



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimant Mr A Barutchiev

AND

Respondent Igloo Automotive Arctics Ltd

HELD AT: London Central on 13/3/2019

Employment Judge: Mr J S Burns

Representation

Claimant: No appearance

Respondent Ms K Swan (Solicitor)

JUDGMENT

The Claimant's Race Discrimination claim is struck out.

REASONS

1. The matter was listed (to consider the Respondent's strike-application) at an open PH today, by notice sent to the Claimant's current address on 15/1/2019. The Respondent's solicitor and a Bulgarian interpreter (arranged by the Tribunal for the benefit of the Claimant) attended but the Claimant did not. Raymond Giles, a tribunal clerk, telephoned the Claimant at my request. The Claimant said he was at a hospital with his mother-in-law who had cancer. He also said that some time ago he had instructed a lawyer, a Ms Koychevo, (whose telephone number he gave), and she had written in to the Tribunal requesting an adjournment of the hearing today, and what is more Ms Koychevo was herself indisposed because of pregnancy. He did not intend attending today.
2. Mr Giles then tried to telephone Ms Koychevo on the number given, but was answered by an answer machine only. He then searched in the tribunal offices and email inboxes for any recent message requesting an adjournment from or on behalf of the Claimant. No message requesting an adjournment could be found. The last communication from the Claimant to the tribunal was his email of 10/1/2019. The Respondents solicitor confirmed that the Respondent and its solicitors had received no contact from or on behalf of the Claimant since December 2018.

3. I decided not to adjourn the hearing. I am not satisfied by the Claimant's excuses for not attending. There is no proper application to adjourn before me. If he did want an adjournment he should have contacted the Respondent's solicitors as well as the tribunal before today to try to arrange this in an orderly manner. He could also have submitted written representations in relation to the application today, as he was invited to do by the Order dated 9/1/2019. The case has already been the subject of previous adjournments and delays caused by the Claimant. The facts of the case are already stale, dating from 2017. Given the Claimant's approach to this litigation I have no confidence that if I adjourned he would attend any subsequent hearing or comply with directions. It is contrary to the overriding objective to further adjourn.
4. The only extant claim is race discrimination. Following a previous hearing on 18/7/2018 at which the Claimant was represented by a solicitor, Mr Brown, the Claimant's solicitor was sent on 3/8/2018 an order containing directions which had been given orally at the hearing to allow the parties to prepare for a trial on 29 and 30 November 2018. The Order ends with a warning that if the directions were not complied with, the Tribunal may strike out the claim.
5. The Claimant was required by 3/8/2018 to give (i) further particulars of his comparators and other details relating to his claim and (ii) a statement of remedy and schedule of loss, to include details of any mitigation by way of his having obtained alternative employment, and by 17/8/2018 he was required to give disclosure of his documents including those pertaining to remedy. By 31/8/2018 he was to produce a final hearing bundle pertaining to remedy.
6. The Claimant failed to comply with any of these directions. As a result the Respondent made an application on 9/11/2018 to strike out the claim. On 26/11/2018 (that is nearly four months late) the Claimant supplied further particulars. As a result the trial starting on 28/11/2018 had to be adjourned shortly before it was due to commence.
7. On 6/12/2018 Mr Brown confirmed that he had ceased acting for the Claimant.
8. Despite numerous chasing letters and warnings written to the Claimant by both the Respondents solicitors and the tribunal itself, the Claimant has failed to comply with any of the other directions, and this remains the case today. As a consequence the Respondent has itself been unable to prepare for trial. The case is still not ready to be listed. I am not satisfied that a fair trial is still possible given the passage of time and the continued refusal to provide basic information.
9. I have taken into account the fact that the Claimant does not speak English as his first language. However, as appears from his various emails, he can write and understand English reasonably well and also he did not have any difficulty conversing in English with Mr Giles on the

telephone. He would have been provided with a tribunal interpreter to assist him had he attended. In any event any language difficulties do not provide a reasonable excuse for his non-compliance for over six months with basic directions, which were first given to him when he was represented by a solicitor.

10. I am aware that striking out is a draconian measure but in my judgment it is now justified in this case. The manner in which the Claimant has conducted this case has already wasted public money, prevented other cases being heard earlier, and increased costs. Protracted litigation of this type unfairly detracts from an employer's primary concern, which is to run its business.
11. I therefore strike out the case on the grounds (i) that the manner in which it has been conducted has been unreasonable (ii) that there has been non-compliance with an order of the Tribunal (iii) that it has not been actively pursued, and (iv) that it is no longer possible to have a fair trial, under Rule 37(1)(b)(c)(d) and (e) respectively.

13/03/2019

Employment Judge London Central

For Secretary of the Tribunals

Date sent to the Parties
18 March 2019