EMPLOYMENT TRIBUNALS

Claimant: Mr A Lawrence

Respondent: George Walker Transport Manchester Limited

Heard at: Manchester **On:** 1 December 2023

Before: Regional Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: Did not attend
Intermediary: Ms A Burton
Respondent: Miss R Jones (Counsel)

JUDGMENT

The claimant's application under rule 38(2) to have the unless order of 14 December 2022 set aside is refused, meaning that the dismissal of the case on 16 May 2023 stands and the case in the Employment Tribunal is at an end.

REASONS

Introduction

1. This decision is in the form of a judgment, rather than a further Case Management Order, because it is a decision which finally determines this claim and therefore falls within rule 1(3)(b)(i).

2. This hearing was arranged to decide the claimant's application to set aside an unless order under rule 38(1) made by Employment Judge Butler in December 2022. Employment Judge Allen decided in May 2023 that the claimant had breached the terms of the unless order and that his case had been dismissed as a result.

3. On 29 November 2023 the claimant emailed the Tribunal to say that it was unlikely he would be attending the hearing for medical reasons.

4. When the hearing began at 10.00am on 1 December 2023 the claimant was not present. Ms Burton was in attendance as the intermediary to help the Tribunal

communicate with Mr Lawrence. At 10:09, however, the claimant emailed the Tribunal. His email said he had made it to a car park in Manchester but was in considerable pain from a pinched nerve and stressed out by the traffic. He said he had been sitting down for a while and not yet felt like moving. His email said that the Tribunal should "feel free to proceed without me".

5. Miss Jones drew my attention to this email at the start of the hearing and I adjourned so that our clerk could ring Mr Lawrence. The clerk reported at 10:22 that she had spoken to him. He had said he was in too much pain to make it to the Tribunal without taking medication, but if he took the medication he would not be able to drive home. He told the clerk that he did not want the hearing to be postponed and it could proceed in his absence.

6. I reconvened the hearing and relayed this information to Ms Burton and Miss Jones. As the claimant had provided some detailed written representations in support of his application, and was not asking us to postpone the hearing, I decided it was appropriate under rule 47 to proceed in his absence.

7. The intermediary Ms Burton was released and left the hearing.

8. I had read all the material before the hearing, including the bundle of documents running to 187 pages and the claimant's emails since that bundle was compiled. References to page numbers are references to the bundle.

9. I put to Miss Jones some of the points made by the claimant in his email of 29 November and she responded to them. She made some additional points in her oral submission.

10. The remainder of these reasons explains why I decided that the application should be refused.

Procedural Background

11. It is relevant to summarise the procedural history of this case.

12. The claim form was presented in July 2018 and raised complaints of unfair dismissal and disability discrimination arising out of the claimant's employment as an HGV driver between May 2017 and May 2018. All claims were resisted by the respondent in the response form filed in August 2018.

13. I did the first case management hearing in September 2018 and the case was listed for a six day final hearing in October 2019. Unfortunately the Tribunal's usual hearing venue was closed at that time due to a flood, and the hearing was moved to a court room at Crown Square. The hearing had to be adjourned after a few days because the environment was not suitable for the claimant.

14. The hearing resumed in our usual hearing venue, Alexandra House, in March 2020. Unfortunately, that resumed hearing had to be abandoned due to the first Covid lockdown.

15. The final hearing was listed to resume a second time in February 2021, but that hearing did not take place because of a decision that it should start afresh with a new panel. Eventually new hearing dates were set in February and March 2023.

16. There were a number of case management hearings in the meantime. An intermediary's report was obtained in October 2022. This was considered at a "ground rules" preliminary hearing before Employment Judge Butler on 14 December 2022.

17. Shortly before that hearing the respondent made an application for an unless order requiring the claimant to refrain from using abusive language in his communications. The claimant had received two earlier warnings about his use of language in letters from the Tribunal of 22 July 2022 and 11 August 2022.

18. For reasons set out in his written Case Management Order issued on 9 January 2023, Employment Judge Butler made unless orders saying that the claim would be dismissed unless the claimant ceased to use abusive, derogatory and/or foul language towards the respondent and its representatives. He was also required to refrain from using such language towards witnesses, and to refrain from copying witnesses into correspondence with the respondent.

19. The final hearing was postponed from February 2023 to June 2023. A case management hearing was arranged for 16 May 2023.

20. Shortly before that hearing the respondent drew to the Tribunal's attention further correspondence from Mr Lawrence which it said breached Employment Judge Butler's orders. At the hearing Employment Judge Allen decided that the claimant had been in breach of the unless orders and that the claim had been dismissed. This was confirmed in a Case Management Order issued by Employment Judge Allen in writing on 30 May 2023.

21. By email of 13 June 2023 the claimant applied for his case to be reinstated in the interests of justice. By email of 11 September 2023 the respondent opposed the application. It was listed for hearing before me today.

22. The claimant sent further emails on 13 September 2023, 29 November 2023 and 30 November 2023. His emails between June and November were treated by me as containing the grounds upon which he wanted the Unless Order to be set aside.

Communication

23. In preparing for this hearing I had read the Tribunal's file, the intermediary's report from October 2022, and the "ground rules" for hearings recorded in paragraphs 6-12 of the Case Management Order of Employment Judge Butler from December 2022.

24. I had also read again the relevant parts of the Presidential Guidance on vulnerable parties and witnesses in Employment Tribunal proceedings issued in April 2020, and the Equal Treatment Bench Book.

25. Had Mr Lawrence attended I would have begun the hearing with a discussion about the ground rules so that with the assistance of the intermediary the hearing could have been conducted fairly. As he did not attend there was no need for any such discussion.

The Law

26. Unless orders are governed by rule 38 of the Employment Tribunal Rules of Procedure 2013. The relevant parts of the rule read as follows:

> **"(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.**
>
> **(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so…"**

27. The power to set aside the unless order must be exercised in accordance with the overriding objective in rule 2, which is to deal with a case fairly and justly. Rule 2 also says this:

> **"The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."**

28. There have been several decisions of the Employment Appeal Tribunal about rule 38. The cases which I took into account were the following:

- **Thind v Salvesen Logistics Ltd UKEAT/0487/09**
- **Enamejewa v British Gas Trading Ltd UKEAT/0347/14**
- **Uwhubetine and Others v NHS Commission Board England and Another UKEAT/0264/18**
- **Minnoch and Others v Interserve FM Limited [2023] EAT 35**
- **Bi v E-Act [2023] EAT 43**

29. From these cases the following principles can be derived.

30. Firstly, the decision I was making was the third of three decisions which might arise in relation to an unless order.

31. Secondly, the four main factors to be considered in an application under rule 38(2) are the reason for the breach of the unless order, and in particular whether or not it was deliberate; the seriousness of the breach; any prejudice to the other side resulting from the breach; and whether a fair trial remains possible.

32. Thirdly, my task involved a broad assessment of what was in the interests of justice and would not necessarily be limited to the factors identified above: it depended on the circumstances and facts of the individual case.

33. Fourthly, in dealing with the application I must have proper regard to Mr Lawrence's vulnerability which affects his ability to fully participate in these proceedings. That obligation arises from the overriding objective, the claimant's right to a fair hearing under Article 6 of the European Convention on Human Rights, and from the common law concepts of justice, fairness and a fair hearing.

34. Fifthly, although all reasonable adjustments should be made in those circumstances to ensure a fair hearing, the interests of the claimant are not the only consideration. The respondent also has the right to a fair hearing in accordance with the overriding objective and common law.

The Unless Order

35. The successful application for an unless order was made by the respondent in an email of 13 December 2022 which appeared at pages 102-104. It set out in detail the sequence of events from March 2022 when the claimant had been warned about his language by Employment Judge Butler during a case management hearing.

36. Between July and November 2022 the claimant had used abusive and derogatory language about and to the respondent and its representative, the terms being used in email correspondence including "*cheeky bitch*", "*crock of shit*", "*arseholes*", "*professional liars, snakes and spiteful little cunts*", "*ungrateful little cunts*" and a "*shit company*". That conduct continued despite the Tribunal warning letters of 27 July 2022 and 11 August 2022.

37. Even so, Employment Judge Butler was not minded to impose an Unless Order until Mr Lawrence raised his voice and used foul language during the hearing on 14 December 2022, as recorded at paragraphs 15 and 16 of the written Case Management Order.

38. It was clear to me that the unless order was not lightly imposed, and was done as a last resort to secure an end to the abusive language from Mr Lawrence.

Breach of Unless Order

39. Employment Judge Allen decided at the hearing on 16 May 2023 that the claimant was in breach of the unless order. He recorded in paragraphs (5)-(8) of his written Case Management Order the repeated references made by the claimant to the respondent's barrister and solicitor being dishonest, and his inclusion of foul language in emails even though not directed at the respondent. The use of foul language not directed towards the respondent was not a breach of the unless order, as he explained in paragraph (19), but the language directed at the respondent's representatives amounted to material non-compliance and the claim was dismissed.

Claimant's Application

40. The claimant's application to set aside the unless order was made in his email of 13 June 2023. The points he made included the following:

- Judge Butler had had good intentions, but Judge Allen had not.
- There were a number of abusive terms that he had not used during the proceedings.

- He did not believe in bad words but only in "bad context".

- Judges who were "*easily offended by the odd piss, shit, cunt or fuck or respecting ones aversion to honesty and integrity by labelling them dishonest*" [sic] are not inclusive and not in a position to dispense justice to the working classes.

- It was his understanding that "*it would be profanity aimed at the respondent would be triggering the unless order, and not Judge Allen's interpretation of [his] attempt to respect the respondent's and their representative's aversion to honesty and integrity by calling dishonest people dishonest*."

- He had been "*gaslit by the dishonest Rebecca Jones into saying fuck you and fuck your money*".

- "*In an ideal world the next Judge will neither have a stick or their butt or an axe to grind*".

- He made several references to "*the dishonest Heather Lunney*".

- There was a "*much more polite Adrian Lawrence who died in March 2021*".

41. By email of 1 August 2023 the claimant added some more information. He asked that Employment Judge Allen should not hear his case again and said some emails were being blocked. He then added this paragraph:

> **"I would also like to add that I was considerably more relaxed at that hearing [before Judge Allen] due to having sex beforehand, but it was not [with] my wife, it was with one of his esteemed legal colleagues working as a prostitute on the side, and that as I do not believe in bad words, I believe in context, it should constitute a philosophical belief with the protections that follows."**

42. On 13 September 2023 the claimant sent a number of emails to the Tribunal and to the respondent's representatives. He referred again to "*the dishonest Heather Lunney*". He referred to the respondent as a "*dishonest client with a dishonest representative*".

43. Having received the bundle for the hearing on 27 November, the claimant sent a lengthy email on 29 November 2023. In that email he said that it was unlikely he would attend but also made the following points:

- There had not been a fair trial before Judge Allen because the evidence of breach of the unless order had only been submitted the previous day.

- During the hearing in December 2022 Judge Butler had asked if he was ok to continue. He had said not, but the hearing continued anyway.

- He criticised Judge Allen for deciding that "*simple, honest and direct language which wasn't profane*" had breached the unless order, and said of Judge Allen: "*What a prick*".

- He did not believe in bad words, but in bad context, which was a protected philosophical belief.

- His use of profane language was due to his background and experiences whilst younger.

- Profane language was fine in the respondent's workplace so how could they be objecting to it now?

- He explained why he considered the respondent and Ms Lunney dishonest.

- He had arrived well in advance of the hearing in May 2023 and had "*casual sex with a legal professional, an officer of the court, working as a prostitute in order to relax and limit outbursts before that Judge threw out due process*".

44. Finally, the claimant supplemented that email in an email of 30 November 2023. He reiterated his belief that there were no bad words, only bad context, and that this was a protected philosophical belief. He argued that the right to respect for that belief meant that he should be accepted for who and what he was.

Respondent's Position

45. The respondent's grounds for opposing the application were set out in detail in the email of 11 September 2023 which appeared at pages 172-180 of the bundle. The offending passages of the various emails were quoted. The respondent pointed out that some of the emails had been copied to the Manchester Evening News. The respondent submitted that it would not be in the interests of justice to set aside the unless order. The claimant's conduct since the unless orders were made was scandalous, vexatious and unreasonable. An additional point was that if the case were to be reinstated the final hearing would be in late 2024 or 2025, by which stage witnesses would be having to recall events that had happened between seven and eight years previously.

46. In her oral submissions Miss Jones relied upon those points and made some brief additional points. She said that she had no recollection of the hearing in December 2022 having proceeded despite the claimant saying he was not ok to go ahead, and observed that there had been an intermediary present during that hearing to ensure that there was proper communication. The claimant's point about the language being acceptable in the workplace was irrelevant as the conduct of judicial proceedings was a very different environment. There was no reason for the claimant's behaviour: he had not asserted that it was a consequence of his disability and even if he had there was no medical evidence to support that. Nor could his use of such language amount to a protected belief. Ms Lunney dreaded opening correspondence from the claimant and did not attend the hearings for the same reason. The application for the unless order, and for the claim to be dismissed pursuant to it, had not been lightly made. At times the claimant had copied his emails to witnesses. He had shown no apology or contrition but rather "dug his

heels in". He was unable to conduct the litigation in an appropriate way. There was no respect for Tribunal processes. A fair trial was impossible.

Decision

47. I decided that it was not in the interests of justice to set aside the unless order and reinstate the claim. My reasons were as follows.

48. Firstly, the unless order was not made lightly or prematurely. The claimant had been warned on three occasions about his use of foul and abusive language, and it was only because he repeated such language during that hearing that Employment Judge Butler decided an unless order was appropriate.

49. Secondly, the claimant had breached the unless order in his further communications for the reasons set out clearly by Employment Judge Allen in his Case Management Order. His point that it only applied to foul language was misconceived. It applied to "derogatory" language too (paragraphs 20.1 and 20.1 of Employment Judge Butler's case management order).

50. Thirdly, the claimant had not refrained from such communications or shown any contrition or regret over his use of language, but instead had sought to justify it. I was satisfied that there was no prospect of him conducting this litigation without repeatedly referring to the respondent and its representatives as dishonest, and making lurid and foul accusations about Judges and their colleagues.

51. Fourthly, such conduct was in breach of the duty under rule 2 for the parties to cooperate with each other and with the Tribunal to help ensure that the case is dealt with fairly and justly.

52. Fifthly, the respondent and its representative were prejudiced by having to experience repeated accusations of dishonesty, which had no bearing on preparation for the final hearing and the issues to be determined at it, but caused the respondent and its representatives additional distress and cost in having to deal with them.

53. Sixthly, the reason for the breach of the unless order was the claimant's deliberate decision to use such language, based on his belief that there are no inherently bad words but only bad context. The difficulty with that proposition is that the context of legal proceedings means that using such terms is highly inappropriate, a point which seems lost on him. His point about this being a "philosophical belief" was irrelevant and without merit.

54. Seventhly, his use of abusive language had not been isolated or occasional but consistent and repeated, and therefore his default was serious, not trivial.

55. Putting these matters together I was satisfied that a fair trial was not possible as the litigation, if revived, would be conducted by Mr Lawrence in this inappropriate manner. His behaviour would indeed meet the test for being scandalous, vexatious or abusive and therefore his case could have been struck out under rule 37 had it not been dismissed under rule 38.

56. For these reasons, applying the overriding objective and the tests required by the case law, the application was refused.

57. The case is at an end.

Regional Employment Judge Franey
5 December 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
7 December 2023

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/