

Example witness statement for an employment tribunal hearing

Witnesses give evidence on matters within their own experience/ about which they can reasonably comment. In England and Wales a witness's evidence is given by the individual reading out their written witness statement (in Scotland by a representative asking non-leading questions of the witness – ie open questions which don't imply a specific answer).

The Claimant's witness statement must include reference to all relevant matters upon which the Claimant relies. In other words where a matter is important to the Claimant's case, comment must be provided by the relevant witness. Failure of a witness to comment on a material issue may mean that the tribunal finds that no evidence/ insufficient evidence has been provided to support an accusation. This can result in the employer's evidence being accepted on the basis that it's uncontested.

The claimant's witness statement is therefore a vitally important document and it is worth spending quite a bit of time perfecting it. While questions designed to illicit information supplementary to the witness statement can be put to the claimant by his or her representative, they are usually limited to unforeseen matters/ matters arising out of the respondent's witness statements.

The following witness statement is designed to assist readers of the LRD booklet Employment Tribunal Companion. Please refer to section 5 of that booklet for further information.

IN THE BIRMINGHAM EMPLOYMENT TRIBUNAL

1234567/2009

BETWEEN: -

Peter Byrne

Claimant

- and -

Bell Pictures Ltd

Respondent

WITNESS STATEMENT OF PETER BYRNE

I, Peter Byrne, of 23 Pine Drive, Edgbaston, Birmingham SAY AS FOLLOWS:

[IDENTIFY YOURSELF AND YOUR ADDRESS]

1. I started work with Bell Pictures on 21 June 2003 as a Picture Framer (no written statement or contract of employment was provided). I have always had very good relationships with my work mates as well as very good feedback from my manager (BS/ my uncle) about my performance.

[START OFF WITH WHEN YOU COMMENCED WORK, YOUR POSITION, WHO YOU WORKED FOR/ TYPE OF ORGANISATION]

2. I often worked overtime/ weekends (sometimes for free) on behalf of the company: I'm used to working hard and this did not impact negatively on my daily performance. In particular I was never the subject of disciplinary action on any ground.

[GIVE EXAMPLES OF GOOD PERFORMANCE/ RECOGNITION: PROMOTION, AWARDS]

3. On occasion the assistant manager (SG) would ask me to work weekends with him. We did not always tell BS that we were going to work weekends as it could cause him to be irritable.

[BEGIN DESCRIPTION OF COMPLAINT]

4. BS discovered that we had worked on Sunday 15 April 2007 and when I attended our premises on Monday 16 April 2007, SB (who could be described as a domineering manager of whom the staff are afraid) was furious. Before I had even taken my coat off, SB said to me "You had better not be f*cking tired today". I pointed out that he didn't fuss about me drinking and socialising at the weekend. I also told him that he couldn't dictate what I do and don't do at the weekends.

[TRY TO BE AS PRECISE AS RECOLLECTION PERMITS, ABOUT WHAT WAS SAID AND WHEN]

5. BS shoved me against the workbench and said "I can f*cking dictate what you can and can't do". I turned round to carry on my work. I was shocked but managed to say "I suppose you'd complain if I'd gone to my aunt's funeral" (i.e. he would have moaned about that). I then carried on with my work. Approaching me from behind, BS grabbed my right arm and turned me round. **(Please see SG's initial witness statement of 13 March 2008: "BS walked over to Peter and grabbed him by the arm to turn him around to face him.")** He held my arm very tightly and when I told him to let "f*cking go of me", he dug his fingers in tighter. Everyone in the workplace was uncomfortable and embarrassed. Although there was usually a jokey atmosphere (for example BS christened me "Oompah Lumpah" because I'm not very tall), no-one spoke.

[REFER TO DOCUMENTS THAT HAVE BEEN DISCLOSED AND ADDED TO THE BUNDLE]

6. When I went home that evening my right arm was still sore and I showed my parents the bruising where BS's fingers had dug in. This incident made me realise that BS was willing to be violent towards me. It also confirmed my view (formed from events and statements such as BS's boast that he had pushed MG for failing to show at a pre-paid works social event) that he could lose control of his temper.

7. On Monday 3 December 2007 I was gilding picture frames when I was asked by BS whether I wanted to have a rest. I said that I did not need a rest. BS then asked if I wanted a lunch break. I said that I did not need a lunch break. BS responded that he needed to make some phone calls and therefore wanted me to take a 30 minute break. I said that if this was my lunch break then I would like to take more than 30 minutes. I left to start my lunch break. BS followed me and publicly criticised me in front of my colleagues.

8. When I returned from my curtailed lunch break (only 30 minutes as BS requested) I expressed my concerns about BS's behaviour towards me: I told him "you have blown this way out of proportion". BS responded by telling me to "get the f*ck out". I was shocked and started walking out of the room. Before I had even got through the doorway BS pushed me hard in the back causing me to stumble forward. I turned round and made it clear to BS that I was unhappy with him. I said "what the f*ck are you doing". He responded "Get the f*ck out". I responded again "you're f*cking blowing this out of proportion". Walking towards me he shouted "Get the f*ck round there. I don't want you anywhere f*cking near me. I'll get MG to help me." **(Please see SA's initial witness statement of 17 March 2008: "I saw BS and Peter having a heated exchange with furious finger pointing from both sides.")**

[REFER TO EVIDENCE SUPPORTING YOUR RECOLLECTION – ESPECIALLY FROM PEOPLE WHOM ARE NOT ATTENDING AS A WITNESS IN SUPPORT OF YOUR CASE]

9. I was upset by the events of Monday. After discussing the matter with my parents in the evening, I decided that the best course of action would be to ask BS for a meeting. The following day (4 December 2007) I attended Bell Pictures premises. At work BS did not acknowledge my presence. At around 11am I asked BS for a meeting to which he aggressively replied “yeah, right now”.

10. We went to the factory office. He sat down in his chair about six feet away from where I was standing. He asked, in a threatening tone, what I wanted a meeting about. I then said that he had crossed the line by manhandling me and he couldn't do it anymore. At this he jumped up out of his seat and got face to face with me (within about three inches). I felt very intimidated, and took a pace back. I thought I must stand up for myself this time, otherwise there will be no end to this type of abuse and intimidation. He also said he could push me, shove me, grab me if he felt like it and there was nothing I could do about it. I told him he could not do those things. He started swearing at me and telling me what a bad worker I was. I replied with some nasty comments back. Over a period we argued. The meeting was going nowhere and he finished the conversation with “If you don't f*cking like it, you know where the f*cking door is”. **(Please see section 5 of ET3, in particular, the penultimate paragraph: “...I told him in no uncertain terms that I was annoyed with him...”)**

[WHERE YOU REMEMBER AN EXACT PHRASE, USE IT – IT CAN BRING A SITUATION TO LIFE FOR THE TRIBUNAL. IF THE TRIBUNAL FIND IT COMPELLING, IT WILL BE USED AS A PIECE OF THE JIGSAW, FROM WHICH THEY CAN INFER INFORMATION ABOUT THE REST OF THE SITUATION]

11. I then went to the toilets as I was very upset and crying. Despite having put in years of hard work (including completing formal training in picture framing), I knew that I could no longer work with BS and he had made it clear that he no longer wished to work with me. I therefore collected my things and left the company. When I walked off the premises, SA (who rents space from Bell Pictures) came running out and asked if I was okay. He said that I shouldn't drive in such a state and advised me to ring my parents. Shortly after speaking to my Dad, I drove off.

[TRY NOT TO GET TOO OFF TRACK – STICK TO WHAT'S RELEVANT AND SUPPORTS YOUR CASE, RATHER THAN SOMETHING THAT ALTHOUGH ANNOYING, OTHERS DON'T CONSIDER TO BE OF GREAT CONSEQUENCE]

12. That afternoon (about an hour later), in my presence, my Dad phoned BS to ask what had been going on. My Dad said words to the effect of “You can't f*cking push him around”. My Dad relayed to me that BS said words to the effect of “Peter should have shown me respect”. My Dad responded “You lost that the first time you manhandled him.” My Dad relayed to me that BS responded that he (my Dad) did not know the full story. My Dad responded “I don't care what he said, keep your f*cking hands off him”. My Dad then told BS that he could keep the job and to send the monies owed to me.

[THE MORE CANDID YOUR RECOLLECTION, EVEN IF IT IS NOT ALWAYS FLATTERING TO YOUR POSITION, THE MORE LIKELY THE TRIBUNAL ARE TO PREFER YOUR ACCOUNT TO THAT OF THE EMPLOYER]

13. That same day (4 December 2007) I wrote and sent my letter of resignation (**please see bundle – document 1**) which confirmed that I was resigning in response to BS's treatment of me. On 6 December 2007 BS responded in writing (**please see bundle – document 2**) accepting that his behaviour had fallen below a certain standard.

[REFER TO ALL DOCUMENTS ON WHICH YOU RELY/ IN RELATION TO WHICH YOU WILL CROSS-EXAMINE THE EMPLOYER'S WITNESS(ES)]

14. Following receipt of my resignation letter, BS phoned my house and left a message on the answering machine that he wanted to come to my home that evening or the next evening. I replied by email (Thursday 6 December 2007):

“Dear BS, I received your telephone message tonight. I'd rather you sort everything out by post, as I am still very angry and do not wish to see you at this moment in time. From Peter”

I remained very distressed/ depressed and felt that talking to BS would only exacerbate things further. I felt I could not put my point of view across anymore as it would only lead to more arguing, abuse and intimidation: to be honest I had had enough.

15. Following my termination I made strenuous efforts to secure alternative employment. I phoned the Job Centre to arrange an interview for the earliest possible slot. Unfortunately they didn't have any suitable alternative work available. I wasn't deterred, however, and between December 2007 and April 2008 I filled out a number of applications for advertised posts (**please see bundle – documents 3, 4, 5, 6 and 7**) and in pursuit of a new position, visited the premises of companies including:

[NAMES OF ORGANISATIONS]

16. I also asked my family to help me find new work. Specifically, at my request, my Dad asked all the companies with which he came into contact about any vacancies that they might have. Additionally, at my request, my Sister asked the following companies to consider me for any vacant posts:

[NAMES OF ORGANISATIONS]

17. Even after sustaining a back injury around 11 February 2008 (I tripped in the street) I carried on my job search over the phone and on the internet. Happily my job search was eventually successful and (although it's not picture framing) Station Management have employed me since 16 April 2008. I have again worked hard for my employer, and having successfully passed my Large Goods Vehicle test on 13 November 2008, I am working as a lorry driver for the firm.

[DON'T FORGET TO INCLUDE A SECTION ON STEPS YOU TOOK TO REDUCE YOUR LOSS OF EARNINGS]

18. The losses that I have incurred as a result of being constructively unfairly dismissed are set out in my Schedule of Loss (**please see bundle – document 25**).

[REFERRING TO YOUR SCHEDULE OF LOSS IS IMPORTANT SO THAT IT IS FORMALLY ADMITTED INTO EVIDENCE]

19. In addition to being a member of Bell Pictures' Pension Scheme and recipient of a Christmas bonus, I would like to point out that I am entitled to an annual “dividend” payment, as I held “shares” in Bell Pictures for the duration of 2007 (**please see bundle – documents 26 and 27**). This “share” scheme was in fact a type of bonus scheme entirely arising out of my employment: specifically it was only open to employees who had two or more years' service and anyone leaving the company (such as LJ/ myself) was asked to sell their “shares” back.

20. BS has recently decided to withhold payment to me of this substantial “dividend”: about £3,900 (£2.44 for each of my 1,600 shares) is due. I find this baffling as BS promised in his letter accepting my resignation as well as in other correspondence (including in his letter accepting my

resignation, his letter to me of 31 January 2008 and his email of 6 May 2008: **please see bundle – documents 2, 8 and 23**) that I would receive the “dividend”. Indeed I agreed to sell my “shares” back to BS in reliance on this undertaking.

21. Following my “shares” being bought back, they were distributed amongst the staff (including BS). I subsequently learnt that a few weeks later, the people that had newly acquired my “shares” were awarded my “dividend”. In other words my reward for working hard throughout the year and helping the company to grow was taken by BS and others including MG in contravention of the terms of the “share” scheme and agreed operation of the “dividend” payment.

[FINISH ON A STRONG NOTE – PERHAPS HOW YOU’VE TRIED TO OVERCOME THE INJUSTICE YOU SUFFERED, OR A TELLING DEMONSTRATION OF THE EMPLOYER’S CONTINUED POOR CONDUCT]

Statement of Truth

This statement is true to the best of my knowledge and belief.

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Peter Byrne

Date: