



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4117006/2018

5

Held in Glasgow on 31 October 2018

Employment Judge: Ian McPherson

10

Mr Hugh Graham

**Claimant
Represented by:
Mr Ryan Russell
- Solicitor**

15

(1) Argent Energy (UK) Limited

**First Respondent
Represented by:
Mr Stephen Hughes
- Advocate**

20

(2) Mr James Walker

**Second Respondent
Represented by:
Mr Alistair Murdoch
- Solicitor**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Judgement of the Employment Tribunal is that:-

- (1) Having heard parties' representatives in Case Management Preliminary Hearing, and, at the close of that Preliminary Hearing, counsel for the first respondents being excused from further attendance, his clients not being a party to the opposed application for Strike Out of the claim against the second respondents, and the solicitors for the claimant and second respondents agreeing that, so as to prevent delay and avoid unnecessary expense, the matter of that opposed application should be dealt with then, at this sitting of the Tribunal, rather than at a freshly convened Preliminary Hearing at a later

35

E.T. Z4 (WR)

date, the Tribunal notes and records that they consented to this Hearing being converted from a Case Management Preliminary Hearing into a substantive Preliminary Hearing to allow the second respondents' opposed application to Strike Out the claim against the second respondents, in terms of **Rule 37 of the Employment Tribunals Rules of Procedure 2013**, on the three grounds set forth in the second respondent's solicitor's written application dated 24 October 2018, to be heard at this Hearing.

(2) Having reserved Judgment, and following private deliberation, in chambers, and taking account of the oral submissions made by the solicitors for the claimant, and second respondents, the Tribunal has **refused** to Strike Out the claim against the second respondents, on the basis that, at this stage of these Tribunal proceedings, it is not in the interests of justice to do so, nor is it in accordance with the Tribunal's overriding objective under **Rule 2 of the Employment Tribunals Rules of Procedure 2013** to deal with the case fairly and justly, in circumstances where the claimant's solicitor argues that the terms of an *Interim* interdict granted by the Sheriff at Hamilton on 27 June 2018, in a civil action by the second respondent against the claimant, under case number no. HAM-A270-18, is in force, and for the claimant, and / or his solicitor, to provide further specification of the claim could be the subject of proceedings in the Sheriff Court for breach of that interim interdict.

(3) In light of the information provided to the Tribunal at this Hearing that the claimant in these Tribunal proceedings, as defender in that civil action, has enrolled a motion, to be heard on Wednesday, 7 November 2018, to recall / relax that *interim* interdict, so as to allow him to provide further and better specification and fair notice of the basis of claim against both respondents, and further noting that that motion has been opposed by the solicitor for the second respondents, as pursuer in that civil action at Hamilton Sheriff Court, this Tribunal considers that, in this *forum*, parties are therefore not on an equal footing at this stage.

(4) The Tribunal notes and records that the claimant wishes to pursue his claim before this Tribunal, and his solicitor has confirmed at this Hearing that the

claimant seeks to actively pursue his claim before the Tribunal, once the *interim* interdict is recalled, or relaxed, appropriately, to allow him to fully plead the claimant's case against both respondents in this Tribunal, in fuller terms than at present in the ET1 claim form presented on 27 August 2018, following
5 ACAS Early Conciliation between 29 June 2018 and 29 July 2018.

- (5) In these circumstances, the Tribunal finds that it would be draconian to Strike Out the claim, at this stage, before the claimant has had an opportunity to fully plead his case, and both respondents have had the opportunity to reply to the
10 claimant's further and better particulars of claim, and the Tribunal, at that stage, with the benefit of all parties' revised pleadings in the claim and responses, has considered further procedure in these Tribunal proceedings, at a future Case Management Preliminary Hearing held before Employment Judge Ian McPherson at Glasgow Employment Tribunal, on a date to be
15 hereinafter assigned by the Tribunal.

REASONS

1. This case called before the Tribunal on the afternoon of Wednesday, 31 October 2018, for a Case Management Preliminary Hearing, further to Notice of Preliminary Hearing issued to all parties by the Tribunal under cover of the
20 Tribunal's letter dated 30 August 2018.
2. As per standard practice, it was listed for a one-hour Hearing in private, before an Employment Judge sitting alone. On 30 October 2018, in refusing the claimant's solicitor's application to postpone the Case Management
25 Preliminary Hearing, I directed that the duration of the Hearing be extended to two hours.
3. All parties enjoyed the benefit of legal representation. Having considered parties completed Preliminary Hearing agendas, case management orders
30 regulating further procedure before the Tribunal will be issued under separate cover in a written Note and Orders to be issued by the Judge.
4. Full written reasons for the Judge's decision to refuse the second respondent's application for Strike Out of the claim are **reserved**, and those

reasons will be given, in writing, in due course, in terms of **Rule 62 of the Employment Tribunals Rules of Procedure 2013.**

5 **Employment Judge: GI McPherson**
Date of Judgment: 05 November 2018
Entered in register : 05 November 2018
and copied to parties

10