



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Butler

v

North Shore Golf Club Ltd

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Nottingham

On: 7 August 2018

Before: Employment Judge P Britton

Appearances

For the Claimant: No appearance

For the Respondent: Mr C Platt, HR Consultant

CASE MANAGEMENT SUMMARY

JUDGMENT

1. The Claimant's application for review of the dismissal of his claim for non-compliance with an Unless Order and pursuant to the provisions of Rule 38 of the Employment Tribunal Constitution and Rules of Procedure Regulations 2013 Schedule 1 is dismissed.

REASONS

1. The claim (ET1) primarily being one of unfair dismissal, was presented to the Tribunal on 8 November 2017. It was served upon the Respondent by notice of 29 November inter alia stating that the case was listed for a 1 day hearing before a Judge sitting alone on 17 May 2018 at Lincoln. Directions were also contained in the notice.

2. On 4 January 2018 the Respondent duly filed a response by which it was clearly defending the proceeding. As at 11 January 2018, the Claimant failed to comply with the first directions in this matter relating to provision of a schedule of loss and list of documents he intended to rely upon. As it is, the Claimant sent in his schedule of loss on 12 January 2018 but there were then follow-up communications from the Respondent to the effect that he was not complying with the Orders relating to discovery and furthermore, that he had not served his witness statement.

3. Accordingly, on the 5 March 2018 Employment Judge Milgate made an Unless Order. It required that by the 16 March 2018 the Claimant must have provided "a copy of his witness statement and a list of those documents he intends to rely upon" to the Respondent. By the deadline the Claimant had not done this. Instead on 15 March 2018 he wrote to the Employment Tribunal making comments on the witness statements that had been provided to him by the Respondent. The Respondent wrote in on 19 March 2018 stating that this did not comply with the Unless Order, and in those circumstances on 16 May 2018, Employment Judge Milgate issued a letter making plain that in accordance with Rule 38 (1) of the Tribunals Rules of Procedure 2013 (the Rules) there having been non-compliance with the Unless Order, therefore the claim was dismissed.

4. As it is, the Claimant turned up at the hearing on 17 May 2018 but there was nobody present to hear it and no Respondent as the case had been dismissed. On 27 May 2018, he made an application via his mother, Amanda Butler, in terms of explaining his position: Inter alia relying on his health.

5. On 14 June 2018 Employment Judge Milgate duly treated that communication as an application for review of the Unless Order and consequent dismissal pursuant to Rule 38 (2) of the Rules. She asked the Respondent to reply in writing as to whether or not it would object to granting the review.

6. On 21 June 2018 the Respondent replied in considerable detail setting out the history of the matter and why therefore it objected to the application to review; and so on 29 June 2018 the parties were informed that there would be a reconsideration hearing and should the Claimant succeed, then the Judge would consider whether to make a Deposit Order in terms of his claim on the basis that it appeared to have only little reasonable prospect of success. The Claimant was ordered to provide medical evidence in terms of that part of his explanation by 16 July 2018 and that if he was unable to get the necessary documentation from his GP he must make an application by that day to the Tribunal.

7. On 30 June 2018 the matter was listed for a hearing by telephone on Tuesday 7 August 2018 commencing at 11:30 and the parties informed. On 30 July 2018 the Respondent provided an agenda and the following day the Claimant emailed the Tribunal wanting this case put forward to 9:00am stating that he had only just opened the email of 30 June 2018 and the clear implication being he had not obtained any medical evidence. On 3 August 2018 the Respondent wrote in to the Tribunal objecting to what was going on and on the basis that the Claimant's approach was unacceptable. The matter was then placed before my colleague, Employment Judge Camp. In a strongly worded Order, he made plain that he was deeply sceptical as to why the Claimant would leave so long opening his emails and that the case would proceed come what may at 11:30am on Tuesday 7 August 2018.

8. As it is, at 11:30am on Tuesday 7 August 2018 the Claimant was not on the telephone, the Clerk's endeavoured to contact him on the telephone numbers we had been given without success. In those circumstances, I refuse the application for review.

9. It therefore follows that the case remains dismissed.

Employment Judge P Britton

Date: 5 September 2018

Case No: 2601884/2017

Sent to the parties on:

7 September 2018

For the Tribunal: