



EMPLOYMENT TRIBUNALS

Claimant: Miss Theresa Alabi

Respondent: HMRC

CLOSED PRELIMINARY HEARING

Heard at London South: by CVP

On: 15 March 2023

Before: Employment Judge Truscott KC (sitting alone)

Appearances

For the Claimant: In person (by telephone)

For the Respondent: Mr A Bershadski of Counsel

JUDGMENT on PRELIMINARY HEARING

1. The application for an anonymity order is refused.
2. The application for disclosure was not adjudicated upon at this time.
3. The remaining applications were not adjudicated upon at this time.

REASONS

Preliminary

1. This Preliminary Hearing was listed at the request of the claimant as:
 - 1.1 The claimant sought specific disclosure of certain documents. The respondent has responded to those requests in a detailed letter dated 16 January 2023.
 - 1.2 The claimant sought an anonymity order.
 - 1.3 The claimant sought unspecified orders regarding what she says is late exchange of witness evidence by the Respondent.
 - 1.4 The claimant sought to add an additional respondent.
 - 1.5 The claimant sought an order for a cast list.
2. The Tribunal received submissions from the claimant and the respondent. A bundle of documents running to 711 pages was provided to the Tribunal but [parties were agreed that it was not intended that it should be referred to at this hearing.

3. In relation to the anonymity order, the claimant set out her position in an email to the Tribunal dated 11 January which she summarised in an email dated 7 March, as follows:

1. Her work involves direct and indirect contact with the public. Some work duties can involve members of the public who are involved in criminal activity.
2. She has additional need given her mobility issues, which affect her daily activities.
3. She has recently been subject to another breach of her own private and confidential information by the respondent. Although she spoke with the respondent emphasising objections to the breach, the respondent did not protect her from the consequences of the breach and victimisation.

4. She emphasised that she had a right to individual privacy. She is a public facing civil servant. She made a number of complaints that the respondent had breached her confidentiality. She sought that her name and all personal information be withheld from all areas of the public domain, from all publishing platforms and from all online documents in England, Wales, Northern Ireland, Scotland and the world. The respondent said that it had redacted the names of any person involved in its enquiries.

Anonymity Order Relevant Legal Framework

5. When assessing an application under SI 2013/1237 Sch 1 r 50(3)(b), as with all orders under r 50, is the strong interest in open justice and the limited power to permit exceptions from this. In **British Broadcasting Corporation v. Roden** [2015] IRLR 627 EAT, Simler J (as she then was) set aside the anonymity order. Her starting point was art 10 and the principle of open justice, which she said is of 'paramount importance and derogations from it can only be justified when strictly necessary as measured to secure the proper administration of justice' (at [22]). Further, at [50] she stated:

"The default position in the public interest is that judgments of tribunals should be published in full, including the names of the parties. That principle promotes confidence in the administration of justice and the rule of law. The reporting of court proceedings in full without restriction is a particularly important aspect of the principle and withholding a party's name is an obvious derogation from it, requiring cogent justification for its restriction. ... The mere publication of embarrassing or damaging material is not a good reason for restricting the reporting of a judgment, as the authorities make clear."

6. Whilst 'the default position is and should be that it is in the public interest that the full decisions of courts and tribunals, including the names of the parties, should be published' (see Underhill J in **F v. G** [2012] ICR 246 at [49]), the case law reflects the increasing protection given to individuals' art 8 Convention right to a personal and private life which may justify an Anonymity Order. Anonymity Orders have assumed particular importance since the advent of the online judgment database. The result of this fully searchable online repository, coupled with the ability to disseminate information rapidly through social media channels, is that even if traditional media reporting on a case is proscribed by an Restricted Reporting Order, without anonymisation, it may be possible for an individual's involvement in a case to be

quickly identified and publicised (see **A v. Secretary of State for Justice** [2019] IRLR 108, in which the EAT overturned the tribunal's decision to revoke an Anonymity Order and replace it with an RRO, considering this to provide insufficient protection). On the other hand, in **A v. X** [2019] IRLR 620, the EAT, at [70], having allowed an appeal against the tribunal's refusal to grant an RRO, did not allow an associated ground of appeal against the tribunal's refusal to grant an Anonymity Order. Soole J declined to accept that concerns that there would be social media breaches of the RRO compelled the tribunal to order anonymity. As various cases have shown, the process of balancing a Convention right in favour of an Anonymity Order (usually the right to a personal and private life under art 8) with a Convention right against an Anonymity Order (usually art 10, the right of freedom of expression including the right of the free press) may be a difficult exercise.

Disclosure

7. In an email dated 7 January, the claimant set out the documents which she sought to be disclosed. A “streamlined version was provided on 7 March to which the respondent had not had an opportunity to respond. She also complained about the extent of redactions on some of the pages of the hearing bundle.

Witness statements

8. The date for exchange of witness statements was 6 March 2023. The respondent sent five witness statements to the claimant on this date but the passwords were sent the following morning. The claimant has expressed a concern that substantive changes were made to the witness statements following receipt of the claimant’s statement. The respondent confirmed that this is not the case; whilst the claimant has correctly pointed out that the file sizes of the witness statements changed marginally between 6 and 7 March 2023, this was as a result of minor typographical changes to the headings and/or changes to the security settings of the documents. No substantive changes were made.

Adding a respondent.

9. In a standard agenda form which was provided for this hearing, although it is not clear why, in response to one of the questions, the claimant had said she wishes to add a respondent.

Cast list

The claimant sought an order for a cast list. The Tribunal explained that this might be useful to the main hearing but would not be ordered at this stage.

CONCLUSION

Anonymity

10. There was no substantial basis advanced by the claimant for the anonymity order. Most of her complaints were about the actions of the respondent. In relation to her involvement with investigations, standing the redactions by the respondent, there

was no substantial reason for departure from the normal rule. The interest of open justice must be satisfied. The application is refused

Disclosure

11. The Tribunal did not adjudicate the issue of specific disclosure. The Tribunal permitted the claimant time at the hearing to go through what she wanted in order that the respondent could properly understand the request. The respondent is to give consideration to the request.

Witness statements

12. As the claimant now has the witness statements, they will be relied upon at the final hearing. No further order is necessary. The application is refused.

Adding a respondent

13. The Tribunal explained that the claimant must apply to add a respondent and provide reasons. The Tribunal outlined the considerations involved and indicated that there appeared to be no grounds to do so at this stage.

Cast list

14. The Tribunal explained that there was no need for an order at this stage.

Employment Judge Truscott KC
20 March 2023