



Neutral Citation Number: [2022] EWHC 666 (QB)

Case No: QB-2021-000060

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

UNITE THE UNION

Claimant

- and -

MR RICARDO FREITAS

Defendant

Mr Mark Henderson (instructed by **Howe & Co Solicitors**) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing date: 15th March 2022

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am on 23rd March 2022.

The Honourable Mrs Justice Collins Rice :

Background

1. The Claimant, Unite the Union ('Unite'), is a trade union. Its British Airways cabin staff branch is BASSA - the British Airlines Stewards and Stewardesses Association. BASSA is run by a branch committee elected by its members. In the summer of 2020, BASSA entered negotiations with BA over a proposed large-scale redundancy exercise in response to the impact of the covid pandemic on the travel industry.
2. The Defendant, Mr Freitas, was a member of BA cabin staff and BASSA. He took voluntary redundancy in August 2020. He joined a Facebook group made up of some 1,700 former BA cabin crew who took voluntary redundancy around this time.
3. In January 2021, Unite brought a claim in libel and harassment because of a post Mr Freitas published on his own Facebook page on 7th November 2020, and a series of 23 posts published to the Facebook group between November 2020 and January 2021. The pleaded 'natural and ordinary meaning' of these posts was that:

The Claimant entrusts the leadership of its BASSA branch to members who are paedophiles and/or child sex offenders, and more of them deserve to join those currently in prison.

The Claimant operates and/or condones or tolerates the operation of its BASSA branch as a criminal enterprise controlled by a criminal cabal which is engaged in criminal conduct including fraud and corruption and even paedophilia. The endemic criminality and fraud is of such extent and severity as will imminently be established by the proper and necessary investigations of the Serious Fraud Office and other law enforcement authorities, and will be demonstrated by the merited arrest and exposure of Branch Committee members and others associated with the leadership.

4. Mr Freitas filed a defence to the claim in February 2021. He acknowledged the posts were 'totally unacceptable'. He mentioned his diabetes and associated mood swings in explanation. He regretted the comments and apologised for any distress caused. He said he had removed the offending posts and offered reassurance that they would not be repeated. He indicated a willingness to explore an ADR settlement of the claim.
5. It appears, however, that since early August 2021 Mr Freitas stopped communicating with Unite or engaging with this litigation, and left his address, and possibly the UK altogether. Unite applied for summary judgment on its claim. A hearing was listed before Master Yoxall in October 2021 at which Mr Freitas did not appear and was not represented. Giving judgment in favour of Unite, the Master was satisfied that Mr Freitas had no real prospect of succeeding at trial on his defence. He considered the posts clearly defamatory ('utterly incendiary and scurrilous'). Mr Freitas's defence did not take issue with the facts of publication or that publication had caused or was likely to cause serious harm to Unite's reputation (Defamation Act 2013 section 1). No

arguable defence appeared to either the defamation or harassment aspects of the claim: there was ‘*not a jot of evidence*’ to justify the posts complained of.

6. By Order of 8th October 2021 (sealed 19th October 2021) the Master entered summary judgment for Unite on its claim and directed a remedies hearing. The matter was listed before me on 15th March 2022 to consider quantum of damages and applications for final ancillary relief.
7. Mr Freitas did not appear or make submissions and was not represented. I had before me a witness statement from Unite’s solicitors dated 11th March 2022 giving details of efforts made following the handing down of summary judgment to communicate with Mr Freitas about the remedies hearing and to provide him with the relevant documentation. I accepted that evidence. I noted in particular that mail sent to Mr Freitas’s last notified address had not been returned, and messages sent to an email address from which he had previously responded did not bounce back. I was satisfied on the evidence before me that Unite had taken all practicable steps to notify Mr Freitas of today’s hearing and the applications before the court (Human Rights Act 1998 section 12(2)(a)); that Mr Freitas was apparently choosing not to engage with this litigation; and that it was right in all the circumstances to proceed in his absence.

Quantum of general damages

8. Unite seeks an award of general damages. I have directed myself to the guidance from the decided authorities on assessing quantum of general damages in defamation proceedings. I have noted in particular the statement of general principles in *Barron v Vines* [2016] EWHC 1226 (QB) at paragraphs 20 and 21, and the helpful summary in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) at paragraphs 74 to 82.
9. The purpose of an award of damages in these defamation proceedings is to compensate Unite for damage to its reputation and vindicate its good name. Approaching that exercise, I must take account of the gravity of the defamation, the extent of its publication (including purposed or predictable re-publication), and evidence of the harm it has done.
10. The overall calculation of compensatory damages in defamation cases has to be undertaken in a broad and holistic way, much as juries used to do, taking all of these relevant considerations into account. Regard may be had to the (very differently assessed) awards in personal injury cases to ensure that damages for defamation are, and are seen to be, proportionate. Regard may also be had to other awards in defamation cases of a comparable nature, for similar purposes. Each case is however unique, and must be considered on the totality of its own facts.
11. On that basis, turning first to the question of the gravity of the allegations, I note that they assert systematic and sustained criminal misconduct of a corrupt, dishonest, predatory and depraved nature; that they suggest this has deservedly attracted the attention and active investigation of major law enforcement authorities; and that they impugn the integrity of Unite and its leadership in a way which goes to the fundamentals of its standing as a decent, reputable and trustworthy members’ representative organisation. These are grave allegations indeed.

12. On extent of publication, I have taken into account the size of the Facebook group to whom Mr Freitas published directly. I was provided with written and oral evidence, which I accept, that the allegations received extensive circulation, republication and debate within that community; and that it did not end there. The allegations quickly spread to remaining BA colleagues and BASSA staff where they continued to be shared and commented on: they were ‘impossible to ignore’ in the workplace. And because a large proportion of the remaining staff were either furloughed or working from home, the allegations were particularly difficult to counteract by normal workplace interactions.
13. Given the scurrilous nature of the allegations, the disruption of normal working life, and the atmosphere of understandably heightened consciousness in the context of a major redundancy exercise precipitated by the pandemic, that is not in the least surprising. This sort of traction was either positively intended by Mr Freitas or entirely foreseeable by him as a ‘percolation effect’. It adds up to extensive publication and republication within its sizeable target audience.
14. As to reputational harm, I bear in mind that Unite, and BASSA, depend on their reputation to attract and retain members. That is not only a general issue about their reputation for integrity and performance. It also has specific application to the function of handling difficult or major negotiations, where a reputation for acting in good faith and brokering for recommendation the best available outcomes is integral to their entire purpose. At a time of particular anxiety and uncertainty, staff were especially needful of the solidarity and support of their union, and to be able to put their futures confidently in the hands of its leadership. Trust was at a particular premium.
15. I bear in mind the number and content of Mr Freitas’s posts: they had the character of a coherent and persistent campaign of denigration. I bear in mind that Mr Freitas calculatedly gave the impression that he had inside knowledge from personal engagement with law enforcement agencies and held himself out as authoritative and well-placed to know the truth. I bear in mind that his publishees were (former) work colleagues: on the one hand an audience chosen for maximum impact, but on the other perhaps able to bring a certain amount of perspective of their own to the question of the objectivity and credibility of the allegations. I have no evidence that anyone did believe them or changed their views or behaviour towards Unite accordingly, but the corrosive effect of this sort of poisonous rumour-mongering should not be underestimated.
16. I read and listened to evidence from three individual BASSA office-holders about the personally hurtful impact of the posts. I accept what they say about the distress and humiliation they experienced. Although they are not themselves as individuals parties to this claim, and although general damages for distress are not available to a corporate claimant, I accept that the posts, and the reaction of others to them, had an effect on these witnesses which made it difficult for them to perform their union functions at a time of major and demanding negotiations. I accept that Unite was at least to that extent directly impacted.
17. I take into account that Mr Freitas did take the posts down promptly when challenged and tendered an apology to Unite. But I also take into account the persistence of material on social media, and the propensity for this particular sort of material to have a longer half-life than lighter content. I further bear in mind Mr Freitas’s subsequent

failure to follow through in a constructive fashion to make amends, so obliging Unite to pursue the vindication to which it was entitled through litigation.

18. I was taken to some of the decided cases for guidance on the quantum of damages awarded to corporate claimants. I have had regard to those cases, but the comparison is not very exact. Quantum in the case of for-profit businesses is largely focused on the market impact of defamation and the devaluation of goodwill as a business asset. I was not shown comparators from the not-for-profit sector. But I entirely accept that the reputation of a trade union recognised for collective bargaining purposes is nevertheless a valuable asset, particularly at difficult times, even if (or perhaps especially because) it does not translate so easily into monetary terms.
19. I am principally concerned in any event in this case with vindication. The sum awarded must be enough to serve as an outward and visible sign of that vindication – sending a message restoring Unite’s good name ‘sufficient to convince a bystander of the baselessness of the charge’ Mr Freitas wrongly made against it.
20. Adopting the approach indicated above, and taking account of all the factual matters identified, my conclusion is that the appropriate global award of general damages needed to compensate Unite for injury to reputation, to ensure adequate vindication in respect of these allegations, and to counter Mr Freitas’s campaign, is £50,000.

Injunction

21. I have had particular regard to the importance of the Convention right to freedom of expression (Human Rights Act 1998 section 12(4)). Mr Freitas claimed the benefit of that right in his original response to this claim. As Master Yoxall’s judgment made clear, however, defamation is an abuse of free speech which is properly restrained by law. As Tugendhat J observed in ZAM v CFW [2013] EWHC 662 (QB):

...once final judgment has been entered, whether after trial or summarily, a defendant’s right to freedom of expression does not preclude the grant of an injunction. On the contrary, a claimant who succeeds in obtaining a final judgment is normally entitled to a permanent injunction to vindicate the right that he has proved that he has.
22. I have no doubt that Unite’s case for a vindicatory injunction is a strong one on its merits. An injunction is a discretionary remedy none the less, and will not be granted unless it is necessary to do so. That generally turns on whether there is a real prospect that a defendant will continue to publish unless restrained.
23. Mr Freitas has taken down the offending posts, tendered an apology and absented himself from the issue (and possibly the country). That might be taken to suggest that from his point of view the matter is firmly, if irregularly, closed. There are, however, features of Mr Freitas’s conduct limiting the reliance that can fairly be placed on that assumption.
24. First, there is the systematic nature of the defamatory publications: detailed claims of inside knowledge adding up to a sustained campaign of misinformation and fake news.

This was planned, not impulsive; Mr Freitas has made a certain investment in these allegations and may be minded to capitalise on it further unless restrained.

25. Then there is the fact that Mr Freitas did not make good his suggestion of ADR, did not take any of the positive steps necessary to make voluntary amends, has offered no undertakings as to future conduct – indeed has effectively absconded from this litigation, appears to be actively trying to avoid service of process, and has wholly failed to engage with Unite’s claims and entitlements since last August. None of this suggests that reliance may be placed on his co-operation, goodwill or voluntary self-restraint.
26. In these circumstances, I am on balance satisfied that Unite is entitled to the injunctive relief it seeks, and that such relief is necessary to ensure that Mr Freitas does not think of repeating his libel. An injunction will be made in the following terms:

that the Defendant, whether by himself, his servants or agents, or otherwise howsoever, be prohibited from publishing, causing to be published, and/or continuing to publish, the words complained of or any similar statements.