



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MARTIN

BETWEEN: Mr A Rehman Claimant
and
Lionheart Security Management Ltd Respondent

ON: 03 May 2017

APPEARANCES:

For the Claimant: In person (for part of the hearing)

For the Respondent: Mr Warne - Consultant

JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's claim is struck out

REASONS

1. This was a hearing to determine the Claimant's claims of unauthorised deductions from wages and breach of contract. I had been listed for one hour. The Claimant attended and had not brought any documentation with him. He also had not complied with an order made by Employment Judge – Hall Smith requiring him to set out *'further and better particulars of his financial complaints, namely stating the precise sums claimed under each head of claim, specifying whether the sums claimed are claimed in respect of wages, holiday pay and/or damages for breach of contract and specifying the basis of calculation for the sums claimed'*. The date for compliance was 12

April 2017. The basis of his remaining claims was therefore unknown.

2. This matter has a long and protracted history which has already been set out in the order made by Employment Judge Hall-Smith at the hearing on 28 March and sent to the parties on 5 April 2017. This was the fourth hearing. The Claimant had not attended the previous two hearings with no prior notice of his non-attendance being given. The Claimant had previously walked out of a hearing before Employment Judge Baron. It is not proposed to repeat the history in this order.
3. Between the Hall-Smith preliminary hearing and this hearing there was a substantial amount of correspondence from the Claimant. The Regional Judge directed that it could be considered at this hearing. However, this was not possible as the Claimant had not copied correspondence to the Respondent's representative as he had been requested to do. The Respondent therefore did not know what it said. The Claimant's position was that the Respondent's representatives should not be representing the Respondent. This had been dealt with in correspondence previously on at least two occasions with the Tribunal telling the Claimant that the Respondent could choose who to appoint as its representative and that the Tribunal was not able to interfere with this.
4. At this hearing, the Claimant attended but when asked by the Clerk for his papers said he did not have any. The Respondent was in a position where the current owners of the business had no documentation and no knowledge of matters pertaining to the case as they bought the business on 1 September 2016 and the previous owner and director had disappeared.
5. Therefore, not only had the Claimant not complied with the order made by Judge Hall-Smith, he had not brought any evidence on which to base his claim. He was unable therefore to prove his case.
6. I tried to explain to the Claimant that I considered that there were two options open to me. One was to strike out the claim on the basis that the Claimant had not satisfied the burden of proof and had the opportunity to properly prepare for the hearing, the second was to adjourn and issue an unless order. The difficulty was that the Claimant would not stop talking over me and arguing points not begin considered and which had already been dealt with. I had to ask him on several occasions to sit down and stop talking so I could explain how I proposed to deal with matters. At that stage I had not decided whether to strike out the Claimant's claim and wanted to discuss how it may be possible to progress his claim.
7. The Respondent made an application to strike the Claimant's claim out because the Claimant was unable to discharge the burden of proof and because of his unreasonable conduct and the way he has conducted the proceedings. Despite my best efforts to encourage the Claimant to stay he walked out of the hearing even though I told him on more than one occasion that I would hear the Respondent's application and that I wanted him to stay

so he could respond. I am satisfied that he heard and understood what I was saying but nonetheless walked out.

8. The Respondent submitted that the Claimant would not co-operate with the process, and they were surprised he attended the hearing. The Respondent reminded the Tribunal that this was the fourth time they had to attend the Tribunal for a hearing and despite the Tribunal's best efforts it has been unable to assist the Claimant. It was submitted that the Claimant had been asked to submit information on four occasions and four times had failed to do so. Instead the Claimant sent voluminous correspondence which made no sense, was nonsense and impenetrable. Additionally, he had attempted to appeal case management decisions at least three times, two had been rejected and the third was pending sift at the EAT.
9. The Respondent submitted that it has been left in a situation where Mr Lawman, the current owner and director was not the director in February 2016, when claim relates and knows nothing about the facts of this case. The former director has disappeared. Therefore, the Respondent, not only does not know the basis of the Claimant's claim but cannot defend the claim through no fault of his own. The Tribunal was reminded that the burden of proof lies with the Claimant.
10. It was submitted that the delay caused by the Claimant's unreasonable behaviour and conduct of the proceedings and that his behaviour at the hearing today was grounds for strike out if for nothing else. It was submitted the Claimant was acting vexatiously. There had been considerable delays which had prejudiced the Respondent which were caused by the Claimant's behaviour. The Respondent pointed out that at the hearing before Judge Baron hearing last year, the previous director was instructing Peninsular and at that time it would have been possible to get proper information. It was submitted that even if the Claimant could behave himself, there could not be a fair hearing with no knowledge of the facts.
11. I considered the previous orders and voluminous correspondence on the file. I particularly noted the history of non-compliance with orders including unless orders which resulted in parts of the Claimant's claim being dismissed. I have noted the amount of Tribunal resource being expended on this matter both in terms of the number of hearings and the resources needed to deal with the voluminous correspondence which often repeated matters which had already been addressed. The Respondent has also had to expend time and resource in responding to corresponding and attending four preliminary hearings.
12. I have considered the overriding objective and the necessity to deal with cases justly, proportionately, avoiding delay and saving expense. I would have liked to hear from the Claimant but was unable to as he absented himself from the hearing.
13. The Claimant's claim is struck out. This was the final hearing and the Claimant was unable to discharge the burden of proof that lay with him. He

had failed to comply with orders and I am satisfied he had the time and resource to prepare properly for today's hearing. The delay caused by the Claimant has rendered a fair trial not possible. The Respondent is now in a position where it cannot defend any proceedings and even now the Claimant's remaining claims have not been particularised despite numerous orders which the Claimant has failed to comply with.

14. The Tribunal is a public body, and like most public body has very limited resources. The Tribunal has already expended considerable resource in trying to manage this case to a hearing and it is not proportionate for more time to be expended. The Respondent has also been put to great expense and time in defending these proceedings. I find that it is just and in accordance with the overriding objective to bring this litigation to an end on the basis that the Claimant has not proved his case and has acted unreasonably and vexatiously in the manner in which the proceedings have been conducted pursuant to rule 37(1) (b) Employment Tribunal Rules of Procedure 2013 resulting in unacceptable delays.

Employment Judge Martin
Date: 4 May 2017