



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr K Wieczorek

v

Greencore Food to Go Ltd

Heard at: Watford

On: 17 April 2018

Before: Employment Judge Wyeth

Appearances

For the Claimant: not in attendance

For the Respondent: Mrs H Rice-Birchall, Solicitor

JUDGMENT

1. The correct name of the respondent is Greencore Food to Go Limited.
2. The claimant's claim is struck out in accordance with Rule 37(1)(b) and (d) of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. By way of a claim form dated 12 November 2017, the claimant brought complaints of automatic unfair dismissal for making a protected disclosure (contrary to section 103A of the Employment Rights Act 1996), and detriment for making a protected disclosure (contrary to section 47B of the ERA). The respondent defended those claims and, amongst other matters, asserted that the claimant did not have legal status to bring those claims as he was neither a worker nor an employee as defined by the relevant legislation.
2. On 4 February 2018, in accordance with the direction by Employment Judge Manley, a notice of preliminary hearing was issued to determine the

employment status of the claimant whilst working for the respondent. The hearing was scheduled to take place today at 10.00am.

3. On the same date, 4 February 2018, Employment Judge Manley directed the claimant to indicate whether he objected to the respondent's name being changed to Greencore Food to Go Limited. On 12 February 2018, the claimant's solicitor emailed the tribunal to confirm that the claimant had no objection to changing the name of the respondent to Greencore Food to Go Limited. Shortly after that correspondence, the claimant ceased to be represented by a solicitor.
4. On 6 March 2018 the respondent's solicitors wrote to the claimant requesting relevant evidence to enable his employment status issue to be determined. No response was received in relation to that correspondence.
5. On 7 March 2018, an order by Employment Judge Heal dated 6 March 2018 was sent to the parties requiring both parties to disclose documents relevant to the issue to be determined at this preliminary hearing by 13 March 2018. The parties were further ordered to agree a joint bundle of documents for the preliminary hearing by 27 March 2018 and prepare witness statements containing facts relevant to the preliminary hearing issue and send these to the other party by 3 April 2018.
6. In accordance with that order, the respondent's solicitors sent to the claimant on 12 March 2018 (by post to his home address) the documents upon which they intended to rely at this preliminary hearing. In the cover letter the respondent's solicitors referred to the fact that they were awaiting a list of documents for disclosure and, in particular, any evidence relating to the fact that the claimant supplied his services through his own business as asserted by the respondent. No response was received to that correspondence.
7. On 23 March 2018, the respondent's solicitors wrote to the claimant again at his home address and once again requested disclosure of documents. That letter enclosed a copy of the case management order referred to above and requested that the claimant comply with his obligations as a matter of urgency, so that the respondent could properly prepare for the preliminary hearing. The respondent asked for the claimant to provide documentation in relation to the claimant's business "PL Drivers Limited" and the relationship between that company and the employment agency the respondent said had supplied the claimant's services to them. In that letter, the respondent's solicitors also indicated that if the claimant did not provide the necessary information in good time before the hearing and by no later than Friday 6 April, the respondent would make a costs application either at the preliminary hearing or thereafter and would apply for the claimant's claim to be struck out on the basis that he was not actively pursuing it.
8. Once again, the claimant did not respond to that communication. Furthermore, the claimant did not comply with his obligations to disclose documentation.

9. On or around 3 April 2018, the claimant sent a 12-page letter to non-executive Directors of the respondent, Ms Bailey and Ms Rose outlining his concerns about the respondent that formed the basis of his claim before the tribunal. He indicated that he had decided to take certain steps including contacting customers of the respondent directly, the national media and “due to some material having sensitive legal restrictions” he would “file for court proceedings”.
10. In accordance with the indication provided to the claimant, the respondent's solicitors made an application on 6 April 2018 for the hearing listed for today to be vacated and for the claimant's claim to be struck out on the grounds that the manner in which the proceedings were being conducted by, or on behalf of, the claimant, had been unreasonable and further, and/or in the alternative, the claim was not being actively pursued.
11. I accept the respondent's solicitors' submission to me today that a copy of that email was sent to the claimant by post to his home address on or around the same date. Indeed, the email refers to the fact that a copy of the application had been sent to the claimant informing him of his right to object.
12. On 12 April 2018, the postponement request by the respondent's solicitors was refused by Employment Judge Bedeau, but he indicated that the respondent's application for strike out would be dealt with at this hearing.
13. In accordance with routine practice, this tribunal's listing team contacted both parties yesterday afternoon to confirm their attendance at today's hearing. When the clerk spoke to the claimant his response to the clerk's enquiry as to whether he would be attending today was one of ambivalence.
14. Before I proceeded with the hearing this morning, I arrange for my clerk to attempt contact with the claimant to establish his whereabouts. The clerk telephoned the claimant on the number provided, but there was no reply. The claimant did not attend at any stage prior to the conclusion of the hearing which commenced at 10.15am.
15. In accordance with the written application, Mrs Rice-Birchall made an application for the claim to be struck out on the basis that the claimant was behaving unreasonably and was not actively pursuing his case.
16. For the reasons outlined above, I am satisfied that the claimant has acted unreasonably and is not actively pursuing his case. Furthermore, I am satisfied that the claimant's default is intentional and contumelious in accordance with the principles laid down in Birkett v James [1978] AC297, HL and Evans and another v Commissioner of Police of the Metropolis [1993] ICR151, CA. The claimant has failed to respond to any communications he has received from the respondent's representatives. The claimant has also failed to comply with the tribunal order of 6 March 2018 and has shown contempt for the tribunal in his approach to the orders made, compounded by his failure to attend or provide any representations by alternative means in respect of his case today.

17. Accordingly, I am striking out the case on the basis that the claimant has conducted the case unreasonably and that he has not actively pursued his claim.

Employment Judge Wyeth

Date: 25 May 2018

Sent to the parties on:

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For the Tribunal Office