



EMPLOYMENT TRIBUNALS

Claimant: Mr I Whittaker

Respondent: Futaba Manufacturing UK Limited

Heard at: Nottingham **On:** Monday 2 December 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: No appearance

Respondent: Ms S Cooper, Solicitor

JUDGMENT

1. The claim of unfair dismissal is struck out.

REASONS

Background to this hearing

1. The Claimant presented his claim to the Tribunal on 20 October 2018. He had been employed by the Respondent as a Lab Technician between 9 December 2009 and 27 July 2018. His claim was of unfair dismissal only. The Claimant provided almost no detail of his claim saying in paragraph 8.2:

“I have a my writing appeal letter in my e-mail and some notes. I will send to an e-mail address once contacted. It won't let me attach files.”

2. The claim was served on the Respondent on the 6 December 2018. The Respondent lodged their ET3 on 17 January 2019. They asked for the case management Preliminary Hearing that was listed on 13 March 2019 to be converted to an attended Preliminary Hearing to resolve the issue of what the Claimant was complaining about as he had provided no details of the claim.

3. The Employment Tribunal Judge reviewing the matter agreed to this but the hearing of 13 July 2019 had to be postponed because of a lack of judicial resources.

4. The matter was then listed for a further attended case management hearing on 12 June 2019. That hearing was conducted by my colleague Employment Judge Brewer. The Claimant did not attend the hearing and did not answer when he was telephoned to give an explanation.

Employment Judge Brewer decided to list the matter for a final hearing and ordered the Claimant to provide further information by 3 July 2019. He also made various case management orders for the preparation of the hearing.

5. The Claimant wrote on 3 July 2019 asking that his case should not be dismissed and saying that he needed more time to get legal help to present his case.

6. A further case management hearing by telephone was arranged for 11 October 2019. At that hearing, which was conducted by my colleague Employment Judge Clark, the Claimant failed to dial in to the hearing. He made further orders including an order that by 22 October 2019 the Claimant was to contact the Tribunal confirming whether his claim was being withdrawn or is still being actively pursued. He also made further case management orders.

7. The Respondents wrote to the Claimant on 25 October 2019 and 1 November 2019 reminding him to comply with the Tribunal's directions but he failed to do so. The Claimant had not provided a schedule of loss or his documents and they said that he was not actively pursuing his claim again.

8. On 5 November 2019 the Employment Tribunal wrote to Mr Whittaker telling him that Employment Judge Heap was considering striking out the claim because it had not been actively pursued and he was not complying with orders of the Tribunal. He was given until 12 November to respond.

9. He did respond on 12 November 2019 saying:

"I struggle a bit with writing and you said I have to explain in a letter. Please ask the Judge to ask Futaba 1 question.

We're they cutting corners putting people's life's at risk.

Going to the paper is my final option if they don't admit it."

10. On 13 November 2019 the Respondent repeated their earlier application to strike out the Claimant's claim because he was not complying with the directions and was not pursuing his claim at all.

11. Because of this correspondence my colleague Employment Judge Adkinson directed that the final hearing which had been set for 3 December and 4 December 2019 would be converted to a Preliminary Hearing to determine whether the claims should be struck out because the Claimant was not actively pursuing it and if not to consider making case management orders.

12. He went on to say:

"The Tribunal also notes the Claimant has not attended hearings so far, and that the Claimant's e-mail of 12 November 2019 does not address the issues raised by Employment Judge Heap's letter of 5 November 2019. If the Claimant does not attend this hearing (or arrange for him to be represented) then the Tribunal may strike the claim out in his absence."

The hearing today

13. Ms Cooper had written to the Claimant on 28 November 2019 reminding him of the hearing today. She reminded him that the hearing was scheduled to start at 10:00 am and confirmed the address of the Tribunal Hearing Centre.

14. At 05:48 this morning the Claimant sent an e-mail to the Tribunal which said:

“Hi.

My phone is completely broke. Has been for a week. I have had to come to work early to be able to send this e-mail. I will try to be there if I can get the bus there and get the time off work.

Regards
Israel.”

15. The Claimant did not attend the hearing. He could not be telephoned because he said in his e-mail that his phone was not working. I commenced hearing the case at 10:40 to give the Claimant time to attend or send in some further explanation. He did not.

Submissions

16. Ms Cooper provided me with a helpful bundle of documents which included a chronology of the events. I have outlined details of the events in this reasons document.

17. She invited me to strike out the claim on the basis that it was not actively being pursued. This is the third hearing that the Claimant has not attended.

The law

18. Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provide: -

“(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 none 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 a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.”

19. Ms Cooper provided me with a copy of the judgment in the case of **Mr W Khan v London Borough of Barnett** UK EAT/0002/18DA. The case highlights that striking out a claim is a draconian step. A decision to strike out a claim is not to be taken lightly. It is a matter of last resort. Her Honour Judge Tucker referred herself to the case of **Rolls Royce Plc v Riddle** 2008 IRLR 873. She referred me to paragraph 20 of that judgment when Lady Smith set out the following:

“It is quite wrong for a Claimant, notwithstanding that he has, by instituting a claim, started a process which he should realise affects the Employment Tribunal and the use of its resources, and affects the Respondent, to fail to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the Tribunal and/or its procedures. In that event a question plainly arises as to whether, given such conduct, it is just to allow the Claimant to continue to have access to the Tribunal for his claim.”

20. It seems to me that those comments apply very much in this case.

My conclusions

21. Although I am satisfied that the Claimant has not actively pursued his claim in this case and that I should strike it out for that reason I am also satisfied that the following other matters are relevant in my considerations: -

21.1 The Claimant was dismissed on 27 July 2018 and it is now more than 16 months since then and despite being given every opportunity to set out his claim he has not done so.

21.2 This is the third hearing that he has not attended nor has he given any explanation that is adequate for his non-attendance at any of the hearings. The Tribunal has done its best to accommodate him as has the Respondent but without success.

21.3 He has not complied with any of the previous case management orders of the Tribunal. He has shown a complete disregard for the orders of the Tribunal and the help that the tribunal has sought to give him in setting out his claim.

21.4 As I have said above it is now 16 months since the Claimant was dismissed and it is increasingly difficult to see how there could be a fair hearing in this case when so long has elapsed without the Claimant prosecuting his claim any further other than presenting a very short claim form to the Tribunal.

21.5 I am satisfied that the Claimant has been given more than enough

chances to prosecute his claim which he has failed to do. The final straw was his message to the Tribunal today. If he had difficulties in respect of his phone for a week he has done nothing to otherwise communicate with the Tribunal during the last week. He could have sent an e-mail or even done something old fashioned such as ringing from a landline or writing a letter. He has done nothing.

21.6 He sent his e-mail from work and refers to trying to get time off work to attend the Tribunal. He has been aware of this hearing date since it was ordered by my colleague employment Judge Clark in June and he was told that it was being converted to consider striking out his claim on 16 November 2019 but he has done nothing to get any time off work apparently. As he is in work it is hard to see why he would have a difficulty obtaining the bus fare from Derby.

21.7 I am satisfied that the claim should be struck out because the Claimant is not actively pursuing it.

Employment Judge Hutchinson

Date 23 December 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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