

IN THE INDUSTRIAL TRIBUNAL

Case No. Ind Tri 15/2012

BETWEEN:

SHAKIRA REEVE

Complainant

-and-

YORK LIMITED T/A MARKS & SPENCER

Respondent

Before: Gabrielle O'Hagan, Chairperson

Attendances:

For the Complainant: Andrew Cardona of Counsel instructed by Phillips & Co

For the Respondent: Mark Isola QC of Counsel instructed by Isolas

Decision: (i) The Complainant to serve on the Respondent accurate typewritten transcripts of the contents of any audio recordings on which she relies or which adversely affect her own case or the Respondent's case. The transcript of each audio recording must in each case identify the type of recording device used, the individuals recorded, and the date of the recording and be accompanied by the audio recording transcribed.

(ii) Permission given to the Complainant to serve supplemental witness statement(s) in connection with the audio recordings and transcripts referred to in paragraph (i).

(iii) Permission given to the Respondent to serve supplemental witness statement(s) in connection with the audio recordings and transcripts and/or in response to the Complainant's supplemental witness statement(s).

Time limits for compliance with each of the above to be settled in conjunction with Counsel.

REASONS FOR DECISION

Introduction

1. At a Preliminary Hearing on 28 April 2015, issues were raised in relation to manuscript transcripts made by the Complainant of audio recordings of conversations made by the Complainant. This is the Tribunal's ruling on those issues.

Background

2. The Originating Application was filed on 3 July 2012, but the existence of the audio recordings was not disclosed to the Respondent's lawyer until 16 October 2013, despite correspondence between the parties' lawyers in the intervening period, including in respect of disclosure (which the parties had agreed would be dispensed with).
3. Under a Tribunal Order made by my predecessor Chairman on 12 February 2014 ("**the Order**"), the Complainant was Ordered to:

"2. ... serve the Respondent with a proper written transcript of the contents of each audio-recording identifying each of the persons, the type of recording device used and the date of the audio-recording by 5 pm on 19th March 2014 together with a copy of each audio-recording".

The Respondent was given permission to serve supplemental witness statements resulting therefrom.

4. Both Counsel appeared to be in agreement that the written transcripts were eventually served by the Complainant, albeit well after 19 March 2014, and in manuscript format: the Complainant had herself transcribed each of the audio recordings. In addition, not all of the audio recordings themselves had been served.

Submissions

5. Counsel for the Respondent submitted that:
 - (i) the transcripts should be admitted into evidence by means of a witness statement;
 - (ii) the witness statement should clarify (by specific reference) the relevance of the contents of the transcripts to the facts in issue; and
 - (iii) the transcripts should be accurate and in typed format (although the manuscript transcripts were legible, they were in handwriting, making them more difficult to read (and they also included some errors)).
6. Counsel for the Complainant submitted that there would be no objection to the transcripts being admitted into evidence by means of a witness statement, so long as this was limited to admitting the transcripts. He did not dispute that the transcripts as served might contain errors. But he submitted that the process of having the transcripts typed out would be costly and time-consuming and that the Complainant wished to reach a resolution of the matter as quickly and cheaply as possible.

The Law

7. Under the Industrial Tribunal Rules, on application, the Tribunal may grant to the person making the application such discovery or inspection of documents as might be granted by the Supreme Court (Rule 10(1)(b)). But there is no applicable law or procedural rule prohibiting the disclosure of (legible) documents in manuscript, nor prescribing that documents should be disclosed in typewritten format.
8. Generally, subject to the provisions of the Rules, the Tribunal may regulate its own procedure (Rule 16(1)).

Reasons

9. The Order appears to have been made following my predecessor Chairman hearing from Counsel. Paragraph 2 of the Order means that my predecessor Chairman intended that the audio recordings and their transcripts should be disclosed by service, if somewhat late in the day. This reflects the parties' ongoing duty of disclosure.
10. However, some consideration must be given to the use in paragraph 2 of the Order of the word "*proper*" (usually defined as suitable, appropriate and/or fit for purpose) - in the formulation "*proper written transcript*". If the word "proper" had not been used, then I take the view that a hand-written transcript could have been served without infringing the Order, but use of this additional adjective "*proper*" must mean that the transcript should carry some additional attribute making it suitable for use in the instant proceedings, as well as being in writing. The most obvious such attribute (and the most likely to ensure that the case is dealt with expeditiously and fairly) is in my mind typewritten format.
11. I appreciate that the process of typing out will require some time to complete and also potentially give rise to some costs for the Complainant. However, even Industrial Tribunal Complainants usually have to bear the costs which arise out of the proceedings which they have commenced, for example, in undertaking a disclosure exercise or preparing evidence. Unless they choose to represent themselves, they will also generally have to bear the costs of retaining their lawyers and any other advisers. As a matter of fair case management between the parties, whether the typewriting process is undertaken by the Complainant's lawyer's firm or otherwise, I do not view the likely resulting costs as being disproportionate to the quantum of the Complaint, the importance of the case or the complexity of the issues.
12. Finally on this issue, it seems to me that it can only assist both parties and the Tribunal if the transcripts are in the most accessible format.
13. No order is made as to whether the transcripts should be admitted into evidence by means of a witness statement and it follows that no order is made as to the contents of such a witness statement. This is because my understanding of the procedural history is that the Order was not made in

response to issues being raised as to admissibility as evidence of the audio recordings and transcripts, but was rather made to ensure that full disclosure had been made; and this was achieved by the Order that the recordings and the transcripts be served on the Respondent. It may be that my predecessor Chairman envisaged that if the contents of the transcripts did give rise to admissibility issues, appropriate applications could in due course be made. That is in any event my view.

14. Notwithstanding that I make no order as to whether the transcripts should be admitted into evidence by means of a witness statement, I do hereby give the Complainant permission to serve supplemental witness statement(s) in connection with the audio recordings and transcripts, if she wishes, once service of the typewritten transcripts has been effected. I would remind her that disclosure is generally not filed with the Tribunal and it is unlikely to be taken under consideration unless the Tribunal is expressly directed to it, by witness evidence or Counsel's submissions, for example.

15. I also hereby re-iterate the Order in that I give the Respondent permission to serve supplemental witness statement(s) in connection with the audio recordings and transcripts.



Gabrielle O'Hagan, Chairperson

21 May 2015