



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BETWEEN:

Mr R Greenwood

Claimant

and

Euro Car Parks

Respondent

JUDGMENT

The claims are struck out and the hearing on 5 June 2019 is vacated.

REASONS

1. In this matter the respondent has applied for the claims to be struck out pursuant to rule 37 (1)(b) (c) (d) &/or (e) of the Employment Tribunal Rules of Procedure 2013 which state as follows:

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

2. In considering this application it has been necessary to consider the lengthy procedural history of this matter, which in summary, is as follows.

3. On 7 April 2017 the claimant, acting in person, submitted a claim of unfair dismissal, age discrimination, unpaid notice pay and arrears of pay to the tribunal. A case management discussion was held on 10 July 2017 at which the claimant did not attend. Orders were made at that hearing requiring him to provide further information regarding his claim of age discrimination by 28 July 2017 and a schedule of loss by 31 July 2017. Other case management orders were made and the matter was listed for a full merits hearing on 9 May 2018.
4. The claimant failed to comply with the order of 10 July 2017 in respect of further particulars and accordingly it was recorded that an age discrimination complaint was not made. He also failed to comply with the order to file a schedule of loss and was directed to do so forthwith and to respond on or before 22 September 2017.
5. The claimant failed to reply and on 1 November 2017 a letter was written to the claimant informing him that consideration was being given to striking out his claim for breaches of tribunal orders and failure to pursue his claim. He was directed to inform the tribunal in writing within 10 days of any reasons why his claim should not be struck out.
6. The claimant replied in writing by letter dated 7 November 2018 however he gave no indication of when he proposed to comply with the tribunal orders. The tribunal wrote to the claimant on 18 January 2018 informing him that he was expected to comply with the directions and to notify the tribunal of his response on or before 25 January 2018. The claimant failed to reply and he was sent a strikeout warning by the tribunal dated 7 February 2018 with a response required by 21 February 2018. The claimant wrote to the solicitors acting for the respondent on 8 March 2018, with a copy to the tribunal, indicating his intention to pursue his claim but saying he found it difficult dealing with the process.
7. On 30 April 2018 an unless order was sent to the claimant by the tribunal requiring him to provide the respondent with his schedule of loss by 14 May 2018 otherwise all his claims would stand dismissed without further order. In the meantime the full merits hearing otherwise listed for 9 May 2018 was postponed and replaced by a one-hour open preliminary hearing on 12 June 2018 to consider whether the claims have been or should be struck out.
8. On 2 May 2018 the claimant sent a brief and unquantified statement of loss to the respondent with copy to the tribunal.
9. At the preliminary hearing on 12 June 2018, which the claimant did attend, it was confirmed that the age discrimination claim stood dismissed but the remaining claims were continuing with standard unfair dismissal directions. It was subsequently listed for hearing on 18 December 2018 but unfortunately that hearing was then postponed the day before due to lack of judicial resource. A new hearing date of 5 June 2019 was listed.
10. On 3 December 2018 the respondent wrote to the tribunal confirming that in the absence of up-to-date directions they had proposed directions to the claimant requiring disclosure of documents and further particulars by 7 December 2018 and exchange of witness statements on 11 December 2018; that they had sent their witness statements to the claimant by that date but had not received a copy of the claimant's witness statement in return or any contact from him regarding the further information requested.
11. On 13 December 2018 the respondent applied for a strikeout of the claimant's claims on the basis that the manner in which the claimant had conducted and was continuing to conduct the proceedings was unreasonable and vexatious. The respondent chased for a reply on 6 February 2019 adding to their earlier application that the claimant had refused to sign for delivery of the respondent's witness statements.

12. A further strike out warning was sent to the claimant by the Tribunal on 26 March 2019 warning him that consideration was being given to striking out his claim because he had not complied with tribunal directions and his claims had not been actively pursued. He was given a deadline of 2 April 2019 if he wished to object. The claimant telephoned the tribunal on 27 March 2019 saying that he was not computer literate and that he did not want to contact the respondent's solicitors but he was advised that he was required to do that and he was informed of their full postal address.
13. The claimant wrote to the tribunal on 28 March 2019 stating that he was representing himself and that he had not received any letters 'regarding directive' and the only letter he had received was the strikeout warning letter dated 26 March 2019. He stated that the respondent was harassing him unnecessarily and he wished to bring this to the notice of the Court.
14. In reply by letter dated 1 April 2019 the respondent provided further information in support of their application for a strikeout confirming that they had, as referred to above, written to the claimant on 3 December 2018 proposing dates with directions and that he had failed to comply with these. They included a copy of the return delivery slip from the Post Office indicating the delivery of the respondent's witness statements had been refused by the claimant. They submitted that it was clear that the claimant had received a number of letters from them and that he had knowingly and deliberately failed to cooperate with them in preparation of the case.

Conclusions

15. Striking out a claim is clearly a draconian step and never one to be taken lightly. In light of the history of this particular claim however I conclude that the claimant, even taking into account the fact that he is a litigant in person and, on his own case, not computer literate, has been given ample opportunity to present his case and to comply with orders made either by the Tribunal or deadlines reasonably suggested by the respondent, that are necessary for the case to be properly prepared and fairly dealt with at hearing. He has also been given the opportunity to make representations before this step is taken.
16. Overall, the claimant has failed to comply with his obligations and accordingly his claims are struck out due to his unreasonable conduct of his claims.
17. The hearing on 5 June 2019 is accordingly vacated.

Employment Judge K Andrews

Date: 20 May 2019

