



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr DM Alim

Guy's and St Thomas' NHS
Foundation Trust

PRELIMINARY HEARING

HELD AT London South

ON 1 November 2017

EMPLOYMENT JUDGE BALOGUN

Appearances

For Claimant: In person

For Respondent: Mr Caden, Counsel

JUDGMENT

The claims of unfair dismissal and wrongful dismissal are automatically dismissed pursuant to Rule 38 of the Employment Tribunal Rules of Procedure 2013 for non compliance with the Tribunal's unless order dated 3 August 2017.

REASONS

1. By a claim form presented on 22 October 2016, the Claimant complained of unfair dismissal and wrongful dismissal. The claims were resisted by the Respondent, who contended that the Claimant was fairly dismissed for gross misconduct.
2. Pursuant to these proceedings, the Respondent (via its representatives) wrote to the Claimant on 24 January 2017, with a specific disclosure request for:
 - (i) His GP records from February to April 2015
 - (ii) His hospital records from 30 March 2015
 - (iii) His ambulance service records from 30 March 2015

3. The request went on to state that if the documents were not within the Claimant's possession, power or control; he should use reasonable endeavours to obtain them. It then set out the steps the Claimant should take to obtain such documents from the relevant holders.
4. The Claimant did not comply with the request and on 3 March 2017, Employment Judge Nash made an order that the Claimant provide the documents to the Respondent within 28 days of the order or use reasonable endeavours to obtain them within 47 days of the order.
5. In addition, the order provided that, if requested by the Respondent, the Claimant shall provide a letter addressed to the holders of the documents giving his consent to their disclosing them to the Respondent. Such a request was made by the Respondent, who wrote to the Claimant on 15 June 2017, enclosing draft consent letters for his signature and return. The Claimant failed to return the letters or otherwise provide the necessary consent.
6. Apart from providing the Respondent with his GP records for February - April 2015, the Claimant did not comply with the order. As a result, on 3 August 2017, Employment Judge Martin made an Unless order in the following terms:

"Unless by the 17 August 2017 the Claimant complies with the order of the Tribunal dated 3rd March 2017 the claim will stand dismissed without further order".
7. The Claimant took no further steps to comply with the order.
8. The Claimant sought to argue today that he had complied with the order by providing his GP records and that there were no further steps he could have taken as the other documents do not exist and that he had explained this to the Respondent in correspondence. That did not suffice as an explanation. Any issues about the ability to comply with the order should have been raised before the date for compliance but in any event, the existence or otherwise of the outstanding documents did not prevent material compliance with the order, which could have been achieved by the Claimant signing and returning the letters of consent as requested.
9. Having considered the parties' representations, including the Respondent's written skeleton argument, I am satisfied that there has been material non compliance with the order. In those circumstances, the claims are automatically dismissed.

Employment Judge Balogun
1 November 2017