



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mrs R Azeem Taj

Harvey & Thompson Limited

PRELIMINARY HEARING

HELD AT London South

ON 3 May 2019

EMPLOYMENT JUDGE BALOGUN

Appearances

For Claimant: In Person

For Respondent: Mr G Lomas, Consultant

COSTS JUDGMENT

The Claimant is ordered to pay the Respondent £160 towards its costs of attending the hearing on 8 January 2018.

REASONS

1. This hearing was to consider the Respondent's application of 16.5.18 for strike out of the Claimant's claim.
2. The application was brought pursuant to rule 37 of the Tribunal Procedural Rules of 2013.
3. Rule 37 (1)(b) provides that a claim or response can be struck out if, amongst other things, the manner in which the proceedings have been conducted has been unreasonable.
4. The issues I had to decide were: i) has there been unreasonable behaviour and if so; ii) Should the claim be struck out as a result.

Findings

5. By a claim presented 28.9.17, the Claimant brought complaints of unfair dismissal (even though she was still employed), age, race and pregnancy discrimination and unlawful deduction of wages.
6. A notice of Preliminary Hearing dated 2.11.17 was sent to the parties informing them that a case management hearing would take place at the Employment Tribunal office in Croydon on Monday, 8 January 2018 at 2pm. Accompanying the notice was a Case Management Agenda proforma for completion by the parties.
7. The Claimant did not attend the hearing and as a result, Employment Judge Spencer issued a Case Management and Unless Order, ordering the Claimant to write and confirm that she was still pursuing her case and to explain why she had not attended the hearing. That order was sent to the parties on 23 January 2018 by email.
8. The Claimant received that email as on the same day, she responded with an explanation for her non-attendance. Her explanation was that the tribunal's notice of hearing went straight to her spam folder and that she only discovered it when she checked her emails the day before i.e. 22 January 2018.
9. The Tribunal responded, stating that the notice of hearing was sent by post. The Respondent also confirmed that it received the notice by post. The Claimant has not produced the notice of hearing she claims was emailed to her, even though she was given an opportunity to retrieve it from her mobile phone. The Claimant says she did not receive anything in the post though accepts that the address on the face of the letter is her home address. The notice was not returned to the tribunal undelivered. I am satisfied from the evidence that the notice was sent by post, not email.
10. On 3 January 2018, prior to the hearing, the Respondent emailed the Tribunal, cc to the Claimant, attaching its completed Agenda for the hearing. The email refers to "*the PH to take place on 8 January 2018.*" The Claimant confirmed to the tribunal that she received this email but did not read it fully so did not see the reference to the hearing date as she was focusing on the attached Agenda.
11. The Claimant rang the Respondent's representative that same day and left a voicemail querying the Agenda she had received from him.
12. In response to the voicemail, Mr Lomas sent a further email, this time directly to the Claimant, explaining that the Agenda was for use at the hearing on Monday. The Claimant says that she did not receive this email as it went into her spam folder.
13. In her email of 23 January to the tribunal, the Claimant does not provide the explanation she has provided today. Indeed, she makes no reference to the Respondent's 2 emails of 3 January, and by that time, she would have been aware of both of them, if, as she claims, she checked her mail box on 22 January.

Conclusion

14. On the question of unreasonable behaviour, the onus was on the Claimant, having presented her claim to take pro-active steps to pursue it. That must include reading correspondence received from the Tribunal and her opponent relating to the case.
15. The Claimant has not provided a satisfactory explanation as to why she did not attend the hearing on the 8 January 2018 and in those circumstances, I find that it was unreasonable for her to fail to attend.

16. On the question of strike out, this is a draconian sanction and should not be ordered lightly. For a claim to be struck out on grounds of unreasonableness, case law says that I need to be satisfied that the conduct in question involved deliberate and persistent disregard of required procedural steps making a fair trial impossible. Blockbuster Entertainment Ltd v James 2006 IRLR 630 CA. The Claimant's conduct, although unreasonable cannot be categorised in these terms. Further, the Respondent does not say that the cogency of the evidence is affected in any way or that a fair trial cannot be had. The only prejudice the Respondent refers to is in relation to wasted costs in attending the 8 January hearing, which can be mitigated by a costs order.
17. In all the circumstances, the application for strike out is refused.
18. As a result of the Claimant's unreasonable behaviour, the Respondent had incurred costs in attending the previous hearing. After hearing from the Respondent on level of costs incurred and also noting what the Claimant had to say about her limited means, I ordered the Claimant to pay the Respondent £160 towards its costs.

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Employment Judge Balogun
Date: 8 May 2019