



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Piotr Jarzebski

v

Greensky Cleaning Ltd

Heard at: Watford

On: 20 November 2018

Before: Employment Judge Alliott

Appearances

For the Claimant: In person

For the Respondent: Mr C Bennison, Counsel

JUDGMENT

1. The full merits hearing of this matter is adjourned to be listed on **Monday 18 February 2019** at 10am with a time estimate of **one day**. It has been listed at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford WD17 1HP to start at 10am or so soon thereafter as possible.
2. By a claim form presented on 28 May 2018 the claimant brought complaints of unfair dismissal and claims for holiday pay and arrears of pay.
3. A notice of hearing listing this matter for 20 November 2018 and making case management orders with directions for a remedy schedule, disclosure and exchange of witness statements was sent to the parties on 6 June 2018. The claimant told me he received this document.
4. By a response form ET3 dated 4 July 2018 the respondent complained that the claimant had failed to provide sufficient particulars of the alleged breaches of contract to enable the respondent to respond to the allegations. Due to that, on 24 July 2018, Employment Judge Ord directed that:

“Order to claimant to set out each and every matter relied upon as a breach of contract by his employer entitling him to resign and claim unfair dismissal.”
5. The claimant did not think that he received that direction, notwithstanding that it was correctly addressed.

6. The claimant failed to comply with any of the directions of the Employment Tribunal. Insofar as the claimant has provided a reason to me today, it is that he thought that his case was sufficiently set out in his claim form.
7. On 7 November 2018 the respondent wrote to the Employment Tribunal requesting that the matter be struck out as the claimant had failed to comply with any of the case management orders and it was listed for hearing on 20 November 2018. That application was copied in to the claimant so he was aware of it. Unfortunately, although the tribunal received that email it did not make its way to the file and consequently no Employment Judge saw it prior to myself being informed of it today.
8. Mr Bennison informed me, and the claimant accepted, that since 18 October 2018 the respondent has been chasing the claimant for documents and a schedule of loss and latterly a witness statement. On 2 November 2018 the respondent wrote to the claimant indicating that nothing had been received from him, there was no schedule and no witness statement and stating that this constituted unreasonable conduct.
9. On 13 November 2018 the respondent further chased up the claimant's witness statement.
10. So it is today that we have a full merits hearing listed in circumstances where the claimant has singularly failed to set out in full detail the remedy he is seeking, has failed to comply with the Order requiring him to particularise all matters relied upon as breach of contract and has failed to turn up with a witness statement.
11. In discussion with the parties I came to the clear view that it was not possible to have a fair hearing of this matter in the absence of those documents. For example, as regards the failure to pay wages claim, the respondent has taken a time point. The claimant for the first time suggested that certain things said by persons as yet to be identified may explain why he did not make a claim sooner than he did. The respondent has no idea as to what case it has to meet.
12. In my judgment, my options today were twofold. I could strike out the claimant's claim for failure to comply with Case Management Orders or I could adjourn the hearing. I direct myself in terms of the law that in deciding whether to strike out a party's case for non-compliance with an Order under Rule 37(1)(c), a tribunal will have regard to the overriding objectives set out in Rule 2 of seeking to deal with cases fairly and justly. This requires a tribunal to consider all relevant factors including the magnitude of the non-compliance, whether the default was the responsibility of the party or his or her representative, what disruption, unfairness or prejudice has been caused, whether a fair hearing would still be possible and whether striking out or some lesser remedy would be an appropriate response to the disobedience.
13. On the one hand I consider that the non-compliance is of some magnitude in that the claimant has failed to comply with basic preparation for a hearing of

a case which he is presenting. The responsibility for the default is clearly the claimant's personally. The disruption is significant in that the full merits hearing has had to be adjourned. I have considered prejudice to the respondent and whether a fair hearing would still be possible. Mr Bennison has submitted that the claimant will have the advantage of having seen the respondent's evidence and has the opportunity of responding to it. That may or may not be a fair point and I do not discount it. This case will be reserved to myself as we have begun and it is a matter that can be dealt with in submissions. It will be a factor that I bear in mind when I come to hear the case. What I do take into account is the fact that the claimant is a litigant in person. I take into account that it is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented. According to the EAT in AQ Ltd v Holden [2012] IRLR 648 EAT, an Employment Tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Justice requires that tribunals do not apply professional standards to lay people who may well be embroiled in legal proceedings for the only time in their life. Lay people are likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. The EAT stressed that tribunals must bear this in mind.

14. I have to consider whether a strike out on the grounds of non-compliance is a proportionate response to the non-compliance.
15. In the overall circumstance of this case I have come to the decision that an adjournment of the hearing with appropriate Unless Orders and the opportunity for the respondent to make an application for wasted costs would ensure fairness and justice as between the parties without debarring the claimant from a trial altogether.
16. Consequently, I have decided to adjourn this matter.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. I make the following Case Management Orders by consent.
2. The claimant is ordered to serve on the Tribunal and the respondent so as to arrive prior to **4pm on 4 January 2019** the following documents:
 - 2.1 A document setting out in writing what remedy the Tribunal is being asked to award. The claimant shall include any evidence and documentation supporting what is claimed and how it is calculated. The claimant shall also include information about what steps the claimant has taken to reduce any loss (including any earnings or benefits received from new employment).
 - 2.2 The claimant shall prepare a full written statement of the evidence the claimant intends to give at the hearing. No additional witness

evidence may be allowed at the hearing without permission of the Tribunal. The written statement shall have numbered paragraphs. The claimant to the respondent shall send the written statement Two copies of each written statement shall be provided for use by the Tribunal at the hearing (and not before).

- 2.3 A document in which the claimant is to set out each and every matter relied upon as a breach of contract by his employer entitling him to resign and claim unfair dismissal.
- 2.4 The claimant's witness statement should deal with issues concerning his claim for unpaid wages, in particular deal with the time point that has been taken by the Respondent and include any application for an extension of time as may be appropriate.
- 2.5 **THIS IS AN UNLESS ORDER. IF THIS ORDER IS NOT COMPLIED WITH BY THE DATE SPECIFIED THE CLAIM SHALL BE DISMISSED WITHOUT FURTHER NOTICE**
3. The respondent may, if so advised, serve and file any supplementary witness statements by **4pm on 25 January 2019**.
4. In the event that the respondent wishes to make an application for costs wasted as a result of the adjournment today, then such application should be made and served on the claimant and will be dealt with by myself at the conclusion of the Full Merits Hearing on 18 February, 2019. Any such application should be made to the tribunal and served on the claimant by **4pm on 1 February 2019**. The claimant can make such representations as he wishes to do so in writing or at the hearing in response to that application.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Alliott

Date: ...21 December 2018.....

Sent to the parties on:

.....
For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.