

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: MR A CERULLO

Respondent: ZIANI'S LIMITED

PRELIMINARY HEARING

HELD AT: London Central

ON: 16 January, 2019

HEARD BY EMPLOYMENT JUDGE: Oliver Segal Q.C.

Representation:

For Claimant: In person

For Respondent: Mr B Randle, counsel

JUDGMENT

1. All the Claimant's claims are struck out.
2. No order is made in respect of costs.

REASONS

Introduction

3. This was an open preliminary hearing listed to determine the Respondent's applications to strike out/order deposit(s) in respect of the claims and for a wasted costs order arising out of an earlier abortive PH, and if appropriate to make further case management orders.
4. The original listing of the full hearing, due to commence today, was vacated.
5. The ET1 makes claims of unfair dismissal and for money owed; the details of claim refer to sexual harassment by a chef and a failure to pay minimum wage.

6. After the ET3 was received, the ET made orders for the Claimant to provide by 26 October 2018 details of those two claims.
7. The Claimant sent some documents, including in relation to the minimum wage claim, but not in relation to the claim of sexual harassment; but that did not constitute compliance with the ET's orders and on 24 October 2018 the Claimant was asked again to comply with the earlier orders to clarify his claims in preparation for a PH listed on 19 November 2018 ("the First PH"), at which the Claimant was advised his failure to comply would be considered.
8. The First PH took place in the Claimant's absence. The Claimant turned out to be abroad and the Judge recorded that he had told a clerk he was under the impression an advice centre representative would be attending for him.
9. It became clear at the First PH that a second claim (2206017/18) had been lodged which overlapped with 2205200/18. The two cases were conjoined. Today's PH was listed and an unless order was made requiring the Claimant to comply with the earlier orders to clarify his claims by 3 December 2018.
10. Subsequently, on receiving evidence of the Claimant's ill health, the ET determined that the material order was "no longer an unless order".
11. Without going into unnecessary details in this document, the Claimant produced evidence before and at today's hearing that at all times from at least October 2018 he has been suffering from significant mental health issues.

The application to strike out the claims

12. Despite suffering from ill health, the Claimant was able to provide and did provide a coherent and transparently honest account of what his claims were about.
13. He understood and quickly conceded that he did not have sufficient continuity of service to bring an unfair dismissal claim and agreed that I should strike that claim out.
14. He explained the claim of sexual harassment as referring to an occasion in about January or February of 2017 when a male chef had grabbed him from behind (he demonstrated) whilst he was bending down and had made a rough movement simulating sexual penetration.
15. That claim was therefore presented some 14 months out of time. Given the lengthy period by which it is out of time, together with the Claimant's repeated failure to provide any clarification of that claim when ordered, I do not consider it would be just and equitable to extend time to allow the claim to proceed.
16. I therefore strike out that claim.

17. As to the minimum wage claim, the Claimant explained that he had raised the issue of underpayments within a few months of starting once he looked at his payslips. He said his employer acknowledged that he was right, but only began paying him the correct amounts from that time, without – and this was the essence of his complaint – backdating adjustments to the commencement of his employment. Thus, he says, he was underpaid for about 15 weeks at the start of his employment.
18. This claim is also, therefore some 13-14 months out of time, pursuant to s. 23 ERA 1996; and it was clearly reasonably practicable for the Claimant to have complained to the tribunal about that within the stipulated 3 month period (by, say, the end of June 2017).
19. I must therefore strike out this claim also.

Application for costs

20. The Respondent sought its costs of the abortive First PH in the sum of £554, pursuant to r. 76 ETR.
21. The Claimant explained that his means were as follows: he was not in work and had not been in work for some time; he was signed off sick until March 2019; he lived in Council accommodation, his rent being met from universal credit payments; he had debts to banks totalling £2,300 and was paying £1 a month by agreement to his wife (or ex-wife) from whom he is separated.
22. The Claimant told me, and I accept, that the reason he did not attend the First PH and did not let the ET know in advance was because, as a result of his ill health, he was not properly absorbing and/or remembering written information.

23. Taking the above matters into account, I do not consider it appropriate to make any costs order and do not do so.

EMPLOYMENT JUDGE SEGAL

16 January 2019 London Central

**Date Sent to the Parties
23 Jan. 19**

For the Tribunal Office

IMPORTANT NOTES

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.