



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH  
**BEFORE:** EMPLOYMENT JUDGE BALOGUN  
**BETWEEN:**

Mr M McGerr

**Claimant**

And

Britannia Superfine Ltd

**Respondent**

**ON:** 9 December 2020 (By CVP Video Conference)

**Appearances:**

**For the Claimant: In Person**

**For the Respondent: Mr J Munro, Solicitor**

## **JUDGMENT ON PRELIMINARY ISSUE**

1. The claim is struck out pursuant to Rule 37(1)(b) of the Employment Tribunal Procedural Rules 2013 on grounds that the claimant's conduct of the proceedings has been scandalous, unreasonable or vexatious.
2. The hearing listed for 8-11 February 2021 has been vacated.

## Reasons

1. This hearing was a preliminary hearing to consider the respondent's application to strike out the claim. The application was brought on two grounds:
  - a. That the manner in which the proceedings have been conducted by the claimant is scandalous, unreasonable or vexatious Rule 37(1)(b)
  - b. That it is no longer possible to have a fair hearing Rule 37(1)(e)
2. The basis of the application is that between 19 February 2020 and 29 February 2020, the claimant made a number of harassing phone calls to the respondent of an abusive, offensive and threatening nature. The claimant denies making any such calls.
3. The issues that fall to be decided are:
  - a. Whether the claimant did in fact make the said calls and if so,;
  - b. Should the claim be struck out under 37(1)(b)
  - c. Should the claim be struck out under 37(1)(e)
4. I heard evidence from Ms Nina Collins, an Accountant for the respondent and I heard from the claimant. The respondent provided a copy of the recording of the telephone calls, which I listened to before the hearing and again afterwards, before delivering my decision. The claimant confirmed that he had been provided with the recording and had listened to it. The respondent also provided a preliminary hearing bundle.
5. Having considered the evidence and listened to the recording, I am satisfied on balance of probabilities that the claimant made the phone calls. I say this for the following reasons:
  - a. Ms Collins had spoken to the claimant on the phone previously when she dealt with his grievance (which was dealt with on the phone) and recognised the voice on the phone messages as being his.
  - b. Having heard the claimant speak today at the hearing and then having gone back to listen to the recordings, I find that the voices are remarkably similar.
  - c. Ms Collins reported the claimant's conduct to the police after he threatened to burn down the respondent's premises. Ms Collins has been informed by the police that the claimant has been charged with Harassment without violence. The claimant denies that he has been contacted by the police or charged with any such offence. However, in the bundle is an email to Ms Collins from the Sussex Police customer care unit dated 2 December 2020. The case name in the email: R v McGerr, indicates that the claimant is a defendant in criminal proceedings and it is clear from the email that the offence is one of Harassment without violence. The email states that the defendant i.e. the claimant, has been summoned to attend Hastings Magistrates on 10 February 2021. The claimant's denial of any knowledge of such proceedings is therefore not credible.

6. The phone messages are highly offensive. The claimant uses obscene and abusive language, directed at the respondent generally and certain named individuals specifically. He makes scandalous allegations against the respondent, including murder, acts of violence, paedophilia etc and also makes threats of violence and to burn down the building.
7. In relation to Rule, 37(1)(b), I have asked myself whether the making of the harassing calls by the claimant was part of the conduct of the proceedings or something completely separate and unconnected. The claimant left the respondent's employment in January 2019. The proceedings were brought in February 2019. The only continuing association that the claimant has had with the respondent since leaving is in these proceedings. In those circumstances, it would be artificial to treat the conduct as separate and I find that it is conduct of the proceedings.
8. The claimant has refused to acknowledge or provide any explanation for his conduct. Although he has previously referred to mental health and PTSD and mentioned mental health in passing today, no evidence has been provided and previous requests by the respondent for his medical records have been ignored.
9. The only purpose of the phone messages was to harass the claimant and cause the respondent and its potential witnesses in these proceedings upset and distress.
10. In the circumstances, I am satisfied that threshold for striking out the proceedings under 37(1)(b) has been met and accordingly the claim is struck out.

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Employment Judge Balogun  
Date: 9 December 2020

