



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr D Paton**

**v**

**Winchmore Brickwork Ltd**

**Heard at:** Watford

**On:** 10 September 2018

**Before:** Employment Judge A B Clarke QC

**Members:** Mr D Sutton

Mr R Clifton

## **Appearances**

**For the Claimant:** In Person

**For the Respondent:** Unrepresented

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## **JUDGMENT**

1. The hearing of this case is adjourned to be heard before any Tribunal for three days on **1, 2 and 3 April 2019** at the **Cambridge Employment Tribunal, 197 East Road, Cambridge CB1 1BA.**

## **REASONS**

1. The claimant presented a claim form to the Tribunal on 14 August 2017. His complaint was for race discrimination. That claim was defended.
2. On 18 January 2018 a preliminary hearing took place before Employment Judge Henry at which the claimant appeared in person and the respondent appeared by its Managing Director, Mr Yianni. At that hearing the present respondent was substituted for Mr Yianni as the sole respondent to the proceedings. The Judge also made a series of Orders relating to the production of further particulars of the claim (by 1 February 2018), for the respondent to respond to those particulars (21 days thereafter) and for disclosure of documents, production of bundles and witness statements and the provision of a Schedule of Loss. It is necessary to review what happened thereafter in order to understand why it became necessary for the Tribunal which was intended to hear this case over three days had to adjourn it.
3. The Tribunal file contains a copy of an email dated 12 February 2018 attaching the Case Management Orders made by Employment Judge

Henry. From subsequent correspondence it is clear that the respondent received that email. However, the claimant has no recollection of receiving it.

4. I need to refer to one further paragraph of the document in question. When describing the listing of the hearing it notes that it had been agreed that the hearing “would be completed within four days” and, in the usual way, goes on to say that the hearing will start “at **10.00am** or soon thereafter as possible **on 10, to end on 12 September 2018.**” The listing was, in fact, a three-day listing. Recent correspondence from the respondent suggests that the respondent may have understood what was said as determining that a four-day hearing would commence on either the 10, 11 or 12 September. The confusion which may have been caused by that minor error on the face of the case management summary has to be seen against the background of the events which unfolded after 12 February.
5. The claimant did not produce the further particulars which he had been ordered to produce by 1 February. The respondent wrote to the Tribunal pointing out that he had received no particulars by 13 February and noted that the consequent Order for it to respond now appeared “obsolete”. The respondent asked for the matter to be referred to Judge Henry. Hence, the matter was referred to Judge Henry who asked that a letter in the standard form for “Non-Compliance with Case Management Orders” be sent. The gaps in the standard form were to be completed so as to require an explanation in writing by 29 March as to why there had been no compliance. In the meantime, the Tribunal had received further chasing correspondence from the respondent asking what was happening.
6. That correspondence from the respondent was then passed to Judge Henry with a note to the effect that the letter that he had asked for had not been sent before the date which he had suggested had expired. Hence, Judge Henry directed that the date in his draft letter be changed from 29 March to 23 April 2018. He also asked that apologies be given to the respondent for the failure to action his previous instruction, which apology should note that the new date “for compliance” was to be 23 April 2018.
7. The result was that a letter was sent to the claimant, copied to the respondent, which required an explanation for non-compliance with the original Order, which explanation was to be given by 16 May 2018. That letter did not set a new date for compliance with the original Order. A further letter was sent to the respondent (but not copied to the claimant) which apologised for Judge Henry’s instruction (which instruction was not explained) not being actioned and stated that an Order was now being sent out for compliance by 16 May. Subsequent correspondence from the respondent shows that the respondent understood the letter to it as indicating that the time for compliance with the original Order had been changed from 1 February to 16 May 2018.

8. The respondent continued to chase the Tribunal after the 16 May deadline had passed. Ultimately, the file was passed to Employment Judge Manley who made an Unless Order to the effect that unless the claimant complied with the original Order for providing particulars by 2 July 2018, the claim would be struck out. That Order was sent to the claimant and the respondent by email of 20 June 2018.
9. Having heard nothing by 11 July 2018 the respondent wrote, once again, to the Tribunal (following up on telephone calls) asking for confirmation that the claim had been struck out. That letter was passed to an Employment Judge on 25 July who instructed that a letter be sent to the respondent indicating that the claim had indeed been struck out. However, before that letter could be sent, the Tribunal realised that it had received particulars from the claimant on 1 July by email. Hence, he had complied with the Unless Order.
10. The matter was then referred back to an Employment Judge who instructed that the document complying with the Order be sent to the respondent. An email attaching the claimant's email of 1 July and an exchange between him and the Tribunal relating to it was copied to the respondent on 10 August. The email simply said, "please see attached correspondence." Of course, the claimant had complied with the Unless Order, but he had still not explained his failure to comply with the original Order as he had been ordered to do by the letter of 2 May 2018, which gave him until 16 May 2018 to do so. Furthermore, no thought had been given to amending the timetable relating to the respondent's answer to the allegations, disclosure and witness statements.
11. Subsequent correspondence shows that the respondent contacted the Tribunal on 28 August in order to try to understand the current status of the case and what needed to be done. The respondent was advised "that this case was still to be passed on to the Judge" and that the Tribunal could say nothing more until the matter had been "processed by the Judge." The respondent heard nothing more from the Tribunal until a telephone call on the afternoon of Friday 7 September, being the usual call to establish whether the respondent was attending the hearing the following Monday. The respondent's answer to this was, in summary, that they were uncertain as to the status of the case, that they had assiduously corresponded with the Tribunal in order to understand the status of the case at various times since shortly after receipt of the Case Management Orders on 12 February, that they had understood that the case was to start one on of the 10, 11 or 12 September and that they would be told which, but that they had heard nothing in that regard. It is not surprising, given the events described above, that the respondent was in a state of some confusion. Indeed, it is clear that they understood that the matter was being put before an Employment Judge to determine how matters should proceed.
12. The respondent did not attend today. Its principle witness, Mr Yianni, is engaged elsewhere. That is so for some time into the future.

13. In all of those circumstances we consider that the only just course of action is to adjourn the hearing of this case. Leaving aside the confused state in which the respondent has been placed, the case is simply not ready to proceed. As the original Orders from Employment Judge Henry foreshadowed, before it can be ready to proceed the respondent has to answer the particularised allegations made by the claimant and (among other things) witness statements need to be produced and exchanged relating to those allegations and answers.
  
14. In all of the circumstances we have decided to adjourn this case to be heard by any Tribunal from **1 April 2019** for three days. The venue of the hearing has been changed to Cambridge, because that offered the opportunity for earlier hearing dates. We bear in mind that the respondent has not attended today, but the dates are so far into the future (and considerably beyond the period during which it was said that Mr Yianni was otherwise engaged) that we consider that the case can be safely listed for those dates without reference to the respondent. We have also made various Case Management Orders directed, in the main, to bringing Employment Judge Henry's Orders up-to-date.

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Employment Judge A B Clarke QC

Date: .....21/9/18.....

Sent to the parties on: .....

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For the Tribunal Office