



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr A Clarke

Respondent
Trident Reach the People Charity

AND

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON A PRELIMINARY HEARING

HELD AT Birmingham

ON

5 June 2017

EMPLOYMENT JUDGE Harding

Representation

For the Claimant: Mr Godfrey, Operations Manager

For the Respondent: Mr Patel, Organisational Development Manager

JUDGMENT

The claimant's application to strike out the respondent's defence is refused.

REASONS

1 At a case management hearing on 21 December 2016 an order had been issued that the parties disclose relevant documents to each other by no later than 20 January 2017. The substantive hearing was listed to take place on 5 – 13 June 2017.

2 On 24 May 2017 the claimant wrote to the tribunal complaining that the respondent had yet to produce any internal email correspondence between the claimant and various managers. An order was issued by the tribunal that the respondent disclose internal emails and a number of other documents by no later than 26 May 2017.

3 On 30 May 2017 the claimant applied for a postponement of the substantive hearing on the basis that it had now received 423 pages of disclosure from the respondent and there was insufficient time to go through this before the substantive hearing was due to start.

4 The respondent did not object to the postponement application and accordingly the substantive hearing was postponed and this preliminary hearing was listed in order to deal with outstanding case management and to deal with an application made on the claimant's behalf that the respondent's ET 3 should be struck out for a failure to comply with tribunal orders.

5 Before me it was explained that the 423 pages of disclosure comprised, in the main, emails. There were emails from the claimant to various managers and also some emails sent by these managers to various other individuals within the respondent including the claimant. The claimant told me that around 10-20% of the emails disclosed were relevant to the issues in the case. The respondent did not dispute this. The respondent told me that one of the managers whose emails were disclosed, Ms Ellemay Parkes had left the respondent and it took the respondent until March to gain access to her emails. The other managers in respect of whom disclosure was made, B Keogh, H Kaur and M Peniket, are still with the respondent.

6 The claimant told me that the respondent had initially indicated that the emails would be disclosed by March 2017 and that despite various requests for the information disclosure did not in fact take place until 25 May when the 423 pages were received. The respondent told me that it had sent such a large volume of information across to the claimant because it was not clear which emails the claimant considered were relevant to the case and consequently a decision was made to disclose everything that could be obtained.

7 The order for general disclosure required the respondent to disclose all documents in their possession relevant to the issues whether they assisted the respondent, the claimant or appeared neutral. It was not disputed that some of the emails disclosed to the claimant in May were relevant to the claim. I was satisfied therefore that the respondent had breached the terms of the order for disclosure and/or had conducted the proceedings unreasonably in not disclosing relevant documents. Whilst the departure of Ms Parkes from the respondent would have made it more difficult for the respondent to access her emails this issue was resolved by March 2017 and yet disclosure did not take place for a further 2 months. Moreover the other managers remain with the respondent and their emails are therefore readily accessible. It would have been a relatively straightforward matter for the respondent to conduct a search against the claimant's name and to then sift through these emails to identify ones which were relevant to the case. There was no explanation for why the respondent had not done this.

8 I refused the claimant's application to strike out the response, however, for the following reasons. The respondent has now complied with its general disclosure obligations and the claimant did not seek to suggest that a fair trial was no longer possible. Given that a fair trial is, therefore, still possible I did not consider it proportionate to strike out for breach of the order for disclosure, particularly as that breach has now been remedied.

Case No:1302547.16
Employment Judge Harding
Dated: 5 June 2017

Judgment sent to Parties on
