Case Number: 3301502/2013
3302543/2013
3302570/2015
3302569/2015

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S T Ukegheson	v	**London Borough Of Haringey**

PRELIMINARY HEARING

Heard at: **Watford** **On:** **23 August 2018**

Before: **Regional Employment Judge Byrne**

Appearances:

For the Claimant: **No attendance**
For the Respondent: **Mr J Davies - Counsel**

JUDGMENT

1. The claimant's applications to postpone today's hearing, his application for a further stay of proceedings and his application for transfer of the proceedings and his purported application for amendment of the claims and issues in these proceedings fail and are dismissed for the reasons that follow.

REASONS

1. The claimant's further postponement application.

I have considered the further postponement application implicit in the third paragraph of the claimant's email sent at 20 minutes past midnight on the morning of 23 August 2018, the date of the hearing. I note that he states his that his inability to attend today relates to matters requiring his attention in planning holidays for vulnerable children, namely young people suffering from emotional difficulties. His previous email of 15 August 2018 referred to "*where we are going*" in the second full paragraph at the section of the email beginning number 2. His email of 23 August 2018 refers to "*final preparations and risk assessment/management plans for three extremely vulnerable young people and I cannot postpone their planned holiday".* It is unclear form those emails whether or not the claimant will be on holiday today or whether he is organising the holiday for others but will not be going with them on holiday. No further

explanation for his non-attendance is given other than the holiday planning and associated documentation referred to. I am not satisfied there is good reason for a postponement of today's proceedings on the basis of the information provided to the Tribunal by the claimant in seeking this postponement. This is a case which dates back to 2013. Applying the overriding objective, it is in all parties' interests that matters be progressed today. The domestic appeal process, pursued by the claimant in relation to earlier decision in these proceedings appears to have been exhausted. For all those reasons I reject the further postponement application and direct the hearing listed to deal with identifying the remaining claims and issues and considering the claimant's transfer application will proceed.

2. The claimant's further application for stay.

On the 3 August 2018 on the application of the claimant I signed an order staying the proceedings until 31 December 2018 or earlier determination of an application to the Supreme Court for permission to appeal the order made by the Court of Appeal on 27 July 2017. However, at the date I made that order the Supreme Court had refused the claimant's application for permission to appeal the order made by the Court of Appeal on 27 July 2017 and had done so on 9 July 2018. I was unaware of that Supreme Court order when I signed the order staying proceedings on 3 August 2018. Accordingly the order I made was ineffective because the Supreme Court had already determined the claimant's application. On 7 August I directed that a letter be sent to the parties pointing out that the effect of the Supreme Court order was to lift the stay of the proceedings and that the preliminary hearing previously listed for 23 August be re-instated.

3. The basis of the claimant's application for a further stay, quoting from his email of 2 August 2018 sent to the Tribunal was "*Let it be on record I will not participate in any hearing at the Tribunal until I have exhausted ALL legal routes available within the United Kingdom and Europe to seek redress of the breach of article 6 and 14 of the European Conventions on Human Rights which occurred on 25 September 2013, under the watch of Employment Judge Manley (*who struck out the proceedings *) who admitted in her judgment to have been led (misled) by Ms Osho and Haringey Council Lawyer to reach a very flawed judgment. If the judgment is not revisited by the Supreme Court, it will surely be heard in Europe so let the respondent stop make unlawful and unreasonable applications that serves no purpose or than to increase costs to all parties."*

4. In a further email of 14 August 2018 from the claimant requesting a consideration of the decision to lift the stay of proceedings he set out states "*1. In my application for stay of proceedings, I made it clear that the Supreme Court has agreed for me to make another application which is pending. This is fundamental to whatever will be decided at the preliminary hearing and I will therefore be severely prejudiced if I am not allowed exercise this right to make a fresh application based on advice from counsel."* Dealing with the possibility of further application to the Supreme Court I note from an email dated 19 July 2018, copied by the claimant to the respondent, incorporating the email of 18 July 2018 from a Mr Ian Sewell at the Supreme Court office the final paragraph of his email states

"*Amended Grounds of Appeal: there is no provision in the Supreme Court rules for re-opening an application for permission to appeal that has been refused. If you are advised by counsel that there is good reason to revisit the matter, then it is of course open to you to make a further application".*

5. I have had produced to me today by the respondent **Section 2 of the UK Supreme Court Practice Direction 1** which sets out details of statutory restrictions on the Supreme Court's jurisdictions. Paragraph 1.2.7 states *"There are other statutory restrictions on the Court's jurisdiction. The following are excluded from the Court's jurisdiction and are inadmissible…..f. applications for permission to appeal against refusal by the Court of Appeal to re-open a previously concluded appeal or application for permission to appeal."* I have considered the order of Lady Justice Arden dated 19 February 2018 in which she refuses permission to re-open the appeal and refuses an application for an oral hearing. That is a refusal by the Court of Appeal to re-open a previously concluded appeal and it is clear to me that in those circumstances the claimant has exhausted the domestic appeal procedures open to him.

6. The respondent by email dated 15 August 2018 opposed the application to re-impose the stay. With reference to the claimant's referral to a "*pending application"* to the Supreme Court they stated none had been made yet, that the claimant did not know when one would be made and that the Supreme Court had already told the claimant there was no provision under the rules for the type of application he seemed to be contemplating.

7. I directed by letter dated 20 August 2018 that the claimant's application for reconsideration of the decision to lift the stay and for the imposition of a further stay would be considered at today's hearing.

8. As already stated the decision to lift the stay was inevitable once I became aware of the Supreme Court's refusal of the claimant's application to appeal. Also, it is clear to me having considered the matters referred to at paragraphs 4, 5 and 6 above that the claimant has exhausted the domestic appeal process. There is no evidence before me that any appeal to any other Court has been presented by the claimant. There is no basis on which to reimpose the previous stay ordered or to order a further stay because the domestic appeal process with which the claimant has been involved is exhausted. It appears to me, applying the overriding objective, that it is in all parties interest that the claims remaining for determination be determined as soon as is practicable.

9. **The claimant's outstanding application for transfer of the proceedings.** This application was made by the claimant by email of 19 August 2015 marked for the attention of "Regional Employment Judge Manley". Employment Judge Manley was acting as Regional Employment Judge whilst I was on leave in 2015 and that would appear to be the reason why the email of 19 August is

addressed to her. Essentially the reason advanced by the claimant as justification for a transfer was his view that Employment Judge Manley, who was as he understood it, the Regional Judge at Watford was biased towards him and preferred the respondent's application for strike out which she had acceded to. The claimant appealed that decision. He amplified in an email addressed to me of 29 September 2015 that he wished his claims transferred, them in his view being "*wrongly remitted to Watford Employment Tribunal*" and requested they be transferred to another Employment Tribunal jurisdiction within London. The clear basis of his application was that the Watford Employment Tribunal had been dealing with his claims in a biased way.

10. By email dated 29 September 2015 the respondent addressed a number of matters including the claimant's transfer application. Their opposition to the application was that the reason for it appeared to be the allegation that Employment Judge Manley was biased against the claimant, was in charge of the Watford Employment Tribunal and was able to influence the outcome of the case.

11. The claimant's email of 23 August 2018 repeats his application for transfer stating "*My case should be transferred to another Tribunal as I fear that I may NEVER get fair hearing and justice from Watford Regional Employment Tribunal. The respondent is clearly in control of proceedings at Watford Employment Tribunals from what has happened so far."* There is no other reason advanced today by the claimant as to why a transfer should be granted. Were a transfer granted, leaving aside for the moment the merits of the application, then inevitably that would cause further substantial delay. It would require a substantial investment of judicial time to understanding this case and what has happened to date in order, to deal effectively with all case management matters and applications that might arise prior to a final hearing. It would inevitably take time for a transfer of the file to be affected. Given the current pressures on Employment Tribunal resource both judicial and administrative I have no doubt that any transfer would result in avoidable delay to the ultimate determination of these proceedings.

12. The claimant is based in East London. The respondent is based in North London and the respondent's witnesses, I am informed today, are London based. It is difficult to see what would be achieved by any geographical transfer to another London Tribunal. Any reduction in travelling time, given the effective public transport connections between London and Watford would in my view be marginal.

13. Returning to the claimant's prime reason for seeking a transfer, namely his concerns about bias on the part of the Watford Employment Tribunal, there is nothing put before me today which justifies that concern. The allegation of bias

appears to me to be intrinsically linked to the mistaken assumption that Employment Judge Manley is the Regional Employment Judge, which she is not, and that she can in some way influence the proceedings and makes an unjustified assumption that she might want to. I am entirely satisfied the claimant will receive a fair trial before the Watford Employment Tribunal and further that delay would inevitably occur were these proceedings to be transferred, and for all those reasons the application for transfer is rejected.

14. Has the Claimant any amendment application outstanding in relation to the claims and issues?

The final matter I have to considered and determine today is what is raised by the third paragraph of the claimant's email of 23 August 2018 where he states that if the hearing does go ahead today the Tribunal "should please deal with all the applications I have made since 24 September 2013 (amendments of lists of issues) which remain pending."

15. I have considered in detail the correspondence file prior to the hearing to check what applications there are outstanding and whether any application relates to any proposed amendments. I have also had regard to the extent to which in appeal proceedings reference has been made to identify issues in this case. I have considered the transcript of the proceedings at the Employment Appeal Tribunal on 21 May 2015 presided over by the then President, Mr Justice Langstaff. In the reasons he refers to the heads of claim at paragraph 33 as identified in the case management discussion which took place before Employment Judge Smail on the 24 June 2013. The case management orders made at that hearing set out the claims for determination and the identification of the claims themselves was not subject to any appeal. The only claims and issues on which he expressly commented, "*about which there was a degree of uncertainty"* was the claimant's assertion that there had been an unlawful deduction from wages. That is fully analysed at paragraph 53 of the Judgment and I provide for the additional information required from the claimant to clarify the sum claimed as having been unlawfully deducted in the case management orders made today. The Employment Appeal Tribunal were clear as to the claims and issues in the 2013 proceedings and there has been no appeal against the case management orders made by Employment Judge Smail in those proceedings when he identified the claims and issues.

16. At a Court of Appeal hearing on 15 June 2017 considering the appeals against Judgements of the Employment Appeal Tribunal, including the hearing of 21 May 2015 ,one of the matters recorded at paragraph 30 of the Judgement of the Court of Appeal is the nature of the pleaded case on reasonable adjustments. The Court of Appeal considered that a complaint of a failure to make reasonable adjustments was not part of the claimant's pleaded case and that the orders made by the Employment Appeal Tribunal were properly made on the pleadings as they stood.

17. The order of Lady Justice Arden in the Court of Appeal of 19 February 2018, refusing the claimant permission to re-open the appeal, refers in the second paragraph to "*the question then is whether it is factually correct that you made an application to amend which was not dealt with by this Court".* Lady Justice Arden states, *"I have not been able to find any documentary evidence of an application to amend following the hearing before Employment Judge Manley."* The reasons go on to refer to the outcome of the claimant's appeal against Employment Judge Manley ruling that only a claim for a failure to consider reasonable adjustment had been made and further point out that the EAT dismissed the appeal on failure to make reasonable adjustments on the ground that it had not been pleaded and that the claim appeared to have little prospect of success in any event.

18. Having considered the file fully, and the history of this case including the various appeals in this case, I can trace no outstanding application to amend the list of issues in the 2013 Employment Tribunal proceedings brought by the claimant and in all the circumstances there is no basis on which I can grant any application to amend.

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Regional Employment Judge Byrne

Date: 05.09.18

Sent to the parties on:

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For the Tribunal:

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