number of points focused mainly on his requirement that this tribunal consider all of the detail of his case which he says has not yet been done.

2.2 It proved impossible to communicate the Judgment and Reasons and I said that I would send them to the claimant in the post. He says that this would be too stressful for him and that he would wait all day of necessary for a copy of the written reasons. Since I was in a position to prepare the reasons today I agreed to do so.

The decision

3. This is the claimant's fifth Tribunal claim. He claims unfair dismissal, race discrimination and arrears of pay. These are all claims which he has brought before:

3.1 Claim 3200845/2014 was withdrawn by the claimant.

3.2 Claim 2202261/2014 was dismissed after full hearing 9 June 2015.

3.3 Claim 3202079/2016 was dismissed after a full hearing on 6 July 2016 of claims of unfair dismissal, race discrimination and arrears of pay.

3.4 Claim 2208049/2016 was dismissed at Preliminary Hearing on 16 February 2017. In summary, this was because the claims had already been adjudicated (res judicata), should have been raised at the material time (abuse of process) and were out of time. A copy of that decision is attached because it explains the relevant principles and it is not necessary to reiterate them here.

4. The fifth claim raises no new points and on 19 July a Notice and Order under Rule 27 was sent to the claimant summarising why Employment Judge Wade was of the view that the claim had no reasonable prospect of success:

1. The Claimant has litigated in relation to the same issues against the same respondents on a number of occasions and his claims appear to be barred because they have already been decided (res judicata), they are an abuse of process and/or they are out of time.
2. His claim of unfair dismissal was dismissed by this Tribunal on 6 July 2016.
3. In relation to his claim of race discrimination the claim that the dismissal was discriminatory was dismissed on 6 July and the claim that the Respondent broke into his locker and stole things was dismissed as an abuse of process on 14 February 2017.
4. It is not easy to understand the basis of the Claimant's unpaid wages claim from the ET1 but a claim relating to sick pay was dismissed by this Tribunal on 14 February as it had already been decided.
5. All the claims are out of time as the Claimant's employment ended on 27 August 2015.
6. Further, in relation to his asthma, the Tribunal does not have jurisdiction to consider a personal injury claim. The Claimant told the Tribunal on 14 February that he was pursuing a claim for this in the appropriate court.

The claimant's submissions

5. The claimant feels strongly that he has never been properly heard and that all the considerable evidence which he supplied to his employer, to the previous tribunals and in correspondence since 19 July should be thoroughly considered at a full hearing presided over by a black judge

6. Mr Mighton does not agree that he has already had two full hearings nor does he accept that if he was unhappy with the tribunal process the opportunity to

appeal, which he exercised unsuccessfully, was the correct and indeed only route for addressing this problem. He also makes the point that his locker was broken into and his documents stolen.

7. He also argues that his claims are not out of time because, following the decision of the Supreme Court in the UNISON case, all proceedings should now be void from the beginning. Further, he has not had a proper lawyer to represent him because he has not been able to afford it and this is an access to justice point which renders the earlier proceedings void. He did receive at least some remission from fees.

8. Further, he says that he should have a hearing in this tribunal and that the dismissal of his appeals is irrelevant because the EAT made a mockery of him. He says that if these claims are dismissed "I will be back".

9. Finally, he says that he has got asthma as a result of the respondent's treatment of him. There now seems to be some doubt as to whether he would pursue a separate personal injury claim in the County Court and he believes strongly that the respondents should be brought to justice for the health and safety risks which they have caused.

Conclusions

10. I am sorry to say that the claimant's arguments have not changed my initial view that this claim has no reasonable prospect of success for the reasons set out in the Notice of 19 July.

11. The argument that the claimant is entitled to another full hearing are appeal points and that route has already been exhausted. The claimant was upset and accused me of not reading all the detail which he had sent through in his many emails. As the notice of hearing makes clear, my job was to assess the prospects of success and decide whether the claim should proceed and not to hold a trial of the facts. Further, since Mr Mighton says that crucial documents were lost when his locker was broken into it is questionable how he thinks that a trial of the facts could now fairly take place.

12. The claimant has had two substantive hearings of the facts. The last claim, and this one, have been struck out at the preliminary stage because they are essentially a repetition of earlier matters and there are strong and clear legal rules preventing this, as well as rules on time limits. It is not in the interests of justice for the claimant to be allowed more trials of the same facts and I fear that if he does try to continue to litigate he will face more frustration because his opportunity to have a full trial of the facts has expired.

13. Mr Mighton has a choice as to whether to continue with the litigation, which he says has made him ill and at times suicidal. I urged him to consider carefully before initiating another claim in the employment tribunal. With regret, I conclude that both the fact that this claim is a repeat of earlier claims which were struck out with clear reasons given and with the support of the EAT, and his warning that

even before these proceedings have been dismissed he will be back with more claims, would make this claim vexatious.

14. The Supreme Court in the UNISON case has indeed rendered the fee regime void from the start but the claimant cannot conclude from that decision either that claimants without legal representation should also be allowed another hearing or that the time limit is now irrelevant. Access to justice is of course very important but the issue at stake before the Supreme Court does not relate to Mr Mighton's case.

15. Finally, the fact that the claimant suffers from asthma and wishes redress against the respondent is not a matter for the employment tribunal. There is no scope for a personal injury claim in the tribunal. Damages from personal injury can flow from a discrimination claim but, as explained above, it has been decided that those claims may not proceed.

Employment Judge Wade
17 August 2017