

JERSEY / JUDGMENT

Gerald Williams v HSBC Bank Plc

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL BETWEEN GERALD WILLIAMS CLAIMANT AND HSBC BANK PLC RESPONDENT LEAVE TO APPEAL JUDGMENT
Reference: [2022] TRE 145 Before: Advocate I C Jones, Deputy Chairman
DECISION The Claimant's application for leave to appeal is refused. DECISION The Appellant's application for permission to appeal against the decision of the Tribunal dated 17 January 2024 (the "Judgment") is refused. 1.

INTRODUCTION

1.1. The Appellant seeks leave to appeal pursuant to Article 94(1) of the Employment (Jersey) Law 2003 (the "Law") which states as follows: "A person aggrieved by a decision or order of the Tribunal may, on a question of law only, appeal to the Royal Court by applying to the Tribunal for leave to appeal." [EMPHASIS ADDED] 1.2. Accordingly the Appellant will not be granted leave to appeal unless the ground of appeal raises a 'question of law'. The Tribunal has previously considered the nature of a 'question of law' generally and in the context of Article 94(1) of the Law, recently in *Parker -v- Ecoheat* [22nd May 2017], which characterises a 'question of law' as follows: (i) the Tribunal has misdirected itself in law or misunderstood the law or misapplied the law; and / or (ii) there was no evidence to support a particular conclusion or finding of fact; and / or (iii) the decision was either perverse in that it was one which no reasonable tribunal, directing itself properly on the law, could have reached, or alternatively, was one which was obviously wrong. I can see no reason not to adopt the above definition or otherwise qualify / modify it. I note that the Appellant does not address the relevant tests set out above and which one (or all) that she seeks to rely on. 1.3. The Appellant contends that the the Tribunal in the Judgment 'had no evidence to support a conclusion or finding of fact'. 1.4. Having identified the ground(s) of appeal the Appellant then sets out the following in support and by way of explanation / characterisation: "I am asking please for a review the decision made by the Tribunal on the basic of allowing me and my witnesses the opportunity to produce a fact finding on the following basic: · My main witness was alleged omltted from HR investigation; · My initial application was summitted within the time scale; · During my monthly review between 28-30.06.22 the alleged discrimination was isolated and not ongoing in relation September 2021; and · with reference to Discrimination Jersey Law 2013, taken from Part 2 I believe the act have taken place between 28-30.06.22 and my witnesses and I should be given a hearing to submit the evidence to support my application." 2. DISCUSSION 2.1. The difficulty with the application – as set out above – is that it does not address directly (or at all in reality) the decision which has been made to strike out the discrimination elements of Appellant's claim. 2.2. The Judgment states as follows: "10. In my

judgment, the real question for me to determine on this application is whether Mr Williams' Claim (on the assumption what is alleged is proved) is to be characterised as an ongoing act which concluded at the end of June 2022 or the Claim is to be characterised as a 'one off' act with continuing consequences. If it is the former then the Claim cannot be struck out. If it is the latter then the Claim must be struck out as it would be out of time.

11. In my view the Claim as particularised by Mr Williams does not identify two separate or distinct acts. What Mr Williams is really complaining of is the duties he was assigned in September 2021. He says that that such assignation amounted to discriminatory conduct because his colleagues had different or more extensive duties which he wanted to have assigned to him also. On the basis of the totality of the pleadings filed by Mr Williams, this status-quo seemed to continue until June 2022...
13. The difficulty for Mr Williams is that in spite of what he contends, the alleged discriminatory act (if it was discriminatory) did not occur in June 2022. It occurred in September 2021 and the dynamic he seeks to complain of as happening in June 2022 was not a separate or new discriminatory act. Nor in my view is it an example of an ongoing act. Rather, it is a 'one off' and distinct event which has a consequence or set of consequences, which consequences subsisted in June 2022 when Mr Williams alleges the second act of discrimination occurred." 2.3. There are two key points: (i) this decision, as befits a decision on a strike-out application, is based on a consideration of the pleadings; (ii) the initial claim form files (the pleadings) was unclear in many respects and Mr Williams was given leave to make various amendments which he then did. The amendments' purpose were to clarify the nature of the discrimination claims and avoid and / or answer an application to strike-out. 2.4. The Respondent had at an earlier stage indicated that it would be making an application to strike-out the Appellant's discrimination claim(s) and as it was apparent that the answer to any such strike-out application might be for the Appellant to amend his claim form (thus obviating the need or opportunity for a strike-out application to be pursued) the Tribunal ordered that the Appellant should amend his claim and gave leave for that purpose. 2.5. The Appellant then did amend his claim and so the decision to grant the strike-out application was against that backdrop with an opportunity having already been given to the Appellant to improve and / or otherwise cure the defects in his case – as identified by the Respondent. 2.6. Notwithstanding that subsisting dynamic, the Appellant seems to seek leave to appeal not on the basis that the Tribunal has made a finding of fact which has no identical basis, but rather has misapplied and / or misdirected itself as to the applicable law. 2.7. I would without any real hesitation be happy to consider the application on that basis in the sense that I can readily see how for a litigant in person, labelling and / or nomenclature for grounds of an appeal may not be immediately straight-forward. The difficulty is that the authorities and / or relevant law were before the Tribunal at the strike-out hearing and the Appellant had every opportunity to engage with the arguments and / or put forward his own alternative legal frame-work. 2.8. While it is no criticism of the Appellant, he did not really do that in any effective or focussed way. I accept that he is a litigant in person but the Tribunal interrogated the application being made by the Respondent, reviewed the

authorities from the persepective of the Appellant and did everything to ensure that the strike-out application was dealt with in a way which addressed the potential disadvantage that the Appellant was at. 2.9. In the final analysis the Tribunal has a discretion to exercise in the discharge of its case-management obligations and the decision made is as reflected in the Judgment. On the basis of the application made for leave to appeal, even allowing for the fact that true ground seems to be a misdirection / misapplication as to the applicable law, there is little to no substance in the application itself. Certainly nothing upon which I could conclude that an appeal has any prospect of succeeding. 2.10. I therefore refuse leave to appeal. Advocate I C Jones, Deputy Chairman Date: 16 April 2024

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