



EMPLOYMENT TRIBUNALS

Claimant
Mr. T. Bhamra

Respondent
Mitie Aviation Security Limited

v

Heard at: Watford
Before: Employment Judge Heal

On: 8 November 2017

Appearances

For the Claimant: in person (with Mrs Bhamra, the claimant's mother)

For the Respondent: Mr. C. Milsom, counsel

JUDGMENT

1. The claimant did not comply with the Unless Order sent to the parties on 28 March 2017.
2. Accordingly, I record that this claim was struck out on 3 April 2017.

REASONS

1. By a claim form presented on 28 April 2016 the claimant made complaints of age discrimination, sex discrimination, discrimination on grounds of religion or belief, race discrimination, disability discrimination, discrimination on grounds of sexual orientation, breach of contract, unpaid annual leave and unauthorised deductions from wages.
2. Of those claims, only that of unauthorised deductions from wages is now relevant. This is a complaint of unpaid wages from 15 April 2014 onwards.

Issues

3. The issue before me today is whether that claim was struck out on 3 April 2017 for the claimant's failure to comply with an Unless Order.
4. The respondent has also made applications to strike out the claim because it says that the claimant has been fraudulently amending or falsifying information and because of a failure to exchange witness

statements. If the claim has already been struck out on 3 April 2017, then there would be no claim remaining to strike out.

Procedural Matters

5. I have had the benefit of a bundle of documents provided by the respondent and running to 290 pages. Mr Milsom also provided me with a number of authorities to which he did not expressly refer. In fact, this hearing dealt with the first of the 2 applications only so that legal argument was limited. I was also provided with witness statements from Mr Richard Allen, Mr Abdul Vohra and Ms Cathy Blackburn. Argument about the unless order was based on the documents and the parties' representations, not on oral evidence.
6. The hearing began half an hour late because the tribunal received a message from the claimant saying that he had difficulty walking and would be late.

Application to postpone

7. The claimant began the hearing by making an application to postpone which I refused.
8. The claimant had already made the following applications to postpone this hearing:
 - 8.1 by email from Amos Obadiah dated 27 October 2017 (repeated on 28 October and 1 November) on the ground that the claimant had an appointment booked with his GP on 8 November 2017 at 10 am. I refused this application on the grounds that the claimant could change his medical appointment.
 - 8.2 By email from the claimant dated 6 November 2017 on the ground that the claimant wished to have legal representation and could not find a lawyer available for 8 November.
 - 8.3 By email dated 7 November 2017 at 00.54 from the claimant's email address from an unnamed person who claimed to be writing with the claimant's consent, requesting postponement on the grounds that the claimant had an urgent appointment with a cardiologist at Northwick Park Hospital on 8 November at 1 pm made by the accident and emergency department. This email was accompanied by a document recording that the claimant had attended Northwick Park Urgent Care Centre on 3 November 2017, a statement of fitness for work signed by a GP on 6 November saying that the claimant was unfit for work from 6 to 13 November 2017 because of a cardiology appointment on 8 November, and a prescription for Co-drydamol dated 6 November.
 - 8.4 By email dated 7 November 2017 at 01.00 from the claimant's email address from a person unnamed who claimed to be writing with the claimant's consent, requesting a telephone hearing due to the claimant's current health condition and because the claimant will be

unable to attend the tribunal due to an appointment at Northwick Park Hospital due to severe chest pain and breathlessness.

- 8.5 Regional Employment Judge Byrne refused the claimant's applications for postponement and a telephone hearing. He said that the claimant was clearly able to engage in a hearing because he was content to attend by telephone, the claimant had had every opportunity to arrange his medical appointment and there was no medical evidence indicating that it was critical for the claimant's health to attend the medical appointment on 8 November. The litigation had a long history and it was in all parties' interests that it should be advanced without further delay.
9. When the claimant made his application to me, he produced the above medical information and added a handwritten note written on the North West London Hospitals' notepaper dated 3 November 2017 and addressed to a Dr. Shivaraja. This note said that Emilia Pelua arranged an urgent appointment for the claimant to attend to see the cardiologist at 1 pm on 8 November 2017 due to 'the severe chest pain and breathlessness.' The note continues that the claimant, 'informed us there is a tribunal hearing on 8 November 2017 to see the cardiologist is vital important.'
10. I refused the application to postpone because I noted that the claimant had made multiple applications to postpone for different reasons. I note that the 3 November letter from Emilia Pelua had not been sent earlier and could have been sent with the claimant's application of 7 November. I was doubtful about the reliability of the information provided to me by the claimant.
11. Leaving that aside, in the light of the overriding objective I have to do justice to both parties in this case and also to other tribunal users. This case is already very old. The medical evidence does not convey to me that the claimant's appointment with the cardiologist is so important that it is more important than this tribunal hearing. The letter does not say that it is critical for the claimant's health that he must attend at 1 pm on 8 November in particular and/or that the appointment cannot reasonably be rescheduled for another occasion.

Progress of the hearing

12. The claimant told me early in the hearing that he was in pain and his behaviour during the early stages of the hearing exhibited that he was feeling pain. More than once, he got up and walked around as if to relieve pain. As the hearing progressed, these overt signs of pain disappeared. The claimant engaged fully in the proceedings.
13. When the claimant arrived in the tribunal room he placed sealed plastic bags containing the bundle and other documents from the respondent on

the desk before him unopened. He said that he had only received them on the morning of the hearing: he went to the post office and they gave him those bundles. I declined to spend tribunal time listening to debate about whether or why the bundles had not been sent to or received by the claimant in good time. I was more concerned that the claimant should have an opportunity to read the relevant documents fairly in advance of the hearing and to understand Mr Milsom's submissions clearly.

14. Accordingly, I adjourned for 20 minutes. I told the parties that we would deal with the applications one by one and that we would start by concentrating only on the issue of whether the claimant had complied with the unless order. Therefore, to start with at least the claimant need concentrate only on that. I suggested that he use his time by reading Mr Milsom's written submissions. I asked Mr Milsom to make his submissions slowly and clearly bearing in mind that this would assist the claimant in understanding exactly what was being said against him. Mr Milsom agreed with this and did comply with it.

Concise Statement of the Law.

15. According to rule 38 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013, schedule one:

(1) An order may specify that if it is not complied with by the date specified, the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the tribunal shall give written notice to the parties confirming what has occurred.'

16. The party who has to comply with an unless order should be in no doubt as to what is necessary for compliance.

17. The consequence of an unless order that is not complied with is the automatic dismissal of the whole or part of the claim or response: no other act is necessary to effect the dismissal. In determining whether the order has been complied with, much will depend on the actual wording of the order. Has the purpose of seeking compliance been complied with in the context of the particular order?

Relevant chronology

18. Notice of a full hearing was sent to the parties by the tribunal on 15 December 2016. That document contained case management orders including an order that by no later than 11 January 2017,

'the claimant and the respondent shall send each other a list of any documents that they wish to refer to at the hearing or which are relevant to the case. They shall send each other copies of any of these documents if requested to do so.'

19. An unless order was sent to the parties on 7 February 2017 ordering that:

'on or before 9 February 2017 the claimant shall send to the respondent and simultaneously to the tribunal by email with the relevant documents either attached to the email or clearly contained in the body of the email, the following documents as ordered by the tribunal on 15 December 2016:

Schedule of loss (that is, the written statement of the remedy the tribunal is being asked to award, due by 11 January 2017)
Claimant's list of documents (due by 11 January 2017)

20. Time for compliance with that order was extended to 16 February 2017.
21. Although the claimant told me that someone called 'Amos' sent on his behalf a list of documents (which he said incorrectly was the one at page 52 of my bundle) to the tribunal on 10 February 2017, the tribunal file shows that in fact on 16 February 2017 at 17.53 the claimant sent to the tribunal a schedule of loss and the list of documents which now appears at page 11 of my bundle. This is a different document from that at page 52, although p52 appears to be a rather more detailed version of p11. (The claimant did not today produce a copy of the email which he says was sent by Amos.)
22. Therefore, the tribunal considered that the claimant had complied with the unless order dated 7 February 2017.
23. By email dated 17 February Mr Allen for the respondent asked the claimant to send him documents referred to in his documents list as soon as he was able.
24. A further unless order was sent to the parties on 28 March 2017. It is this order that is the focus of today's hearing.
25. So far as is relevant the order says:
 2. *'Unless, on or before Monday, 3 April 2017 the claimant has carried out in full all the steps in the schedule below, the claim shall be struck out without further order.*

Schedule

6. *The claimant shall send to the respondent documents from his list of documents in compliance with the order sent to the parties on 15 December 2016 and the respondent's request of 17 February 2017.*
7. *The claimant shall notify the tribunal in writing that he has complied with the order for disclosure in full.'*

26. By email dated 3 April 2017 at 23.57 the claimant sent to Mr Allen for the respondent 26 PDF attachments. The text of the email said, 'the disclosure enclosed'.

27. I have not been taken through the actual attachments by either party. This application has been argued on the basis of the lists. However, I accept that one of the attachments was (as the respondent says) the list of documents which now appears at page 48 my bundle. Initially, at least, the claimant did accept that p48 was the list attached to his email of 3 April 2017. He later became vague about this. This document gives an unnumbered list of documents each of which is described individually, dated and is also given a page number. This was a new list which appears to have been intended to supersede the original list.

28. That new list includes the following:

Recorded Delivery receipt 13. 02. 2014 confirmation page 4

Fit to work dated 20 February 2014 page 11

Fit to work letter dated 04 June 2014 page 12

Fit Note MED 3 Dated 04. 06. 2014 page 13

Recorded Delivery receipt dated 04 June 2014 page 14

Recorded Delivery receipt dated 18. 08. 2016 page 42

29. There are overall, 8 recorded delivery receipts in the list.

30. As at 3 April 2017 the tribunal file did not contain notification from the claimant in writing that he had complied with the unless order in full.

31. Accordingly by letter dated 4 April 2017 Employment Judge Lewis wrote to the respondent asking whether the claimant had complied with the unless order.

32. By email dated 4 April 2017 with a copy to the claimant, Mr Allen replied,

'The claimant has provided the respondent (on 3 March 2017) with the majority of the documents referred to in his disclosure list. However, he has not provided all of these documents in accordance with the terms of the Unless Order. At present the respondent has still not had sight of the following:

- *A fit note dated 24 February 2014;*
- *a fit note dated 4 June 2014; and*
- *a recorded delivery receipt dated 18 August 2016.'*

33. I infer that the reference to March is an error and Mr Allen means April.

34. By email dated 5 April 2017 the claimant wrote to the tribunal saying,

'I confirm I have disclosed all the documents in my list the documents some items were written duplicated due to I had had written on paper myself with pen and went to the Internet cafe to type as the cafe was busy they had one computer was available and the size of the computer screen was very small I had difficulty seeing in the light was very bright in the room ...[There follows further explanation]

Copy of the fit to work note provided by G. P on 13 February 2014 to the employer I have copy, a copy of the 4 June 2014 fit to work note this was sent to the employer and they had received. Not provided with fit to work note on 24 February 2014 this was provided on 13 February 2014. Copy of Recorded Delivery receipt 18. 09. 2016 this is not mentioned in the list of documents.

On my behalf resending the list of my documents with the corrections in red highlighted your attention.'

35. There was then attached a third, different list of documents. This appears at page 52 of my bundle and in the tribunal file is attached to the email dated 5 April 2017. It itemises 53 documents. For the avoidance of doubt p 52 was sent to the tribunal on 5 April 2017, not in January 2017.

36. This document appears to use the list of documents at page 11 of my bundle as a framework but with amendments, and with dates and notes added, explaining the various items.

Analysis

37. I am sorry to say that I have not found the claimant either credible or reliable in this hearing. I want to make it clear that I have reached this conclusion on the basis only of what the claimant has told me today. I have not reached this conclusion on the basis of what any other judge has said about him or on the basis of any experience that I have had any other occasion.

38. I have found what the claimant has told me today vague and changeable. Indeed, sometimes what he has told me has changed within minutes; occasionally it has then changed back. I have often had to press him to receive any sort of a clear answer. I have found some of what he has told me wholly implausible. I cannot rely upon what he says. I note too that he says that he possesses a file containing the documents which he has in this case but although he knew the importance of this hearing, he did not bring it to the hearing to demonstrate what he wanted to say.

39. I understand that the claimant is a litigant in person. I have seen evidence that he has medical problems. I note that whenever he finds himself in difficulties he reminds me that he is a litigant in person and that he has medical problems and he says that he has made mistakes. Everyone makes mistakes, even professionals, so I have some sympathy this.

However much leeway I give him, I cannot accept that the number of mistakes and errors that he claims can possibly all be innocent or caused by illness or inexperience.

40. The Unless Order sent to the parties on 28 March 2017 orders the claimant to send to the respondent **all** the documents from his list of documents in compliance with the order sent to the parties on 15 December 2016 and the respondent's request 17 February 2017. I consider it to be clear. (It is my own drafting and I intended it to be clear that all the documents must be disclosed. There have been many difficulties, including communication difficulties, in the management of this long case. The hearing was imminent. It was important to make it absolutely clear to this claimant that the tribunal ordered each and every document from his list, not just some, to be sent to the respondent.)
41. [The Unless Order also orders the claimant to notify the tribunal in writing that he had complied with the order for disclosure. Just dealing with that second point first, on 17 May 2017, I recorded that the claim had been struck out because the claimant had not complied with the second part of this order. I did so because there was no email on the file showing compliance, however on 24 May 2017 the claimant drew attention to an email which appeared to be dated 3 April at 16:38 and which purported to show that he had complied with the order. The respondent is highly sceptical about the provenance and dating of that email; however, by the time the issue was investigated at the tribunal it was too late to discover easily exactly when that email was sent to the tribunal. The email will now be in the tribunal system's own archives and it is not proportionate to invest the money involved in discovering electronically when that document was sent. So, I give the claimant the benefit of the doubt and I assume that he did comply with the second part of the order. On 3 June 2017, the tribunal wrote to the parties that the claim was not struck out for the reason given in the letter dated 17 May.]
42. However, Mr Allen for the respondent also says that the claimant did not send 3 of the documents which were listed in the list of documents attached to the claimant's email.
43. Of those 3 documents, first it appears that Mr Allen himself may have made a typographical error in referring to a fit note dated 24 February. It is not possible today to discover exactly what he meant and whether such fit note was really the one dated 20 February. I leave that to one side.
44. There are 2 other documents which Mr Allen says he did not receive: the first is a fit note dated 4 June 2014.
45. The claimant's account of what happened about this document changed. First, he said that he wrote 4 June in error and he should have said 13 February. Later he said that a fit note dated 4 June did exist. This is at least consistent with the email dated 5 April which refers to a fit note dated 4 June 2014. Later he said that he had made a mistake which he

corrected in a subsequent list. At first, he told me that that was p52, a list he said he had sent in January. However, that cannot chronologically be the case. Page 52 was sent with the email dated 5 April 2017.

46. It has simply been impossible to shed any clear light on whether the claimant really intended to include a document dated 4 June in his list or whether he thinks he sent it. He was in any event quite unable to tell me when he thought he had sent it. At one point, he said that he had sent it by recorded delivery. I find it hard to understand why he should have sent this document by separate recorded delivery when all the other attachments arrived electronically. It is not possible to tell what he really says about it. I do not find what he does say reliable. Mr Allen says it was in the list and he did not receive it. I accept therefore that Mr Allen did not receive it and I conclude that the claimant has not complied with the unless order in this respect.
47. The remaining document is a recorded delivery receipt dated 18 August 2016 which Mr Allen says he did not receive.
48. The claimant says that he wrote 18 August 2016 on his list when he meant 13 February 2014. I do not understand how one can write 18 August 2016 when one means to write 13 February 2014; nor do I understand how the claimant knows that it is really the 13 February 2014 document that he intended to identify when there are 8 recorded delivery documents on the list all with different dates. It is odd too that the claimant should allocate a page number separately to a document which he now says does not exist.
49. So, I conclude that the claimant has not sent that document either to Mr Allen. I think it likely that he intended to write 18 August 2016 as he did but he has not sent the document and he is now attempting to cover up his failure.
50. Having said all that, I note that at the time I made the Unless Order there was only one list of documents in existence. That is the one now appearing at page 11 of my bundle which was sent to the tribunal on 16 February 2017. (The claimant himself complicated matters somewhat by sending a new and different list of documents with his email on 3 April 2017.) As Mr Milsom points out, that is a list of 53 documents but only 39 documents were actually sent to the respondent in purported compliance with the relevant Unless Order. So, says, Mr Milsom, the claimant has not complied with the Unless Order insofar as it relates to this list, either.
51. When I asked the claimant about this he pointed out that a number of entries repeat themselves. Indeed, it might be said that most of the entries on p 11 repeat themselves, one 8 and some of them 5 times.
52. The claimant says that these duplications are errors and each batch of duplications only refers to one single document.

53. I find it implausible that the claimant could have written, for example 'letter RMRD', 7 additional times by mistake, intending to refer only to one document. I could repeat that point many times over but that one example will do. So, I do not accept the claimant's explanation for the obvious failure to comply with the Unless Order insofar as it relates to this list of documents.
54. I note that there is the third further list of documents in existence and that is the one which I find was sent to the tribunal on 5 April (p52) and which arrived after the unless order compliance date. The claimant says that this is the correct list. (If this is the case, then he may not have complied with the Unless Order dated 7 January 2017 since it was not sent until 5 April 2017.) On close examination, it appears to be the list from 16 February 2017 with many detailed annotations, additions of dates and amendments. Although I note that the claimant has said against certain entries that there has been an error or duplication, I also see that there are documents in that list which have not been included at all in the p48 list sent on 3 April. So, since the attachments sent on 3 April are the documents listed on p48 (excepting the missing documents identified above), then, for example, items 17, 21, 23 and 31 have not been disclosed. There may be others.
55. So, whichever list of documents I refer to, either the one on page 11 or the one at page 48, the claimant has not complied with the Unless Order in that he has not sent to the respondent *all* the documents contained in that list.
56. In the context of the order, the purpose of that order had not been complied with. The purpose was – in a case beset by lack of clarity and distrust which had been long running and time consuming – to bring the parties to the listed hearing with full disclosure completed so that there could be a fair hearing. The difficulties in this hearing have shown clearly what would have happened at that listed full hearing had disclosure not been completed fully. Each single missing document had the potential to create confusion, unfairness and delay.
57. Therefore, this case was struck out on 3 April 2017
58. That being the case there is no jurisdiction to hear further applications from the respondent.

Employment Judge Heal

Date: 30 November 2017

Sent to the parties on: 30/11/2017

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For the Tribunal Office