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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Lander

**Respondents:** (1) The Estate of Christopher Huckle  
(2) Mr Alec Smith  
(3) Mr Allan Locke

**Before:** Employment Judge Jones

**On:** 20 January 2021

On written representations from the parties

## JUDGMENT

The Tribunal has no jurisdiction to hear these complaints. They are struck out as an abuse of process under the rule in *Henderson v Henderson*.

The Tribunal has no jurisdiction to hear the complaints of unlawful deduction of wages and constructive unfair dismissal as they can only be brought against an employer (sections 13 and 94 Employment Rights Act 1996).

## REASONS

1. On 23 November 2020, the Respondents applied for this claim to be struck out under Rule 37(a) and/or (b) of the Employment Tribunal Rules of Procedure 2013. The Claimant objected. The Tribunal has dealt with this application on the papers as invited to by the Respondent and not objected to by the Claimant. Both parties addressed all the relevant legal and factual points in their written submissions to the Tribunal.
2. The Tribunal considered the following law in addressing the Respondent's application.

*Law*

3. In their objection to the claim, the Respondents referred to the issue of the claim as an abuse of process. They also referred to the principle in the case of *Henderson v Henderson* [1843] 3 Hare 100.

4. In that case, Sir James Wigram V-C stated as follows: -

*“...where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward the whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of the case. A plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of the litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”*

5. *Harvey* confirms that this is a form of estoppel which is based on abuse of process, and involves the court striking a balance between a claimant's right to bring before the court 'genuine and legitimate claims with a defendant's right to be protected from being harassed by multiple proceedings where one should have sufficed. The aim of this principle (*Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1), is to ensure that (a) there should be finality in litigation, and (b) 'that a party should not be vexed twice in the same matter' or 'to avoid the oppression of subjecting a defendant unnecessarily to successive actions'. The court in that case formulated a set of principles to be applied when a court is determining whether a claim should be struck out as an abuse of process under the rule in *Henderson v Henderson*.

6. Lord Bingham stated as follows: -

*“ The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all.....(It) should be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before..”*

7. The Tribunal's decision as to whether there has been abuse of process is not the exercise of a discretion but is a decision involving many factors to which there can be only one correct answer.

*Decision*

8. The Claimant issued an earlier claim against his employer, Incodia International Ltd on 19 February 2020. The claim (Case No. 3200580/2020) was amended on 25 June when the Claimant withdrew the claims of direct and indirect disability discrimination. The claim comprises complaints of constructive unfair dismissal, unlawful deduction of wages, discrimination arising from disability, a failure to make reasonable adjustments and harassment.
9. Naomi Cunningham of Counsel conducted an investigation into the Claimant's grievance on the Respondent's behalf and produced a report, which the Claimant annexed to his application to amend the claim to add the named individuals as Respondents. The report was issued on 3 March 2020 and sent to the Claimant on 24 March 2020. It upheld many aspects of the Claimant's grievance.
10. The Claimant resigned from the Respondent's employment on 7 May 2020.
11. At a preliminary hearing on 13 July, the Claimant applied to amend his claim to add the three individuals named in this claim as individual respondents. After due consideration, EJ Elgot refused the application. She gave her reasons during the hearing and set those out in a written judgment which was promulgated on 21 July 2020. The Claimant applied for a reconsideration of that judgment and by a decision dated 16 September, EJ Elgot refused that application on the grounds that it had no reasonable prospects of success.
12. The amended claim in that case included a statement at paragraph 83 that the Claimant also claimed against Messrs Huckle, Lock and Smith, under sections 110 – 112 of the Equality Act 2010. No further details were provided although there was further mention at paragraph 84.22.
13. The Claimant then issued this claim (3213380/2020) on 10 September 2020 against the individual named Respondents alleging discrimination arising from disability, failure to make reasonable adjustments, harassment, constructive unfair dismissal and unlawful deduction of wages.
14. At all times the Claimant was employed by Incodia International Ltd.
15. By letter dated 14 January 2021, the Claimant informed the Tribunal that he withdraws his complaint of a failure to make reasonable adjustments in claim 3213380/2020 against the individual named Respondents. That complaint is dismissed in a separate judgment also issued today.
16. Section 13 of the Employment Rights Act 1996 refers to a worker's right not have any deductions made from their wages by an employer.
17. It is this Tribunal's judgment that a complaint of unlawful deduction of wages cannot proceed against individual named managers as they were

not responsible for paying or withholding the Claimant's wages. Even if they made a decision to pay the Claimant a certain wage, to review or vary it or to withhold it, they would be doing so on behalf of the Respondent and not in an individual capacity. The only entity who can have legal liability for an act of withholding the Claimant's wages is his employer.

18. This complaint is already properly brought as part of claim 3200580/2020.
19. The Tribunal has no jurisdiction to hear a complaint of unlawful deduction of wages against individual named Respondents who were not the Claimant's employer.
20. Similarly, section 94 of the Employment Rights Act 1996 gives an employee the right not to be unfairly dismissed by his employer. The Claimant was not employed by the individual named Respondents in this case. A complaint of constructive unfair dismissal is already properly brought against the employer in claim number 3200580/2020.
21. The Tribunal does not have jurisdiction to hear a complaint of constructive unfair dismissal against individual named Respondents who were not the Claimant's employer.
22. The Claimant had been in possession of all the information that gave rise to his belief that the individual named Respondents had discriminated against him in relation to his disability, at the time that he issued his first claim. It is likely that Ms Cunningham's findings in the grievance outcome bolstered his beliefs but he did have them before. This is demonstrated by the narrative and the allegations set out in the original and amended grounds of claim number 3200580/2020. The amended claim brought the claim up to date by adding in details of what happened since the claim was issued, added the constructive unfair dismissal claim and a section 15 claim – all against the employer.
23. Although off sick at the time, the Claimant had legal representation when he issued the first claim. In the Claimant's response to the Respondent's application to strike out the second claim, the Claimant does not set out why, given the Claimant's strength of feeling against them, the first claim was not issued against the individual Respondents as well as the employer. The Claimant had the opportunity to do so at the time and failed.
24. The new claim, case number 3213380/2020, repeated the allegations from the first claim. It also added statements to paragraph 84.22 essentially ascribing liability for some of the allegation in paragraph 84 to the individual named Respondents as well as to the employer.
25. I also considered the other relevant facts referred to by EJ Elgot in her judgment and in her judgment on reconsideration. The Claimant's former employer, Incodia International accepts vicarious liability and appears to be financially sound and able to cover any liability for acts committed by the named individuals in the course of their employment. The Respondent accepts liability for the acts referred to in section 84.22 of the

new claim as well as the original version in the amended claim in claim number 3200580/2020.

26. Taking everything into consideration, it is this Tribunal's judgment that the complaints in claim number 3213380/2020 are complaints that the Claimant could and should have brought in the first claim, at the time of issue. The Tribunal has not been given any reasons why that was not done.
27. The Claimant was required to bring forward the whole case at the time of issue. It was not brought forward at the time, only because the Claimant, whether from negligence, inadvertence or even by accident, omitted part of his case. The complaints against the named individuals properly belonged to the first claim, which the Claimant failed to include. Bringing it now in a second complaint is an abuse of process that is not excused or justified by special circumstances.
28. This Tribunal is satisfied that the complaints against Messrs Huckle, Lock and Smith in claim number 3213380/2020 are an abuse of process. The Tribunal also has no jurisdiction to consider the complaints of constructive unfair dismissal and unlawful deduction of wages against individuals who were not the Claimant's employer.
29. The Tribunal has no jurisdiction to hear the complaints in claim number 3213380/2020 and it is struck out.

**Employment Judge Jones**

**21 January 2021**