IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL

A2/2000/0510

Royal Courts of Justice
Strand
London WC2

Friday 3rd November, 2000

B e f o r e:

LORD JUSTICE ALDOUS

SIR CHRISTOPHER SLADE

- - - - - -

CARE FIRST PARTNERSHIP LIMITED

Appellant

- v -

MS M ROFFEY AND OTHERS

Respondent

- - - - - -

(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 190 Fleet Street,
London EC4A 2AG
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Official Shorthand Writers to the Court)

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MISS L COX QC and MR P EPSTEIN (Instructed by Bupa Legal Department, Bupa House, 15-19 Bloomsbury Way, London WC1A 2BA) appeared on behalf of the Appellant

MR I SCOTT (Instructed by Messrs Bolt Burdon, London N1 0QX) appeared on behalf of the Respondent

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J U D G M E N T
(As approved by the Court)

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1. LORD JUSTICE ALDOUS: With the leave of the Employment Appeal Tribunal, Care First Partnership Ltd ("Care") appeal against the order of the Employment Appeal Tribunal of 12th July 2000 which dismissed their appeal against the decision of the Ashford Employment Tribunal of 11th July 2000.

2. Care are the respondents to proceedings brought by seven applicants who were employed by them as care workers in an old people's home that was owned by Bromley County Council. The first set of proceedings were presented on 30th July 1999. All seven of the applicants made claims under sections 44 and 47B of the Employment Rights Act 1996. Care took the view that the Tribunal had no jurisdiction to consider the complaints under section 47B, having regard to the date when the Public Interest Disclosure Act 1998 came into force. They therefore requested the Tribunal to set a date for a hearing to determine that issue. The Tribunal fixed the hearing for 2nd February 2000.

3. On 24th January the same applicants presented a second set of proceedings with a view to overcoming the defects which had been identified by Care in the first set of proceedings. What happened at the hearing on 2nd February was recorded in the Tribunal's letter of 29th February. Since the applicants had all presented further originating applications following the termination of their employment, the Chairman expressed his view that in the light of those developments it would not be helpful to have a preliminary hearing as originally envisaged. Counsel agreed with that view.

4. The Chairman then went on to give directions, which included directions for Further and Better Particulars, mutual disclosure and that the parties should exchange witness statements not less than 14 days before the hearing date. The time estimated for the hearing was five days, and the date arranged for the hearing to start was 10th July.

5. As it happens, the applicants were not in a position to exchange their witness statement until 30th June, i.e. five working days before the date of the hearing. On the morning of the hearing, Care applied to the Tribunal for an order striking out the applications on the basis that if all the evidence in the witness statements of the applicants was accepted as factually correct, there was no reasonable prospect of the claim succeeding.

6. The Employment Tribunal heard submissions and decided during the luncheon adjournment that they did not have jurisdiction to make the order sought. Care told the Tribunal that they wished to appeal, and did appeal, to the Employment Appeal Tribunal. That appeal was, as I have said, dismissed on 12th July for essentially the same reasons as given by the Tribunal.

7. The hearing was then resumed for one day, when it was adjourned part-heard, having heard evidence from one of the applicants and the manager of the home. The hearing is set to continue in March 2001, after the hearing of this appeal.

8. This appeal is concerned with whether those decisions of the Tribunal and the Employment Appeal Tribunal are correct. In essence the question for decision is whether an Employment Tribunal has power to dismiss proceedings at the start of a hearing because they stand no reasonable prospect of success. As the Tribunal is a creature of statute, the answer to that depends upon the terms of the rules governing the jurisdiction of the Employment Tribunal. Those rules are contained in the Employment Tribunals (Constitution and Rules Procedure) Regulations 1993. For the purposes of this appeal, the relevant parts of those rules are as follows:

> "4. Power to require further particulars and attendance of witnesses and to grant discovery"

9. I need not read subrules (1) to (6).

> "(7) If a requirement under paragraph (1) or (3) is not complied with, a tribunal, before or at the hearing, may strike out the whole or part of the originating application, or, as the case may be, of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether; but a tribunal shall not so strike out or direct unless it has sent notice to the party which has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so.
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> 7. Pre-hearing review
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> (1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, conduct a pre-hearing review, consisting of a consideration of-
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> (a) the contents of the originating application and notice of appearance;
>
> (b) any representations in writing; and
>
> (c) any oral argument advanced by or on behalf of a party.
>
> (2) If a party applies for a pre-hearing review and the tribunal determines that there shall be no review, the Secretary shall send notice of the determination to that party.
>
> (3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and to advance oral argument at the review if they so wish.
>
> (4) If upon a pre-hearing review the tribunal considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have no reasonable prospect of success, the tribunal may make an order against that party requiring the party to pay a deposit of an amount not exceeding £150 as a

condition of being permitted to continue to take part in the proceedings relating to that matter.

(5) NO order shall be made under this rule unless the tribunal has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of deposit.

(6) An order made under this rule, and the tribunal's reasons for considering that the contentions in question have no reasonable prospect of success, shall be recorded in summary form in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if a party against whom the order is made persists in participating in proceedings relating to the matter to which the order relates, he may have an award of costs made against him and could lose his deposit.

(7) If a party against whom an order has been made does not pay the amount specified in the order to the Secretary either-

(a) within the period of 21 days beginning with the day on which the document recording the making of the order is sent to him, or

(b) within such further period, not exceeding 14 days, as the tribunal may allow in the light of representations made by that party within the said period of 21 days,

that the tribunal shall strike out the originating application or notice of appearance of that party or, as the case may be, the part of it to which the order relates.

...

9. Procedure at hearing

(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and shall otherwise conduct the hearing in such a manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraph (1), at the hearing of the originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

13 Miscellaneous powers

(1) Subject to the provisions of these rules, a tribunal may regulate its own procedure.

(2) A tribunal may-

(a) if the applicant at any time gives notice of the withdrawal of his originating application, dismiss the proceedings;

(b) if both or all the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;

(c) consider representations in writing which have been submitted by a party to the Secretary (pursuant to rule 8(5)) less than 7 days before the hearing;

(d) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended any originating application or notice of appearance, or anything in such application or notice of appearance, on the grounds that it is scandalous, frivolous or vexatious;

(e) subject to paragraph (3), at any stage of the proceedings, order to be struck out any originating application or notice of appearance on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or, as the case may be, the respondent has been scandalous frivolous or vexatious; and

(f) subject to paragraph (3), on the application of the respondent, or of its own motion, order an originating application to be struck out for want of prosecution.

(3) Before making an order under sub-paragraph (d), (e) or (f) of paragraph (2) the tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

..."

10. Before the Employment Appeal Tribunal Miss Cox QC, counsel for Care, principally relied on the part of rule 9(1) which empowers the Tribunal to conduct the hearing "in such manner as it considers most appropriate for the clarification of the issues before it and generally for the just handling of the proceedings." That power, she submitted, enabled the Tribunal to put an end to a case which had no reasonable chance of success.

11. The Employment Appeal Tribunal, in a judgment delivered by Keene J, rejected the submissions made on behalf of Care. They said:

"26. Reverting to the situation as it is under the current Rules, those Rules do expressly deal with certain grounds on which a tribunal can strike out an Originating Application. Thus one finds those powers to strike out on the basis either that the application is scandalous, frivolous or vexatious, or that the conduct of the proceedings has been scandalous, frivolous or vexatious. Those powers are clearly provided by Rule 13(2)(d) and (e).

27. Again, Rule 13(2)(f) enables a strike out to be ordered on the basis of want of prosecution. There are express safeguards provided before such powers can be exercised, those safeguards being found in Rule 13(3).

28. Then there is the power to which Mr Scott has drawn attention in Rule 4(7) to strike out an application in whole or in part if a requirement by the tribunal to

> provide further particulars or to grant discovery has not been complied with. Again, there is an express safeguard there in the latter part of Rule 4(7).
>
> 29. Moreover, the Rules expressly deal with what a tribunal may do if it takes the view that a party's contentions have no reasonable prospect of success. That of course is Rule 7(4), which deals with the ordering of a deposit to be made by the party in question if it is to be allowed to continue to take part in the proceedings. There has to be a pre-hearing review for that latter power to be exercised, but that generally works no injustice because a party may apply for a pre-hearing review to take place: see Rule 7(1). We acknowledge that Rule 7(4) does not expressly rule out any other sanction if a tribunal takes the view that there is no reasonable prospect of success, but it is particularly noticeable that the only sanction there being referred to is that of the ordering of a deposit as a condition of being allowed to continue to participate.
>
> 30. When both the powers of strike out and the powers of a tribunal to act when there is no reasonable prospect of success are expressly dealt with in the Rules, and dealt with with some precision, it seems to us to be impossible to derive a power to strike out on grounds of no reasonable prospect of success from the more general procedural powers, whether those are to be found in Rule 9(1) or Rule 13(1).
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> 31. Had it been the intention to provide such a power, it seems to us that it would have been expressly given by these Rules, as is the power to strike out for the other reasons to which we have referred. Especially is that so when the very topic of a lack of a reasonable prospect of success is dealt with in the Rules by express provision. Furthermore, Rule 13(2)(e) enables an Originating Application to be struck out as scandalous, frivolous or vexatious because of the manner in which proceedings have been conducted. That clearly includes the way in which they have been conducted at the hearing. And yet if Mrs Cox's argument is correct, that power exists anyway under the tribunal's general powers under Rule 9(1), and Rule 13(2)(e) could have been confined to the period in advance of the hearing. Indeed, if she is right in relation to Rule 13(1) that power was not needed at all."

12. The Appeal Tribunal went on to consider the submission that rule 13(1) gave them the power to strike out, and dismissed them for the same reasons. I say at this stage of my judgment that I believe the Employment Appeal Tribunal came to the right conclusion for the right reasons.

13. Before us Miss Cox submitted that the Employment Appeal Tribunal had not given sufficient weight to the width of the power given in rule 9 to conduct the hearing in such a manner as it considers most appropriate and "generally for the just handling of the proceedings." That provided a wide discretion to do justice, not just a discretion as to the procedure to be adopted. She placed considerable emphasis upon the judgment of the Employment Appeal Tribunal in Hackney London Borough Council v Usher [1997] ICR 705. In that case the Tribunal stopped the case at the conclusion of the employer's evidence, as it had come to the decision that the employer had not discharged the onus upon it to establish that it had acted reasonably. The Employment Appeal Tribunal held that the Tribunal was wrong in its decision as to where the onus lay. It followed that the Tribunal was wrong to stop the case. However, relying upon the judgment of Slynn J in Coral

Squash Clubs Ltd v Matthews [1979] ICR 607, they concluded at page 713:

> "... it is open to a tribunal to stop a case at half-time where the party going first and upon whom the onus lies has clearly failed to establish what he set out to establish.
>
> ... there have been and will be utterly hopeless or frivolous cases where a tribunal is entitled to halt the proceedings without hearing the other party. The present case, in our judgment, cannot be said to fall into that category."

14. The Employment Appeal Tribunal went on in that case to consider rule 9(1) and, after quoting it, said this:

> "We accept that that alteration to the rules [the alteration which had been incorporated into rule 9(1)] emphasises the industrial tribunal's role in conducting its own proceedings; however, it must in our judgment be read subject to the existing body of case law which holds that it is only in exceptional cases that it will be unnecessary to hear both sides before reaching a decision."

15. That was a case in which the Tribunal regulated its procedure to consider the matter before it at the stage when the applicants' evidence had been completed. Such a procedure was part of the case management procedure appropriate under rule 9, but that does not mean that rule 9 confers a power to strike out a claim prior to evidence being heard.

16. The present case, in my view, is not similar. The evidence in the present case had not been heard. As I understand the procedure tat would be adopted, the applicants would give oral evidence which could include evidence not contained in the witness statements. It was only at that stage could the Tribunal decide that the claims could not succeed. Rule 9 in my view deals with the procedure enabling that to be done, not with the power to strike out without hearing evidence. Of course the Tribunal in this case could have decided that the witness statements should stand as the evidence-in-chief and could have postponed cross-examination, and then proceeded to see whether the applicants had established their cases. But that was not done. In my view, in the absence of such a step, the Hackney London Borough Council case does not help to decide the issues in this case.

17. Miss Cox also explained to us the progress that had been made in case management, starting with the case of Eurobell Holdings Plc v Barker [1998] ICR 299, decided in 1996. In that case the Employment Appeal Tribunal held that there was power under rule 9 to require witness statements to be exchanged. It said this:

> "In an appropriate case, it seems to us clear that a tribunal could require a party to provide it with a written statement of that witness's evidence so that it could carry out its duty under rule 9(1), whether under the power given to it to regulate its own procedure or under the power to make directions conferred by rule 16. If a party refused such a request, it seems to us that the tribunal would have power to refuse to

> accept that witness's evidence, if, by receiving it, it was the tribunal's view that the proper and just conduct of the proceedings would be interfered with.
>
> Does the tribunal have power to require a written statement of evidence in advance of the hearing? It seems to us that it does. The power to make practice directions is conferred on tribunal chairmen by rule 13(1). We accept that this rule is 'subordinate' to the specific rules, as the words 'subject to the provisions of these rules' make clear. But this power must, we think, enable a tribunal to require a party to do in advance of the hearing what it could do at the hearing. By exercising this power, the tribunal would not be making a new rule it would simply be regulating its own procedure for the better doing of justice at the hearing. The fact that the county court rule relating to witness statements was not incorporated into the Industrial Tribunals Rules of Procedure does not, as it seem to us, provide any indication, one way or the other, as to how rule 13(1) is to be construed."

18. That again is a case which is dealing with procedure. It is not an authority for the view that rule 9 should be construed as conferring a jurisdiction to strike out a case prior to the evidence being heard.

19. Martins v Marks & Spencer Plc [1998] IRLR 326 is a similar case. In that case the Employment Appeal Tribunal drew attention to the need for active case management to enable a fair, orderly, just and efficient hearing. But it did not suggest that rule 9 or rule 13(1) provided a power to strike out. Those cases in my view were concerned, and solely concerned, with procedure.

20. Miss Cox went on to refer us to the approach required by the Civil Procedure Rules. Applying those rules a court would, she submitted, have no hesitation in entertaining an application for summary judgment because a case did not have a reasonable chance of success. She also submitted that rule 9 was in essence compatible with rules 13(2)(d),(e) and (f) and rule 7. Her submission in the alternative was that the power to strike out was contained in rule 13(1).

21. In my view it is important to analyse exactly what Care were seeking to do. They were seeking a summary disposal of the case upon the witness statements of the applicants. No order had been made that their witness statements should stand as their evidence-in-chief. There was no order barring the applicants from giving oral evidence not contained in the witness statements. The case had not reached the stage where any decision could be reached on the merits.

22. The jurisdiction of the Tribunal is governed by the rules. They, when read, indicate that a strike out can only happen at the preliminary stage or during the hearing of the case under rule 13(2) which entitles the Tribunal to strike out any application on the grounds that it is scandalous, frivolous or vexatious. The standard set by that rule is that which was applied in Order 18, rule 19 of the Rules of the Supreme Court, namely that the application was bound to fail. The lesser standard of proof which is sought to be prayed in aid in this case is contrary to the expressed

intention of the rules. In my view it would be odd to strike out a claim before completion of the applicants' evidence because it appeared to have no reasonable chance of success, unless the rules specifically so provided.

23. Rule 7(4) deals explicitly with a case where a party's contentions have "no reasonable prospect of success". In such a case the Tribunal can require a deposit of £150 as a condition of being permitted to continue to take part in the proceedings and also can give a warning on costs. Thus a party whose case has no reasonable prospect of success at the pre-hearing stage can continue to take part in the proceedings provided that he pays the deposit ordered. That being so, it would seem inconsistent with that rule if a Tribunal could strike out a claim if it considered that it had no reasonable prospect of success before hearing the evidence.

24. I accept that Rule 7(4) is concerned with the pre-hearing stage and that this case had proceeded to the hearing stage. However, the hearing had not proceeded to the stage where the evidence of the applicants was complete. It would therefore be odd if a case could be stopped at the hearing before the evidence of the applicant was complete on the ground that the case had no reasonable prospect of success, whereas it could not be the day before the hearing took place even though witness statements had been exchanged.

25. Miss Cox submitted that Rule 7(4) did not apply to the stage when witness statements were available because they were in practice only available shortly before the hearing. Rule 7(4) was concerned with the stage essentially when the pleadings were complete. I cannot accept that submission. Rule 7 allows a pre-hearing to be conducted at any time. It follows that a pre-hearing review can be held up to the date of the hearing. At such a review the Tribunal can consider whether the contentions have a reasonable prospect of success. Rule 7(1) allows the Tribunal to take into account any representations made in writing. Such representations could in my view refer to the witness statements and they could be taken into account.

26. Rule 9 is also important, in the sense that it has to be read in the light of Rules 7(4) and 13(2). It is concerned with the just handling of the proceedings. In my view it would be unjust to carry out a step contrary to the expressed intentions of the rules. To use rule 9 to determine a case which was not scandalous, frivolous or vexatious would be contrary to the expressed intention of rule 13(2). If rule 9 was of that width, then I can see no reason for rule 13(2). Under rule 9 the Tribunal has the power to manage the case. It could order that the witness statements of the applicants stand as evidence-in-chief. Thereafter it could proceed, after argument, to dismiss the claim (see Hackney London Borough Council v Usher). But the case management powers in rules 9

and 13 do not give the Tribunal the power to grant summary relief. Those rules are concerned with procedure and do not provide a jurisdiction to strike out.

27. Some support for that view can be gained from two decisions referred to by the Employment Appeal Tribunal. First, Kelly v Ingersoll-Rand Co Ltd [1982] ICR 476. That was a case in which the employee's case was struck out for want of prosecution. The Employment Appeal Tribunal said, at page 480:

> "It is to be remembered that industrial tribunals are statutory bodies whose powers are exclusively conferred and regulated by statute. They have no inherent jurisdiction: any jurisdiction they have has to be found in their regulating statutory provisions. Were it not for the words in rule 12(1) 'Subject to the provisions of these rules,' we think it may well be that the tribunal might have had power to strike out for want of prosecution. But in our view, when one sees that striking out for want of prosecution is expressly dealt with, subject to specific safeguards, in rule 12(2)(f), it seems to us impossible to hold that there is a right to strike out any application for want of prosecution otherwise than in accordance with the requirements of rule 12(2)(f)."

28. Of course in that case the width of jurisdiction contained in rule 9 was not in issue. However, the reasoning of the Employment Appeal Tribunal is similar to that applied by the Employment Appeal Tribunal in this case. They referred to the specific provision enabling the case to be struck out for want of prosecution and refused to infer any other jurisdiction than that expressed.

29. A similar point can be made in respect of O'Keefe v Southampton City Council [1988] ICR 419. In that case the Tribunal struck out the claim because of the offensive behaviour of the applicant at the hearing. Relying upon the judgment in Kelly v Ingersoll-Rand Co Ltd, the Employment Appeal Tribunal concluded that the Tribunal had acted in error because it had no inherent jurisdiction to strike out. They expressed the view that there should be an alteration to the rules. That actually took place with the insertion into the rules of rule 13(2)(e). Again, that was a case where the ambit of rules 9 and 13(1) were not considered in depth. But the Employment Appeal Tribunal were of the view that there was no power to strike out except that expressly given in the rules.

30. Miss Cox, in an attractive submission, drew to our attention the powers of case management in the Civil Procedure Rules and the way that the Employment Appeal Tribunal had moved to incorporate similar case management procedures as that adopted in the High Court. To incorporate the powers given in Part 3.4 of the Civil Procedure Rules would, in my view, be contrary to the intention of the Employment Tribunal rules. They were brought into existence in 1993; before the

CPR was conceived. They set out a system for removing hopeless cases. Prior to the hearing the rules enable the Tribunal to require a deposit and give a warning as to costs if a case has no reasonable prospect of success. At any time the case can be struck out if it is scandalous, frivolous or vexatious. By the time of the hearing witness statements may have been exchanged, but the nature of a case does not change during the time immediately before the hearing to when it actually starts. If the Tribunal had no power to strike out a case prior to the hearing because it had no reasonable prospect of success, absent express provision, it would appear to me to be contrary to the intention of the rules that such a power should exist at the beginning of the hearing before evidence has been heard.

31. Further, to embark on such an exercise would not be good case management. If such an application is to be made, then, if possible, it should be made at an earlier stage when witnesses would not be present. In my view, it would be wrong to use the case management rules 9 and 13(1) to graft on a jurisdiction enabling summary judgment prior to evidence being heard.

32. Finally, I am comforted by the words of the Employment Appeal Tribunal in this case:

> "34. As for the practical inconvenience strongly relied on by Mrs Cox, we do not regard this as a real or a widespread problem. It would rarely be wise for an Employment Tribunal to arrive at the conclusion that an applicant's application had so little chance of success that it could be struck out and given its quietus simply on the basis of the written witness statements and without hearing the witnesses in question. That would be a very novel step in the practice adopted by the Employment Tribunals. Witness statements are a valuable innovation which have helped greatly to shorten hearings, but they are frequently clarified and supplemented by oral questions in chief. At Employment Tribunal hearings where, in accordance with Rule 9(1), one seeks to avoid formality so far as is appropriate, it is right that that should be so. Even if the power existed, it would normally be premature to arrive at a conclusion that the application had so little chance of success that it should be ended. That seems to us to be why it is that Rule 7(4) allows only a less stringent step to be taken when there is no real prospect of success and not the final one of bringing the proceedings to a close by a strike out."

33. That being the view of the Employment Appeal Tribunal, there is no need to try and strain the words of the rules to deal with the particular matter that arose in this case.

34. I therefore would dismiss this appeal.

35. SIR CHRISTOPHER SLADE: I agree. I too think that the Employment Appeal Tribunal reached the right conclusions for the right reasons, but will add a few observations of my own, even at the risk of some recapitulation.

36. Miss Cox began her address in effect by making eloquent submissions as to the desirability,

as a matter of public policy, of Industrial Tribunals having the power to dismiss originating applications before the full hearing begins, in cases where the claims are, to quote from her notice of appeal, "doomed to failure or have no reasonable prospect of success".

37. She referred us, among other authorities, to the decision of the Employment Appeal Tribunal in Halford v Sharples [1992] ICR 146, where Wood J, delivering the judgment of the Tribunal, referred to the "rapidly changing scene in some cases before industrial tribunals" and said:

> "Thus, in these complicated cases the time has arrived when, in order to do justice - that which in all the circumstances is fair, just and reasonable between the parties - a more formal approach to pleadings and procedure may be thought desirable."

38. I would, for my part, accept that such jurisdiction may indeed be desirable in cases where the application is as a matter of law on any footing bound to fail. But at least in many such cases any such application will, by its very nature, be "vexatious" within rule 13(2)(d) of the 1993 Rules, so that in such cases the jurisdiction to strike out will be conferred by that Rule. Rule 13(2)(d) has not been invoked by the appellant on this appeal for obvious reasons.

39. Essentially, therefore, the question at issue on the appeal has resolved itself to whether the striking out jurisdiction exists in a case where the Industrial Tribunal considers that the claim has no reasonable prospect of success, either under Rule 9 or under Rule 13 as is contended in the notice of appeal.

40. The jurisdiction to strike out on this ground in advance of a full hearing would be a Draconian jurisdiction and I would, for my part, prefer to leave open the question whether it would in principle be desirable for Industrial Tribunals to possess this power. But the question whether or not it would be desirable seems to me to be ultimately irrelevant. As Browne-Wilkinson J observed in the Kelly v Ingersoll-Rand Co Ltd [1982] ICR 476, at 480:

> "It is to be remembered that industrial tribunals are statutory bodies whose powers are exclusively conferred and regulated by statute. They have no inherent jurisdiction: any jurisdiction they have has to be found in their regulating statutory provisions."

41. I agree with my Lord that the Civil Procedure Rules 1998 have no direct application in the present case. But it is worth noting that, as Mr Scott observed, those Rules, while conferring wide general powers of case management on the court, have thought it right explicitly to spell out, in Rule 3(4) of Part 3, the power of the court to strike out a statement of case if it appears to it that it discloses no reasonable grounds for bringing or defending the claim in question.

42. We have therefore simply to look at the words of the relevant Rules to see whether on a fair reading they can be read as conferring the relevant jurisdiction. Looking at those words, I am satisfied that they cannot be read in this way. Rule 7, dealing with the pre-hearing review, explicitly deals with the case where, upon a pre-hearing review, the Tribunal considers that the contentions put forward by a party have no reasonable prospect of success. Though in such a case it empowers the Tribunal to order that party to pay a deposit of £150 as a condition of being permitted to take part in the proceedings, it confers no power on the Tribunal to strike out on the grounds of no reasonable prospect of success, save in the event of a failure by that party to pay the deposit within the requisite period. If there existed the suggested general power to strike out a party's application on the grounds that it had no reasonable prospect of success, I would have expected to see the legislation having made it exercisable at the pre-hearing review. But, on the contrary, Rule 7 has in my view made it clear that, at the price of paying the deposit of £150, an applicant will be entitled to continue his application after the pre-hearing review, even though the Tribunal may regard it as having no reasonable prospect of success.

43. Does the Tribunal then have the power to strike out his application at the hearing itself, in the circumstances now under discussion? Rule 13(2) confers on the Tribunal a number of miscellaneous powers including most significantly, in sub-paragraph (d), (e) and (f), a number of powers to strike out originating applications in three separate, stated sets of circumstances. But none of these sets of circumstances include the case where the Tribunal considers that the application has no reasonable prospect of success. In the face of these specific inclusions in Rule 13(2), it seems to me impossible to read the powers conferred on the Tribunal by Rule 13(1) or by Rule 9(1) as including a power to dismiss an application at the start of the hearing on the grounds that it has no reasonable prospect of success.

44. With all respect to Miss Cox's admirable argument, I think that none of the authorities, such as the Eurobell case to which she has referred us, support such a conclusion. The Usher case is authority for the proposition that Rule 9(1) allows a submission of no case to answer to be made at the end of a party's evidence. But that is quite different situation from the present, for the reasons given by my Lord.

45. I too would dismiss this appeal.

ORDER: Appeal dismissed with costs, to be subject of a detailed assessment

(Order not part of approved judgment)