



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4123827/18

Held on 4 December 2019

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Employment Judge J M Hendry

Mr M Winsztal

**Claimant
In Person**

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Colin Fraser Limited

**Respondent
Represented by
Mr R Harris,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claims are struck out.

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1. The claimant sought a finding that he was unfairly dismissed from his employment by the respondents. An ET1 was lodged in December 2013. At that point the claimant had the assistance of Quantum Claims who prepared the ET1.

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2. A preliminary hearing took place on 6 March 2019 at which the claimant was represented by Mr Lefevre. Following the hearing Judge Hosie directed the claimant "*within the next 21 days to send to the Tribunal and at the same time copy the respondent's solicitors, details of the claim by way of a revised paper*

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apart clarifying and focussing material facts in which the claimant relies in support of his claim.”

3. It was accepted that the claim as it currently stood required to be substantially recast. Quantum Claims resigned from acting from the claimant on 3 April. From the 16 April the respondent’s solicitors sought strike-out on the basis that the claim was not being actively pursued and that the Better and Further Particulars referred to in Judge Hosie’s Note had not been lodged. The application was refused but Judge Hosie ordered that a strike-out warning should be sent to the claimant.
4. A strike-out warning was sent on 17 April. There was some correspondence received from the claimant but no effort was made to clarify the basis of the claim.
5. On 31 May Judge Hosie instructed a letter be sent to the claimant listing a Preliminary Hearing on the following basis:
 1. Whether the claim should be struck out as the claimant has failed to comply with the Tribunal Order.
 2. Whether the claim should be struck out as having no reasonable prospect of success.
 3. Further procedure if appropriate.
4. A hearing took place before Judge Hendry on 1 August. The claimant attended and had the benefit of an Interpreter. The respondents sought strike-out pointing out that the ET1 claim form was insufficient in its current form to allow a competent defence to be put forward and that it lacked specification. The Judge recorded, after reviewing the position, noting there was no dispute in relation to the sequence of events around the termination of employment. He found that the claimant was a Polish national who said that he could speak English but had difficulty reading English and composing documentation. He stated that he was not conscious/aware of the exact terms of the Order nor

was its existence brought to his attention either by the respondent's agents or the Tribunal. In these circumstances, I asked Mr Harris whether or not the respondents insisted on the strike-out application on this particular ground i.e. in relation to a failure to comply with the Order. He considered the matter carefully and quite properly in my view withdrew the application on strike-out based on non-compliance with the Order but maintained his application on the other grounds.

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5. The Tribunal then considered the prospects of success and concluded that it would be appropriate to question the claimant in relation to his position. The Tribunal narrated in some detail the various aspects of the working relationship that the claimant found unsatisfactory. The Tribunal then indicated to the claimant that he would have a further 21 days to lodge better and further particulars setting out in short paragraphs what the issues were that caused him to resign. He was told that he could use the information narrated in the note and choose which issues he was relying upon. The Order was dated 12 August.
6. The claimant did not respond to the Order. A further strike-out warning was sent to him on 3 October indicating that the Judge was considering striking out the claim on the grounds of non-compliance of the Order of 12 August and that the claim was not being actively pursued. A response was received from the claimant on 21 October which was both difficult to follow and made little sense. The respondent's solicitor reiterated their request for strike-out. The claimant was given a further opportunity to oppose this and to comply with the Order of 12 August. A response was received from the claimant on 20 November which although contained some information about the incident on 14 September 2017 it was otherwise unintelligible.
7. The Tribunal was conscious that strike-out is a draconian measure. If granted it would prevent the claimant from pursuing his statutory right to make a claim for unfair dismissal. It should not be granted lightly.

8. I reviewed the entire file. There has been little or no progress made since the claimant's agents resigned in April. Whilst I am conscious that the claimant is a party litigant he seems unable or unwilling to set out even in the simplest form the basis/reasons of why he resigned from the respondents. I am
5 conscious the respondents are being put to considerable cost both defending the proceedings and engaging in the Employment Tribunal process and to date it is still not clear the basis on which the claim is being made.

9. In these circumstances the claimant has not provided any good reason why
10 the claim should not be struck out in terms of the strike-out warning of 3 October. I now strike the claim out.

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Employment Judge:	James Hendry
Date of Judgment:	06 December 2019
Date sent to parties:	09 December 2019

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