



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr G Alex

Clipfine Limited

Heard at: London Central

On: 28 November 2019

Before: Employment Judge Gordon

Representation

For Claimant: no appearance

For Respondent: Craig J Bennison (counsel)

JUDGMENT

On the Respondent's application to strike out the claim, the claim is struck out under Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 in Schedule 1 on the grounds that:-

- (a) the claim has no reasonable prospect of success;
- (b) the manner in which the proceedings have been conducted by the Claimant has been unreasonable;
- (c) for non-compliance with the tribunal's case management orders made on 18 February 2019; and
- (d) that it has not been actively pursued.

REASONS

1. These reasons are given on the request made at the hearing that the oral reasons shall be put in writing.
2. This is claim 2207192/18 - Mr G Alex against Clipfine Limited. Mr G Alex has not appeared today, and the Respondent is represented by Craig J Bennison, counsel.
3. The Claimant was employed by the Respondent as a traffic marshal (although the Respondent says he was employed as a general operative) from 3

September 2012. On 17 December 2018 he resigned from his employment, and then brought a claim in the tribunal on 21 December 2018 in which he claimed that he had been constructively dismissed and he also claimed that he had not received his written employment particulars. The Response to the claim filed on 3 April 2019 denied that there were circumstances entitling the Claimant to say that he was constructively dismissed and if there was a dismissal denying that it was unfair, and raised other matters. The Response also stated that the Claimant had been given written particulars of employment.

4. In the early stages, the Claimant was represented by solicitors. On 19 June 2019 the solicitors informed the tribunal (in what we have called document 7) that they were no longer representing the Claimant and provided an email address and a postal address for the tribunal to use. I am told that the same contact details for the Claimant were provided to the Respondent's lawyer and which were used after that date.
5. The tribunal made a number of what we call "automatic directions" on 18 February 2019 which required a schedule of loss to be provided by the Claimant, documents which were relevant to the matter to be provided and for witness statements to be provided closer to the hearing.
6. The Schedule of Loss was provided by the solicitors acting for the Claimant but nothing else was provided by the Claimant or on his behalf.
7. I was told by counsel that he has had no contact with the Claimant despite writing on a number of occasions. There had been agreement to extend the time for witness statements to be exchanged but when the time came for that, nothing happened. There were letters which I haven't seen but which I am told about by counsel, openly offering a "drop hands" (nil result) in which case no costs would be sought, and that was repeated when email was not getting any response from the Claimant, by putting it in the post. There were a number of such attempts by the Respondent's lawyer to contact the Claimant but there was no response at all.
8. Because of the lack of response, the Respondent applied to the tribunal on 2 July 2019 for a strike out of the claim for various reasons including the Claimant's failure to comply with the tribunal's directions.
9. Meanwhile the tribunal has noted on the file that the Claimant has no telephone number for contact, and when an email was sent to the Claimant on 2 September 2019 sending notice of the hearing, it bounced back. There is a note on the file, that because of that, the tribunal sent the notice of hearing to the address given by the Claimant's solicitor on 19 June 2019.
10. So there's been nothing from the Claimant at all, which means that he has been in breach of the tribunal's order in a serious respect. The application to strike out has not yet been dealt with by the tribunal, and this is regrettable because although it was applied for on 2 July 2019, and was due to be heard on the first day of the listing on 5 and 6 August 2019, those dates had to be

postponed due to lack of judicial resources, and it was not picked up that as a result, the strike out application remained to be dealt with.

11. I regard the strike out application as before me today. And running through the grounds on which I can strike out a claim under Rule 37, firstly there is the ground that the claim has no reasonable prospect of success. I can't see that the claim ever had any chance of success. Looking at the resignation letter, which uses the signature of the Claimant's solicitors, it optimistically suggests that the Respondent's actions were responsible for the resignation. It claims that the Respondent had, without any credible reasons and proper procedures being followed, prevented the Claimant from working since 25 October 2018, and he had been sent home without reasons, and moved to different locations without reasons. If true, this might have amounted to sufficient for him to resign and claim constructive dismissal.
12. But it has transpired that what is said here is false, as shown by the fact of the email complaining about his behaviour on 25 October 2018 by the main contractors in Paddington (page 77) and by the minutes of the meeting held the next day (page 79), which he signed and which show that he was given an full explanation of the Respondent's position and the importance of wearing the safety gear, and understood it. So this belies what is said in the resignation letter.
13. Also the Claimant was absent without leave from 29 October 2018 and was unpaid from that time so it is difficult to understand what he thought was happening, on his case. As was pointed out by counsel there was no disciplinary action taken against him; the Respondent decided to deal with the matter a different way. So it is a complete mystery why the Claimant took the view that he did about what happened in his letter of resignation. On the face of it there can't be any truth in what he said in the letter. Bearing in mind the Claimant would need to show that the Respondent had behaved in such a way as to entitle him to resign, which he is unable to show, I do not think this claim ever had a reasonable prospect of success.
14. The second ground for striking out a claim is that the proceedings have been conducted in a way which have been scandalous, unreasonable or vexatious. Well, it is entirely unreasonable for a Claimant not to communicate with the tribunal anymore, nor with the Respondents, and despite being asked to explain why he is not doing so, to remain silent and then not attend the hearing. That is another reason to strike out.
15. The third ground for strike out is a breach of the tribunal's order. These orders are made for good reason. They enable the parties to prepare a case which can be dealt with by the tribunal in an efficient way at the hearing, and they encourage the parties to settle cases without the need for a hearing, which reduces the impact of such cases on the resources of the tribunal considerably. This is one reason why we ask for witness statements in advance.

16. The fourth ground in Rule 37 is that the claim has not been actively pursued and that certainly seems to be the case in the light of the Claimant's silence and failure to attend the hearing.
17. On those grounds I strike out the claim.
18. Even if I had not struck out the claim under Rule 37 I would be dismissing it under Rule 47 because of the Claimant's absence. There are no enquiries which may be made which are practicable to explain the Claimant's absence because the tribunal only has a postal address to use to contact him.

Employment Judge Gordon

Date: 28 November 19

JUDGMENT SENT to the PARTIES ON
28/11/2019

FOR THE TRIBUNAL OFFICE