



EMPLOYMENT TRIBUNALS

Claimant: Mr L Faricy

Respondent: Booker Ltd

HELD AT: Manchester

ON: 23 January 2018

BEFORE: Employment Judge Tom Ryan

REPRESENTATION:

Claimant: No attendance

Respondent: Mr L Ashwood, Solicitor

JUDGMENT

The judgment of the tribunal is that:

the claim is struck out on the ground that it has not been actively pursued.

REASONS

1. On 6 August 2018 the claimant presented a complaint of unfair dismissal. It appeared to allege also that he had made protected disclosures.
2. In the claim form the claimant provided an email address. The address that was provided was used by the tribunal in all correspondence to him. Neither the tribunal (nor, subsequently, the respondent) had any intimation that emails to that address had failed.
3. On 24 August 2018 the tribunal sent to the claimant a notice for a preliminary hearing to take place on 22 October 2018.
4. On 20 September 2018 the tribunal received a response from the respondent which was forwarded to the claimant on 24 September 2018.
5. On 15 October 2018 the claimant sent a completed copy of the agenda form to the tribunal and copied it to the claimant referring to the date and time of the preliminary hearing which had been listed.

6. The claimant did not appear at the rehearing before Employment Judge Batten on 22 October 2018. She listed the matter for a further preliminary hearing to take place on 23 January 2018. The resulting order was sent to the claimant on 5 November 2018 and included a warning that if he did not comply with the orders it might be struck out in accordance with rule 37 of the Employment Tribunal Rules of Procedure 2013.
7. The orders made by EJ Batten included providing further particulars to the tribunal and the respondent by 26 November 2018. The claimant did not do so.
8. On 2 January 2019 the respondent applied to strike out the claim on the ground that he was not complying with the tribunal's order and was not actively pursuing his claim. That application was copied to the claimant.
9. On 16 January 2019 the respondent wrote to the tribunal and the claimant seeking confirmation of the date and time of this hearing (because an incorrect date had been inserted in a previous piece of correspondence).
10. On 18 January 2019 the tribunal wrote to both parties confirming the date and time of this preliminary hearing. By a second letter of that date the tribunal confirmed that it considered there was sufficient time at this hearing (again identifying the date) to consider the application to strike out.
11. There appear to have been at least 8 communications to the claimant from the tribunal. The claimant has not responded to any of them. Nor has he communicated with the tribunal in any other form since presenting the claim form according to the information I received from the tribunal staff. The respondent confirmed that it had received no communication from the claimant.
12. I concluded that there was substantial information upon which I could properly conclude that this claim has not been actively pursued over a period of several months.
13. Upon that basis my discretion to strike out the claim pursuant to rule 37 is triggered.
14. Before I decided whether to do so I considered whether some alternative order or step should be taken, recognising that an order striking out a claim is a Draconian sanction.
15. I considered it was not open to me to do nothing at this stage. Some order must be made in accordance with the overriding objective to bring the claim to a conclusion.
16. In those circumstances the options before me were: to simply make a further order or list a further hearing, to make a further order and attach to it an "unless" provision such that, if the claimant should not comply with that further order, the claim would be automatically struck out pursuant to rule 38, or to strike out the claim now pursuant to rule 37. Of those options I rejected the first on the ground that it was unlikely to lead to the matter being progressed properly.

17. It is not usual for a claimant simply to present a claim and then have no further communication with the tribunal. I recognised that it was possible that some life event had occurred to the claimant which prevented him from responding with the tribunal, perhaps through grave illness, for example. In the absence of some such event then the only conclusion to which I could logically come was that the claimant having started these proceedings had simply decided not to pursue them for some reason of his own.
18. In those circumstances it appeared to me that this was one of those cases where the form of order made at this stage was not of great significance in the exercise of the tribunal's discretion.
19. If I made an unless order and the claimant did not comply with it, and it then came to light that he had been unable to do so for the same or a similar reason as that which demonstrated why he had not communicated with the tribunal so far, an application for a reconsideration of the order could be made by him.
20. In the event that the claimant had a good reason for not complying with the order or the tribunal's earlier orders or directions then the unless order could be revoked and the claim could thus be permitted to proceed.
21. If, on the other hand, I decided to strike out the claim on the ground that the claimant had not pursued it and he could then show at an application for reconsideration of that judgment a similar obstacle to his having pursued the claim then the tribunal could make the same decision on the application.
22. In choosing the form of order in these particular circumstances I decided that simplicity was the better course of action. An order striking out the claim in my judgment places the claimant at no more serious disadvantage than an unless order with which I consider it is highly likely he will not comply having regard to the history.
23. Moreover, that form of order is likely to involve the respondent in less future wasted expense. The advantage to the respondent may be marginal but so far it has had to incur the expense of defending a claim that appears, at this stage, to have been one that the claimant, absent such a feature as grave illness, had no intention of pursuing.
24. I therefore decided to strike out the claim as not having been actively pursued pursuant to rule 37.

Employment Judge Tom Ryan

Date 23 January 2019

JUDGMENT SENT TO THE PARTIES ON

28 January 2019

FOR THE TRIBUNAL OFFICE

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