Case Number: 2200016/2018

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Mr R Patel		**(1) Securitas Security Services (UK) Ltd** **(2) Mr K Larsen** **(3) Mr J Barnes** **(4) Mr I Ryan**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 4 January 2019**

BEFORE: Employment Judge A M Snelson (sitting alone)

On hearing the Claimant in person and Mrs J Young, in-house counsel, on behalf of the Respondents, the Tribunal adjudges that:

(1) All claims are struck out.
(2) Accordingly, the entire proceedings are dismissed.

REASONS

Introduction

1. The Claimant is 46 years of age. He has the misfortune to suffer from ulcerative colitis, a condition which he claims to amount to a disability. He entered the employment of the First Respondents ('Securitas') as a security guard on 9 May 2017 and was summarily dismissed from that employment on 21 or 22 December 2017, on the stated ground of misconduct.

2. By his claim form in these proceedings, the Claimant brought against the above-named Respondents and two further individuals (against whom all claims were later dismissed) complaints of 'automatically' unfair dismissal and disability discrimination together with claims for notice pay (*ie* wrongful dismissal), holiday pay, arrears of pay and 'other payments'. The document was not a model of clarity. All claims were resisted.

3. At a lengthy preliminary hearing (case management) on 28 March 2018, Employment Judge ('EJ') Glennie identified the complaints and claims which the Claimant was seeking to put forward and fixed a public preliminary hearing to consider whether any element of the case should be dismissed for want of jurisdiction on time grounds, alternatively struck out as having no reasonable prospect of success, alternatively made the subject of a deposit order as having little reasonable prospect of success.

4. The public preliminary hearing came before EJ Spencer on 10-11 May 2018. That judge:

   (a) Gave the Claimant permission to amend the claim form to make it conform with the list of (intended) claims identified by EJ Glennie;
   (b) Refused an application by the Respondents for the claims to be struck out on account of scandalous and/or vexatious behaviour by the Claimant;
   (c) Declined to rule on the time-based challenge to the discrimination claim, leaving that to be determined at the final hearing;
   (d) Refused to strike out the unfair dismissal claim against Securitas, the disability discrimination claim against all Respondents, the wrongful dismissal claim against Securitas, three money claims against Securitas and two further miscellaneous matters noted to stand in one case as a potential application for costs and in the other as a potential claim for a remedy for unlawful discrimination;
   (e) Struck out all other claims;
   (f) Made a deposit order in the sum of £250 in respect of the complaint of unfair dismissal.

   In the written deposit order sent some time later, the Claimant was given until 5 July 2018 to pay the deposit. The order was in standard form, accompanied by the usual notices drawing attention to the effect of a deposit order and the consequence of failing to pay the deposit in accordance with the order.

5. The matter next came before EJ Glennie on 24 July 2018 in the form of a private case management hearing. The Claimant did not attend. His prior applications for a postponement on 20 July, on the ground of work commitments, and on 23 July on the ground of ill-health, were refused (the latter by EJ Glennie, for reasons given in his note of the case management discussion). By his order sent on 1 August 2018, that judge, so far as material:

   (a) Gave directions (para 3.1) for delivery to the Respondents by 4 September 2018 of a signed statement of the evidence he intended to give and a schedule setting out all losses he intended to claim;
   (b) Gave standard directions for disclosure of documents on lists, service of copy documents, preparation of a bundle and exchange of witness statements of all witnesses to be called by the Respondents and any supporting witness for the Claimant;
   (c) Fixed a final hearing for five days between 18 and 22 February 2019.

In his accompanying note of the hearing the judge explained his requirement for the Claimant to deliver his witness statement first. He also went to some trouble to set out the nature and purpose of witness statements, pointing out that they must set out all the evidence intended to be given, should address facts rather than legal argument and should not contain lengthy quotations. He went on to draw attention specifically to the need for the Claimant's statement to address his medical condition, its impact on his ability to undertake normal day to day activities, and his case as to time limits (in particular why he brought his claims when he did and not earlier). This guidance was explicitly referred to in the body of the order (para 3.1).

6. Without explanation or apology, the Claimant delivered a schedule of loss some 10 days late and failed altogether to comply with the direction to deliver a witness statement.

7. By an application of 19 September 2018 the Respondents sought to have the proceedings struck out on the ground that the Claimant had failed to produce a witness statement and (a much lesser complaint) delivered the schedule of loss late.

8. On the same date, the Respondents made a separate application for the unfair dismissal claim to be struck out on the ground that the Claimant had failed to pay the deposit ordered by EJ Glennie.

9. The Claimant having failed to respond to either of the applications of 19 September, the Tribunal wrote to the Claimant on the instructions of Regional Employment Judge Potter extending time for providing the witness statement to 23 October and adding:

> **If the Tribunal's orders made on 1 August 2018 are not complied with by this date, you will be at risk of your claim being struck out for non-compliance with Tribunal orders and for unreasonable conduct of the proceedings.**

10. The Claimant did not comply with the extended deadline of 23 October 2018.

11. On 25 October the Respondents made another application for the claims to be struck out, relying on the failure to meet the extended deadline.

12. The Claimant did not respond to the application of 25 October until pressed to do so by the Tribunal in a letter of 31 October, to which he replied in these terms:

> **The request from the respondent is untrue and [biased] but also it is not true and should [have] been thrown out because I have already enough evidence and documents which also includes my Hospital Medical Reports as my evidence …**

With that message he sent screen shots of various documents. They did not, and could not, singly or collectively, serve as a statement of his evidence.

13. On 12 November 2018 the Respondents made a further application for the claims to be struck out for non-compliance with EJ Glennie's order. By then the Claimant was in breach of the direction for disclosure as well as the requirement to serve a witness statement, with the consequence that the Respondents were not in a position to finalise their own disclosure or prepare the bundle of documents.

14. The Tribunal set up a public preliminary hearing to determine the strike-out application, which came before me on 4 January 2019. The Claimant appeared in person, having failed in prior correspondence to persuade the Tribunal to postpone the hearing. The Respondents were represented by Mrs Young, in-house counsel.

15. Mrs Young produced a helpful skeleton argument and briefly developed her main points orally. Having allowed the Claimant a full opportunity to respond (I will deal below with what he had to say), I gave an oral judgment, striking out all claims.

16. These reasons are supplied pursuant to an oral request by the Claimant at the hearing.

The applicable law

17. By the Employment Tribunals Rules of Procedure 2013 ('the Rules'), r39(1) the Tribunal has power to require a party to pay a deposit as a condition of continuing to advance any allegation or argument judged to have "little reasonable prospect of success". The same rule includes, so far as material:

> **(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out …**

18. By r37(1)(c) of the Rules, the Tribunal has power to strike out the whole or part of a claim or response on the ground that the relevant party has failed to comply with a relevant rule or order.

19. In *Weir Valves (UK) Ltd v Armitage* [2004] ICR 371 the EAT (HH Judge Richardson and members) considered the correct approach to the application of the predecessor of r37(1)(c). Following the observation that the Tribunal must be free to impose a sanction where there has been wilful disobedience of an order, the judgment continued:

> **17. But it does not follow that a striking-out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The court should consider all the circumstances. It should consider**

> **the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to disobedience.**

Conclusions and outcome

20. I start with the unfair dismissal claim. As I read the Rules, r39(4) gives the Tribunal no discretion: if the deposit order stands and the deposit is not paid by the due date, the Tribunal *must* strike out the relevant allegation or argument. Here, the 'allegation' was that the Claimant was unfairly dismissed. In other words, the strike-out must attach to the entire unfair dismissal claim.

21. Was there any possible basis for varying or revoking the deposit order? The question must receive a negative answer. The Claimant made no application relating to the deposit order, before the compliance date (5 July 2018) or at any time thereafter. On the face of it there appeared to be no ground for challenging the order or seeking to have it reconsidered. In any event, such an application would have had to be directed to the judge who made the order, EJ Glennie, not to me.

22. In short, the right course and the only course open to me was to strike out the unfair dismissal claim under r39(4).

23. Turning to the broader application under r37(1)(c), I was troubled by the difficulty of persuading the Claimant to focus on the danger in which the application placed his case and to give me reason to think that if his repeated breaches of the order of EJ Glennie were met with a sanction less severe than striking-out, there would be a reasonable prospect of an effective hearing of the dispute. Repeatedly, he attempted to develop arguments about the substance of his case and repeatedly, I advised him that the hearing before me was not about the substance and, moreover, that I was proceding on the assumption that he had a good case. Nonetheless, the question before me was whether it should be struck out for repeated breaches of the order. Unfortunately, within a few moments, the message appeared to be lost and the Claimant returned to attempting to argue the merits or (another topic resorted to with almost equal enthusiasm) making obviously preposterous allegations of professional misconduct against Mrs Young.

24. In the rare and brief moments when the Claimant was constrained to address the complaint that he had breached the order of EJ Glennie, he resolutely denied doing so, pointing to numerous documents which he has submitted (the Tribunal file is enormous). Even when I took him to the language of EJ Glennie's order and accompanying guidance, he was unmoved.

25. The repeated breaches of the order were patent and obvious. The denial of those breaches was incomprehensible and absurd.

26. Having given the matter very careful consideration and reminded myself of the terms of r37(1)(c) of the Rules and the guidance in the *Armitage* case, I was reluctantly but irresistibly driven to the conclusion that the only proper course open to me was to strike out all that remained of the case. To do otherwise would be contrary to the overriding objective (see the Rules, r2). I was unable to understand the Claimant's stance, which seemed irrational. He did not assert any difficulty in understanding the requirements of the order and I had no basis for inferring a medical obstacle to compliance. In the end, the reason(s) behind his behaviour remained, for me, a mystery, but I had to proceed on the basis that he was capable of making choices and had elected to act as he had: his repeated breaches were both serious and wilful. That assessment alone warranted summary dispatch of the case, but my main ground for making a striking-out order was that, whatever the explanation for the breaches, there was no realistic prospect of the Claimant changing course. That being so, there was no realistic prospect of him producing a statement from which it might be possible for the Respondents to discern his core complaints and answer them. In those circumstances, there was no realistic prospect of a fair hearing and it would be unjust to expose the Respondents to the expense and worry of resisting the case any longer.

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EMPLOYMENT JUDGE SNELSON
14 January 2019

Judgment entered in the Register and copies sent to the parties on 15 Jan. 19

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