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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **20/01/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE INDUSTRIAL TRIBUNALS

BETWEEN:

WILLIAM HAIRE

Claimant/Appellant:

v

INDUSTRIAL TEMPS LIMITED

Respondent:

Before: McCloskey LJ, Horner LJ and McBride J

Claimant/Appellant: Self-representing
Mr Martin Wolfe KC (instructed by The Engineering Employers Federation) for the Respondent

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McCloskey LJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal by William Haire ("*the Appellant*") against the judgment and order of the Industrial Tribunal whereby his claim for victimisation against Industrial Temps Limited ("*the Respondent*"), a species of employment agency arising out of the respondent's refusal to allow him to register for employment was dismissed.

[2] During the case management phase of this appeal it appeared to the court that this was a suitable case for determination on the basis of all of the documents available, including the parties' written arguments, without a conventional substantive hearing. The court having alerted both parties to its provisional view to this effect neither registered any objection. It is opportune to add that where any court is proposing to determine any case in whole or in part without a conventional oral *inter-partes* hearing ie "on the papers" an objection by a party will be taken into

account but will not be determinative. The overarching criterion which the court will invariably apply is that of procedural fairness to all parties, simultaneously giving effect to the overriding objective.

The Tribunal Decision

[3] Certain material elements of the factual matrix to which the appellant's tribunal claim belonged were uncontentious. In brief compass, the respondent advertised for packers at a meat plant. The appellant responded by registering an enquiry by telephone. The respondent's representative informed him that it would be necessary for him to present a current passport or long birth certificate. These were necessitated by the regulatory/audit requirements of the employer in question, who was the respondent's client.

[4] The appellant's complaint, as originally formulated, was that he had been the victim of discrimination on the ground of his race. During the case management phase of the proceedings, he accepted that (a) he had been subjected to a requirement to produce identity documents which was imposed on all job applicants, irrespective of their race and (b) he had not been treated differently from any other person. In short, he was no longer advancing any allegation of less favourable treatment. Subsequently he withdrew his complaint of race discrimination by letter. The Tribunal's ensuing assessment was that the appellant was in substance pursuing a complaint of victimisation on the ground of age on the basis of a 2014 age discrimination claim which he had attempted to bring against the respondent, unsuccessfully (it being dismissed as out of time). This engaged the "protected act" provisions of the relevant legislation.

[5] It was necessary for the Tribunal to make findings of fact on certain issues given the conflicting evidence of the parties on the content of certain conversations. By its findings the Tribunal resolved these issues in favour of the respondent, assessing the appellant's evidence in certain respects as untruthful.

[6] The Tribunal's self-direction in law was that the appellant had to prove that the person against whom he was alleging victimisation had been aware of his 2014 Tribunal claim. The Tribunal dismissed this as "entirely speculative", devoid of any factual foundation from which the requisite inference could be made. As a result, there was no transfer of the burden of proof to the respondent to establish that it had not discriminated against the appellant by victimisation. The claim was dismissed accordingly.

Appeal

[7] The appellant's appeal was based on a document entitled "Grounds of Appeal." In material part this was couched in the following terms:

> "Points of law around procedural unfairness/irregularity – perverse rulings – abuse of process – predetermined bias – irrelevant facts/figures considered – relevant facts/figures not considered – errors in law/application of law."

The appellant purported to elaborate on these headline points in the text which followed. Subsequently he took full advantage of the opportunities afforded to him by this court to formulate clear and intelligible grounds of appeal. Prolix written materials were compiled by him in response. These take the form of some 70 pages of manuscript text.

[8] The court has taken cognisance of the response made in the written submission of senior counsel for the respondent in compliance with the court's directions. It is appropriate to highlight just one feature of this. At para [29] the respondent seeks to rely on certain evidence adduced by it at the Tribunal hearing. This court would observe, as it repeatedly does in appeals from tribunals, that the crucial feature of tribunal decisions is findings, to be contrasted with the evidence adduced. It follows that this aspect of the respondent's submission does not advance its case in any way.

Conclusion

[9] By Article 22 of the Industrial Tribunals (NI) Order 1996 an appeal to this court lies against a decision of an industrial tribunal where a party is "dissatisfied in point of law" with the impugned decision. The appellate jurisdiction of this court does not involve a re-hearing on the merits. In an earlier decision of this court, it has been observed, in terms, that where a party to this kind of appeal is unrepresented, this court will scrupulously endeavour to determine whether any proper grounds of appeal are advanced: see *Tagro v Royal Mail Group* [2013] NICA 30, at para [34]. It is appropriate to add that while that will be the general approach of this court it will always be subject to the qualification that there are two overarching judicial duties in play, namely (a) the duty of impartiality and (b) the duty to provide both parties with a fair appeal hearing.

[10] In broad terms, the "grounds" of appeal which the appellant has formulated fall into two categories. Belonging to the first there is an extensive series of claims, complaints, assertions and arguments all of which in one way or another seek to take issue with the decision of the tribunal on its merits, extending to a series of pre-hearing events including the case management activities of the tribunal. An abundance of the manifestly irrelevant and purely speculative characterises the case which the appellant has composed for the consideration of this court. Fundamentally, to the relatively limited extent that the appellant's written materials are properly construed as a direct challenge to the tribunal's decision they resolve to a mere disagreement with findings and conclusions belonging more properly to the

forum of an appeal on the merits (which this is not) and having no place in an appeal on points of law only.

[11] The focus of this court is, inevitably, on what the Tribunal has written in its impugned decision. Within this text there are certain identifiable findings and a self-direction followed by conclusions. All of these are in the opinion of this court unassailable in law. This court's review of the Tribunal's decision, in tandem with all of the other materials assembled, confirms unequivocally that the appellant's case was, from the outset, entirely hopeless and doomed to fail. It may be otiose to add that the appellant's grounds of appeal do not begin to engage with the principles which govern an appeal of this genre: se for example *Nesbitt v The Pallet Centre* [2019] NICA 67, at paras [57] to [64].

[12] Belonging to the second of the two categories noted above is a series of claims about the fairness of the Tribunal hearing. These resolve to nothing more than bare, unsubstantiated assertion. Furthermore, they must be evaluated by this court in the context of a litigant who, by a series of unimpeachable findings, was found by the fact finding tribunal to be untruthful in certain specified respects. The Tribunal's decision, considered as a whole, in tandem with everything else, conveys to this court the unambiguous message that the appellant received an incontestably fair hearing at every stage.

[13] As will be apparent from the foregoing this court has considered the appeal in its entirety and on its full merits. The outcome is an order dismissing the appeal.

[14] It may be appropriate in certain cases for this court to take the course of determining whether an appeal should be dismissed in more summary fashion on the basis that the grounds, considered at their zenith, disclose no coherent challenge to the underlying decision. The passages in The Supreme Court Practice, Vol 1, para 59/3/7 (p 1023) and the English decisions in *Aviagents v Batravest Investments* [1966] 1 WLR 150 and *Burgess v Stafford Hotel* [1990] 1 WLR 1215 support the view that this court has an inherent jurisdiction to take this course. Order 59, Rule 10(1) of the Rules of the Court of Judicature, read in conjunction with Order 18, Rule 19, is a strong indicator that this power is exercisable by this court. It is plainly a power to be sparingly exercised. In this respect we concur with the cautionary words of Glidewell LJ and Sir Denys Buckley at 1222c and 1223d. It is appropriate to add that if this court had followed a different procedural course, we would have dismissed the appeal summarily on the ground that there are no coherent or potentially sustainable grounds of appeal.

[15] The parties will have an opportunity to make representations in writing (one A4 page maximum) on the issue of costs. Consistent with the course which this court has adopted to date, this will be a purely paper exercise, with no further listing. The time limit for doing so is 25 January 2023.