

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4110838/2015

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Held in Edinburgh on 9th June 2017

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Employment Judge: James Hendry

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Mr Z Ahmed

Claimant
No appearance

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Hutchison 3G UK Ltd

Respondents
Represented by:-
Mr J Cran, Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. A Preliminary Hearing was assigned for the 9th of June 2017. The date was intimated to the claimant by letter of the 10th of April 2017. He did not attend the hearing which was set down for 10.a.m I arranged for the Clerk to check that the letter had been properly addressed and he confirmed to me that it was. I adjourned the hearing for half an hour to allow the Clerk to try and telephone or email the Claimant. He reported to me that he had not found a current telephone number so had emailed him enquiring why he had not attended and if he intended to attend that day. There was no response received from the claimant and the hearing reconvened. I noted that the claimant had been involved in the process of listing the case having submitted a dates listing letter to the Tribunal on the 7th of April.

2. I checked the procedural history of the case noting that an earlier hearing had had been assigned to the 31st of January. On the day of that hearing the Tribunal received an email from the claimant advising that he was unable to attend due to

serious sickness. A previous Preliminary Hearing had also been cancelled through no fault of the claimant.

5 3. As the claimant was not in attendance and as there had been no indication why he was not present Mr Cran made an application to the Tribunal for the claim to be struck out. He indicated that whilst he had sympathy with the situation of a party litigant he had to observe that the case had been delayed for an inordinate length of time. Many of the allegations being made by the claimant related to events as far back as 2013/2014. The claim was simply not being actively
10 progressed. He applied to the Tribunal in terms of Rule 37(b) and (d) for strike out. Rule 37(b) is engaged if the manner in which the claim has been conducted scandalous, unreasonable or vexatious.

15 4. Mr Cran took the Tribunal through a brief history of the case. There was no explanation as to why the claimant was not in attendance today. He has produced no medical information to justify his previous non-attendance nor his non-attendance this morning. If the case were now to proceed it would probably be towards the end of the year before a further hearing could be arranged and a hearing on evidence might not take place until 2018. This would mean that some
20 4 or more years would have passed since many of the allegations were said to have occurred. Mr Cran suggested that it was important to consider whether there now could be a fair trial given the length of time that had passed. In addition he stressed that there were still issues of time bar and amendment which has still not been addressed.

25 5. In the circumstances I considered the history of the case and the terms of Rule 37 to which I had been directed. I came to the view Mr Cran's submissions were well founded on both heads. It is clearly unreasonable not to attend a hearing of which you have been properly notified. Having checked the file the
30 correspondence appears to be sent to the correct address. The claimant was involved in fixing the hearing. He must at the very least been aware that it was 'in the offing'. Considering the already long history of the case I was struck by the fact that matters had not moved forward since the Preliminary Hearing that was

conducted in May 2016, one year ago. Whilst it may very well be that the claimant has been unwell it is his claim and his non-attendance appears to be evidence that he is not actively pursuing the claim or acting reasonably.

5 6. What concerns me particularly is Mr Cran's submission that it has become impossible to have a fair trial of the issues here. I had regard to my earlier note of the telephone PH on the 27th of May where I recorded that the claimant had as started work in May 20143 and that the race discrimination allegations revolved around the actions of his Manager Mr Drennan and apparently took place over a relatively short period in May and early June 2014. It seems to me that given such exchanges are often of a transitory nature it might now be extremely testing for witnesses to give evidence in relation to such allegations given the passage of time. I also bore in mind that the amendment that the claimant considered making to his pleadings more than a year ago has not yet been dealt with.

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7. In the circumstances I found that the application for strike out was well founded.

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Employment Judge: James Hendry
Date of Judgment: 04 September 2017
25 Entered in Register: 04 September 2017
and Copied to Parties