



EMPLOYMENT TRIBUNALS

Claimant: Miss A Tramowska

Respondent: Vision Teaching Limited

Heard at: London Central

On: 17 January 2025

Before: Employment Judge Joffe

Appearances

For the claimant: Represented herself

For the respondent: Mr D Leigh, director

RESERVED JUDGMENT

The claimant's claims are struck out under Employment Tribunal Rule 38(1)(a) because they have no reasonable prospect of success.

REASONS

1. This was a hearing of the respondent's application to strike out the claims under rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013¹ on the basis they were said to have no reasonable prospects of success, alternatively for deposit orders.
2. The claim was presented on 14 May 2024.
3. There have been a total of three previous preliminary hearings:
 - A hearing on 25 October 2024 in front of Employment Judge Sutton KC at which Judge Sutton ordered that there should be a public preliminary hearing to consider strike out / deposit orders;

¹ Now rule 38(1)(a) of the 2024 Rules

- A hearing on 26 November 2024 in front of Employment Judge Coen. This was intended to be a public hearing of the respondent's applications. However the respondent had not provided documents to the claimant in advance of the hearing so the applications could not fairly be heard. Judge Coen gave directions for further hearings and clarified the issues, which she set out in a draft list:

BACKGROUND AND COMPLAINTS

The claimant was employed by an entity called FS Generate. The respondent is an agency that supplies temporary workers to schools. The respondent placed the claimant as a supply teacher in a number of schools. By a claim form presented on 14 May 2024, the claimant brought the following complaints against the respondent:

- *public interest disclosure (s.43 Employment Rights Act 1996)*
- *[unfair dismissal]*

TIME LIMITS

Were all of the claimant's complaints of whistleblowing presented within the normal 3 month time limit in section 123(1)(a) of the Equality Act 2010 as adjusted for the early conciliation process and where relevant taking into account that section 123(3)(a) says that conduct extending over a period is to be treated as done at the end of the period?

If not, were the complaints presented within such other period as the Tribunal thinks just and equitable pursuant to section 123(1)(b) of the Equality Act 2010?

PUBLIC INTEREST DISCLOSURE

Did the claimant make the following disclosures:

- *to the Police and the respondent on 31 March 2023 in respect of a relationship between a supply teaching assistant and a pupil at Ormiston Beachcroft Academy where the claimant was working as a supply teacher;*

- *to the respondent (by way of a voicemail message left on the respondent's office telephone on 1 May 2023) in respect of the same relationship between a teaching assistant and a pupil at Ormiston Beachcroft Academy.*

Was there a disclosure of information?

Did the claimant believe that she was making the disclosure in the public interest?

If so, was it reasonable for the claimant to hold that belief?

If so, did the claimant believe that the disclosure tended to show one or more of the matters listed in section 43B(1)(a) - (f) of the Employment Rights Act 1996?

If so, was this belief reasonably held?

Did the respondent subject the claimant to any detriments, as set out below?

- *a comment by the safeguarding officer at the respondent to the claimant on 2 May 2023 to the effect that the claimant would not get further work from the respondent if she complained to the police about the issue at Ormiston Beachcroft Academy;*

- a reduction in the amount of work provided to the claimant after 2 May 2023 (with the work carried out being one day at a primary school in Ealing and a two-week placement in October 2023 at [insert details]);
 - removing the claimant from the respondent's books on 8 December 2023;
 - a refusal (communicated by the respondent to the claimant on 20 February 2024) to offer any more work to the claimant on the basis of negative feedback from schools about the claimant;
 - refusal by the respondent to provide the claimant with a reference.
- If so, was this done on the ground that she made one or more protected disclosures?

Remedy

If the claimant succeeds, the Tribunal will be concerned with issues of remedy and, in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded.

- On 18 December 2024, there was a case management preliminary hearing in front of Employment Judge Glennie at which he gave directions for this hearing. The claimant was ordered to provide any documents, including a witness statement on which she wished to rely, to the respondent by 3 January 2025. The respondent was to prepare a file of documents including those provided by the claimant by 10 January 2025.

Judge Glennie further clarified the issues:

The issues are therefore essentially as identified by Judge Coen. I suggested that it might be helpful for the parties to think of the issues to be decided by the Tribunal in the following way:

5.1 As a matter of fact, did the Claimant make the two disclosures?

5.2 If she did make them, did they amount to protected disclosures? (Judge Coen has identified the necessary elements of this).

5.3 Was the Respondent the Claimant's employer?

5.4 If so, did the Respondent dismiss the Claimant?

5.5 If the Respondent was the employer and dismissed the Claimant, was the reason or principal reason for the dismissal that the Claimant made a protected disclosure or disclosures (as to which, see 5.1 and 5.2 above).

The hearing before me

- 4. The respondent had prepared a bundle running to 165 pages and provided the claimant with a copy. The claimant had not sent any documents or a witness statement to the respondent pursuant to Judge Glennie's orders but told me that she had sent a number of emails to the Tribunal in late December 2024 which she wished me to read. These had not been copied to the respondent.

5. I had not seen these emails prior to the start of the hearing and I took some time to ask for them to be provided to me and sent to the respondent. They were as follows:

- 14 December 2024: Email containing a photograph of the Princess of Wales, apparently at a school, with the following text from the claimant:

She wants to end my life in a suffering way.

- 21 December 2024: Email attaching a copy of a form for online reporting of a crime to the Metropolitan Police.

In that form, the incident being reported was described in this way:

People from my old workplace called Silverstone year 2014 stalking my social media and people I met they also spreading wrong informations about me to other people which is affecting my life to the point that I have no life using words end her.

The claimant did not give details of a suspect in this form, although there was a section to do so.

- 21 December 2024: Email to the Tribunal saying:

Dear Justice

I made online report regards Kate Middleton but for some reason I didn't receive any confirmation about it so we can always ask any School headteacher.

- 21 December 2024: Email to the Tribunal including a screen shot of what appeared to be a report to a Polish police force dated 4 November 2024. This report was hard to understand but makes reference to a man (who is named in the report) who is said to have been stalking an unnamed person, apparently with a sexual motivation. There is reference to a prostitute the claimant met on a plane, who appears to be the woman she says is being stalked.

- 21 December 2024: Email from the claimant with what appears to be a screenshot showing some Uber rides she took. The claimant wrote:

I would like to add locations of the incidents where all happened between the dates i made complain.

When I asked one of the headteacher why you are doing this ? She said "you can report anyone you like you are who you are" first post code given.

The reason I took uber was no transport or issues.

- 23 December 2024: The claimant forwarded an email from the Metropolitan Police providing a crime reference number.
- 23 December 2024: An email containing a photograph of a document and the following text:

I would like attach slip from polish post office with confirmation including payment for Christmas from my parents and his dad which is missing it's 3rd week now. When I called post office they said it was sent on the 17th when I asked why I didn't receive any answer ? My mum posted on the 10th this month. Priority

6. Mr Leigh had provided a number of documents and a witness statement.
7. It is not for me at this preliminary stage to make findings of fact. The following is a synopsis of the evidence Mr Leigh gave in his statement together with an account of the documents on which he relied.
The respondent is an agency which provides teaching staff on a temporary basis to schools. The claimant is employed by an entity called Generate FS. She had been engaged by the respondent to be provided for assignments at schools.
8. The documents provided were:
 - Transcripts of telephone recordings which stated that they were 'Automatically transcribed by Speechnotes'. These appeared to show that there were telephone messages or conversations between the claimant and employees of the respondent in which the respondent was seeking to discuss possible work opportunities or discussing actual work arrangements with the claimant on the following dates:
 - 5 October 2023;
 - 6 October 2023;
 - 9 October 2023;
 - 10 October 2023;
 - 17 October 2023;
 - 31 October 2023;
 - 7 December 2023.
 - There is also a transcript of a call on 20 February 2024 between the claimant and Ms A Khan from the respondent in the course of which Ms Khan said to the claimant:

I just wanted to have a chat with you Anyway, I know that obviously we'd, we've worked with each other for so long and you know, we've sent you to quite a few schools. But I'm sure you remember towards the back end of last year, there were a few incidences that happened at quite a few schools.

And I know that you also expressed your own worries about working in certain schools.

So I think we'll decide to to leave it there unfortunately, and we'll put a stop to your work with Vision Teaching.

Ms Khan said that the respondent would be happy to provide the claimant with references.

This telephone call was said to have been prompted by an email from the claimant that day saying she was available for work that week. That email was provided in the bundle.

- What appeared to be automatically generated emails showing the claimant's work bookings for the respondent on the following dates:

24 April 2023;

25 April 2023;

26 April 2023;

27 April 2023;

9 May 2023;

11 May 2023;

9 October 2023;

10 October 2023;

12 October 2023;

13 October 2023;

17 October 2023.

- Another table of bookings appears to show the following additional dates of bookings:

18, 19, 20 and 21 April 2023;

12, 15 and 18 May 2023;

15 June 2023.

- There is an email of 12 June 2023 from the claimant to the respondent with the subject line 'work' which says: 'I can't make it tomorrow because it is very far.'

- There are phone records which show frequent phone calls from the respondent to the claimant between 22 September 2023. and 20 February 2024 There were 48 outgoing calls from the respondent to the claimant during this period.

- On 8 December 2023, there is an email from the claimant to the consultant at the respondent she appears to have dealt with most, Ms Khan, saying:
I am taking little break from teaching because something doesn't feel right every time while I'm at school people place their concentration on something else.

I will call back

as soon all the nonsense stop. Please don't ask me questions because I contacted police before as they know. Please don't worry about anything.

- There are various emails regarding 'statements of service', which are what the respondent provides instead of references. The respondent provided statements of service for the claimant to other agencies on 12 June 2023, 16 June 2023 and 28 September 2023.

These statements say:

Agnieszka Tramowska registered with Vision Teaching on Wednesday 16th October 2019. So far Agnieszka has completed 263 days of work for the company, between Thursday 7th November 2019 and Thursday 15th June 2023.

Whilst acting as an employment agency we are unable to comment on an individual's character or suitability for a position, although I have no reason to doubt Agnieszka's integrity. To our knowledge we know of no safeguarding issues relating to Agnieszka.

- There are also logs of some phone calls made by Ms McKenzie to two agencies which calls are described as 'off record call[s] to advise them [of] false allegations she has made repeatedly'.
- There are a number of documents relating to the safeguarding report made by the claimant. From these it appeared that the claimant raised a concern about sexual abuse on 1 May 2023 via five voicemails to the respondent. The names of the pupil and alleged perpetrator or perpetrators were unclear from these messages. Ms K McKenzie, the respondent's then compliance manager (referred to by the claimant as the 'safeguarding officer'), had completed a form for the Local Authority Designated Officer on 2 May 2023. The local authority referred the matter to the police.

After that Ms McKenzie was in contact with the local authority who asked for clarification of the allegations, which Ms McKenzie liaised with the claimant to provide.

The claimant appeared in her responses to make a new allegation of abuse of a different child and Ms McKenzie asked for further details. The claimant then wrote on 3 May 2023: 'I don't want to talk about anymore'. In further emails the claimant appeared to be reluctant to provide any further information. I was told that the investigation by the local authority found the allegation/s unsubstantiated

- There was a short statement from Ms McKenzie dated 16 December 2024. Ms McKenzie said in this statement

I have never stated to Agnieszka Tramowska that she would not be provided work, after whistleblowing an alleged safeguarding concern whilst a temporary agency worker at Beachcroft Academy, on or around the date of 31/03/2023.

I can confirm that within my professional career, I would never and have never advised such a thing to any temporary agency worker.

Ms McKenzie also said:

I will not be contactable for further information, as the above covers information required.

However Vision Teaching Ltd will be able to provide my email to the Court, should they wish to authenticate this witness statement.

When I asked Mr Leigh about whether Ms McKenzie was willing to be a witness, he said that she had left the respondent's employment not on good terms. She would have to attend under a witness order.

9. The respondent's case was that the decision not to provide the claimant with any further work from February 2024 was because of complaints or concerns raised by schools at which she had been placed.
10. Mr Leigh relied on an undated document which was a table of the claimant's assignments with dates and with columns for 'rating' and feedback. There were records dating back to 2019. The ratings could be 'Y' or 'N', apparently for 'yes' or 'no' as to whether a school would engage the teacher again. The claimant had a total of 13 'no' ratings going back as far as 2019. Seven were from 2023. The most recent 2023 incidents were from April and May 2023. Mr Leigh said that it was the final incidents which caused the respondent to look at the pattern.
11. There was no evidence that the report the claimant alleges she made to the police on 31 March 2023 had led to any action being taken.

Submissions

12. The respondent was in essence saying that the claims had no reasonable prospect of success because they were inconsistent with the contemporaneous documents.
13. The claimant's submissions were not easy to understand. She believed that the Princess of Wales, Lewis Hamilton and Daniel Ricardo were involved in a plot to end the claimant's life. There was collusion of these individuals with the head teacher of the school at which the claimant was placed when she made her safeguarding disclosure. The events the subject of these proceedings played some part in the plot although precisely what role was difficult to follow. There was a woman the claimant had met on a plane who was a prostitute and who was involved in the conspiracy in some way, and also a man who was a 'champion'. Photographs of these people had been displayed at the school the claimant was placed at where the sexual abuse was said to have taken place. The claimant referred to paedophilia with a baby but did not explain who was the subject of that disturbing allegation. She had made reports to the police. The claimant did not present a coherent narrative. She was very emotional and repetitive and it was difficult to elicit information from her.

Law

Striking out

14. Under rule 37 of the Employment Tribunals Rules of Procedure 2013, a claim or response may be struck out on various grounds including that it is scandalous and vexatious or has no reasonable prospects of success: rule 37(1)(a).
15. In heavily fact-sensitive cases, such as those involving whistleblowing or discrimination, the circumstances in which strike out is appropriate are likely to be rare: Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT.
16. The test is not whether the claim is likely to fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test: Balls v Downham Market High School and College 2011 IRLR 217, EAT.
17. It is crucial when considering strike out to take the claimant's case at its highest; where there are core issues of fact which turn to any extent on oral evidence, these should not be decided without an oral hearing: Mechkarov v Citibank NA [2016] ICR 1121.
18. The following helpful summary was given by Linden J in Twist DX Limited v Armes UKEAT/0030/20/JOJ(V):

43. The relevant principles relating to the application of this provision for present purposes can be summarised as follows:

a. A decision to strike out is a draconian measure, given that it deprives a party of the opportunity to have their claim or defence heard. It should, therefore, only be exercised in rare circumstances: see, for example, Tayside Public Transport Company Limited v Reilly [2012] IRLR 755 at paragraph 30.

b. The power to strike out on the no reasonable prospect ground is designed to weed out claims and defences, or parts thereof, which are bound to fail. The issue, therefore, is whether the claim or contention "has a realistic as opposed to a fanciful prospect of success": see, for example, paragraph 26 of the Judgment of the Court of Appeal in the Ezsias case (supra).

c. The court or tribunal should not conduct a mini-trial of the facts and therefore would only exceptionally strike out where the claim or contention has a legal basis, if the central or material facts are in dispute and oral evidence is therefore required in order to resolve the disputed facts. There may, however, be cases in which factual allegations are demonstrably false in the light of incontrovertible evidence, and particularly documentary evidence, in which case the court or tribunal may be able to come to a clear view: see, for example, paragraph 29 of Ezsias.

d. Subject to this point, the court or tribunal must take the case of the respondent to the application to strike out at its highest in terms of its factual basis and ask whether, even on that basis, it cannot succeed in law.

e. The court or tribunal generally should not seek to resolve novel issues of law which may not arise on the facts, particularly in the context of a developing area of the law: see, for example, Campbell v Frisbee [2003] ICR 141 CA.

f. The fact that a given ground for striking out is established gives the ET a discretion to do so – it means that it “may” do so. The concern of the ET in exercising this discretion is to do justice between parties in accordance with the overriding objective and an ET, therefore, would not normally strike out a claim or response which has a reasonable prospect of success simply on the basis of the quality of the pleading. It would normally consider the pleading and any written evidence or oral explanation provided by a party with a view to determining whether an amendment would clarify or correct the pleaded case and render it realistic and, if so, whether an amendment should be allowed. In my view, this last point is important in the context of litigation in the employment tribunals, where the approach to pleading is generally less strict than in the courts and where the parties are often not legally represented. Indeed, even in the courts, where a pleaded contention is found to be defective, consideration should be given to whether the defect might be corrected by amendment and, if so, the claim or defence should not be struck out without first giving the party which is responding to the application to strike out an opportunity to apply to amend: see Soo Kim v Yong [2011] EWHC 1781.

g. Obviously, particular caution should be exercised where a party is not legally represented and/or is not fully proficient in written English (see the discussion in Hassan v Tesco Stores Limited UKEAT/0098/16 and Mbuisa v Cygnet Healthcare Limited UKEAT/0109/18), but these principles are applicable where, as here, the parties are legally represented, albeit less latitude may be given by the court or tribunal.

19. Tribunals should not be deterred from striking out claims that involve disputes of fact if they are satisfied that there is no reasonable prospect of facts necessary to find liability being established, provided that they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been explored: Ahir v British Airways plc 2017 EWCA Civ 1392, CA,

Deposit orders

20. A tribunal may make a deposit order where a claim has little reasonable prospect of success, pursuant to rule 39 of the Tribunal Rules 2013. The purpose of a deposit order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs if the claim fails. Their purpose is

not to make it difficult to access justice or to effect a strike out through the back door. Even where a claim has little reasonable prospect, there is a discretion as to whether to make a deposit order, which must be exercised in accordance with the overriding objective: Hemdan v Ishmail and anor [2017] ICR 486, EAT.

Conclusions

21. I understood the respondent's application as primarily an attempt to show that the claimant had no prospect of establishing the detriments and/or that the detriments were caused by the alleged protected disclosures.
22. I considered each detriment in turn and whether the claimant has no reasonable prospects of establishing the detriment and/or that the detriment was caused by her disclosures on the basis of the contemporaneous documents:

- *a comment by the safeguarding officer at the respondent to the claimant on 2 May 2023 to the effect that the claimant would not get further work from the respondent if she complained to the police about the issue at Ormiston Beachcroft Academy;*

On its face this would appear to turn on a conflict of evidence between the claimant and Ms McKenzie unsuitable to be the subject of a strike out application, particularly as I am generally required to take the claimant's case at its highest for these purposes. I would not have struck this claim out solely on the basis that the claimant has no reasonable prospects of establishing that this is what Ms McKenzie said.

- *a reduction in the amount of work provided to the claimant after 2 May 2023 (with the work carried out being one day at a primary school in Ealing and a two-week placement in October 2023 at [insert details]);*

Here the documentary evidence seemed to suggest that the claimant not only performed work but was offered work regularly after the disclosure during school terms. Certainly the documents show that there were more placements than a single day and a two week stint in October 2023 and that other work was discussed.

- *removing the claimant from the respondent's books on 8 December 2023;*

The email which the claimant does not dispute she sent on 8 December 2023 appears to be an insurmountable hurdle for her in respect of causation.

- *a refusal (communicated by the respondent to the claimant on 20 February 2024) to offer any more work to the claimant on the basis of negative feedback from schools about the claimant;*

NB: this is also the 'dismissal' identified by Employment Judge Glennie.

There was accepted to have been a refusal to provide the claimant with more work so the question was whether the claimant had no reasonable prospect on causation.

There are certainly hurdles for the claimant presented by the contemporaneous documents, which show that she was provided with work and/or offered work for a significant period after the whistleblowing incident. Nonetheless I would not have concluded on the basis of this evidence alone that this claim had no reasonable prospects, particularly in circumstances where other documents raised questions which would need to be explored in evidence, including the rating / feedback table which showed most of the complaints about the claimant were from a significantly earlier period, and the references in the call logs to agencies being told the claimant had made repeated false statements.

• *refusal by the respondent to provide the claimant with a reference*

Here the documentary evidence showed that the allegation as formulated was not correct; the claimant had been provided with statements of service, however in addition to the statements of service it appeared that negative 'off the record' phone references were given. This claim would require amendment but if the claim were amended to refer to negative references, it seemed to me that claim would not be suitable for strike out based only on an argument that the claimant had no reasonable prospect of establishing causation.

23. This was a case in which I would not have struck out at least some of the claims simply on the basis of the apparent conflict between some of the contemporaneous documents and the facts asserted by the claimant. This included the first, fourth and fifth allegations.
24. However, I considered that this was a case where I had to give careful consideration to the impression the claimant was likely to make on a Tribunal and the likelihood of her establishing facts necessary to succeed in her claims.
25. The impression I formed was that the claimant was in the grip of a number of beliefs which she had no prospect of persuading a Tribunal were correct, in particular as to the involvement of celebrities / public figures in a plot against her. That was bound to have an influence on a Tribunal considering what weight to give to her evidence as to the facts of the claims. I should make it clear that I am not asserting as a general proposition that no claimant who has some beliefs which appear to be delusional is capable of succeeding in a Tribunal claim. Each case will of course turn on its own facts. However, in this case, with this claimant, the outlandish beliefs appear to be closely intertwined with the original and incoherent allegations which form the basis of the alleged disclosures.
26. Based on her presentation at this public preliminary hearing, it seemed to me that this was an unusual case in which I could reach a conclusion on prospects even though there were core facts in dispute. In looking at whether the claimant had a reasonable belief that the information disclosed by her tended to show wrongdoing, in the form of sexual abuse of a pupil or pupils, I consider that the incoherence / lack of particularisation of the original allegations as revealed by the documents, combined with the fact that the alleged abuse is factually

intertwined in the claimant's account with outlandish allegations about people in the public eye (which themselves have no prospect of being accepted by a Tribunal) means that the claimant has no reasonable prospect of satisfying a Tribunal that her belief that the information she disclosed tended to show the wrongdoing alleged was reasonable.

27. A reasonable belief that the information tends to show the relevant type of wrongdoing is of course a necessary element of a public interest disclosure. I therefore concluded that the claimant had no reasonable prospect of establishing that she made protected disclosures.
28. Separately, it appeared to me that the contemporaneous documentation meant that the claimant had no reasonable prospects on the issue of causation in respect of the second and third alleged detriments.
29. Bearing in mind as I must, the danger involved in striking out at an early stage a fact sensitive whistleblowing claim, I nonetheless concluded that strike out was appropriate. I could see no benefit to the claimant or anyone else of the proceedings continuing.
30. There was obvious detriment to the respondent and to other Tribunal users of these hopeless proceedings continuing and absorbing resources better used elsewhere.
31. In those circumstances, I concluded that strike out was appropriate.

Employment Judge Joffe

27 January 2025

Sent to the parties on:

31 January 2025

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For the Tribunal Office: