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EZIAS v NORTH GLAMORGAN NHS TRUST (2007)

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CA (Civ Div) (Ward LJ, Maurice Kay LJ, Moore-Bick LJ) 7/3/2007

EMPLOYMENT - CIVIL PROCEDURE

BIAS : DISCRIMINATION : FACTS : STRIKING OUT : UNFAIR DISMISSAL : WHISTLEBLOWERS : FACT-SENSITIVE CASES : APPROACH TAKEN IN DISCRIMINATION CASES

In whistleblowing cases, a similar approach to that taken in discrimination cases was appropriate, namely, that a claim for unfair dismissal should not be struck out except in the most obvious and plain circumstances, especially in fact-sensitive cases.

The appellant employer (N) appealed against a decision of an employment tribunal to overturn an order striking out a claim of unfair dismissal brought by the respondent employee (E). E had been dismissed by N on the basis that there had been a breakdown in the relationship between him and his colleagues. E maintained that the real reason for his dismissal was that he had made allegations of fraud against other employees. N applied for E's claim of unfair dismissal to be subject to a deposit order or to be struck out. At a pre-hearing review held to consider the deposit order, the chair concluded that E's claim had no prospect of success. At a subsequent hearing, the chair granted the order to strike out. The tribunal upheld E's appeal against that decision on the grounds that it was vitiated by apparent bias on the part of the chair, as she had come to the second hearing having pre-judged the issue, and that in any event there were fundamental factual disputes that made the strike out order wholly inappropriate. N submitted that (1) the chair's statement at the pre-hearing review that E's claim had no prospect of success was no more than a provisional view and should not be equated with a pre-determination; (2) the tribunal had erred in its assessment of E's prospects of success.

HELD: (1) What the chair had stated at the pre-hearing review was not, at the time, said to be a preliminary or provisional view subject to further submissions: it was articulated in concluded terms. Accordingly, it was reasonable for a fair-minded and informed observer to take the view that the chair, at the second hearing, had a closed mind as to N's prospects of success, *Magill v Weeks* (2001) UKHL 67, (2002) LGR 51 applied. Therefore, the error of law was not found in the decision of the tribunal, but in the determination of the chair. (2) Given the extent of the factual dispute in the instant case, the decision of the chair to strike out N's claim was legally perverse. The competing accounts of the circumstances surrounding E's dismissal could not be resolved without a full hearing from both parties. In whistleblowing cases, a similar approach to that taken in discrimination cases should prevail. It was important that where a case was fact-sensitive, a claim should not be struck out except in the most obvious and plain circumstances, *Anyanwu v South Bank Student Union* (2001) UKHL 14, (2001) 1 WLR 638 considered. If the chair had had that consideration in mind, it was unlikely that she would have come to the conclusion that she did.

Appeal dismissed.

Counsel:

For the appellant: Timothy Pitt-Payne

For the respondent: In person

Solicitors:

For the appellant: Eversheds

LTL 7/3/2007 EXTEMPORE (Unreported elsewhere)

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