



EMPLOYMENT TRIBUNALS

Claimant: Mr K Bamford

Respondent: Interact CC Limited

HELD AT: Liverpool

ON: 3 February 2020

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Did not attend and was not represented

Respondent: Mrs H Winstone, counsel

JUDGMENT

1. The claim is dismissed.
2. The claimant is ordered to pay £500.00 to the respondent in respect of the respondent's costs.

REASONS

1. By a claim form presented on 22 June 2019, the claimant raised complaints of unfair dismissal and disability discrimination. The unfair dismissal complaint has already been struck out.

2. A preliminary hearing took place on 30 September 2019. The claimant did not attend. By a case management order sent to the parties on 26 October 2019, the claimant was ordered to provide information relating to his alleged disability. He was also ordered to provide a schedule of loss and further information about his disability discrimination complaints. The claimant did not comply with any of those orders either before or after the deadlines.
3. A further preliminary hearing was initially listed for 5 December 2019 to determine the question of whether or not the claimant had a disability. Because of the claimant's failure to comply with case management orders, that hearing was postponed. Instead, a preliminary hearing was listed to determine whether or not the claim should be struck out. The parties were notified by letter dated 4 December 2019 that the preliminary hearing would take place on 9 January 2020.
4. On or about 2 January 2020, the claimant informed the respondent that he sometimes finds it difficult to leave the house. On 3 January 2020 the claimant e-mailed the respondent in the following terms:

"Where is it I need to go and what is going to happen there? If its what needs to be done to close my case I have no choice is there someone I can talk to on the phone who can explain to me in a way I can understand what it is needs to be done and what is going to happen?"
5. On 9 January 2020 the respondent attended the preliminary hearing and was represented by counsel, but the claimant did not attend.
6. By notice sent to the parties on 15 January 2020 the claimant was informed that there would be a preliminary hearing today.
7. In a case management order, also sent to the parties on 15 January 2020, the claimant was informed:
 - 7.1. that at the preliminary hearing the respondent would apply to strike out the claim;
 - 7.2. that at the preliminary hearing the respondent might make an application for a costs order;
 - 7.3. that the claimant should either attend the preliminary hearing or provide a medical certificate certifying him unfit to attend; and
 - 7.4. in the absence of a medical certificate or attendance, the strike-out application and the application for costs might be heard in the claimant's absence.
8. The claimant did not attend today's hearing.
9. This is the third time that the claimant has failed to attend a preliminary hearing.
10. The respondent has had no contact from the claimant since the last preliminary hearing.
11. The tribunal clerk made two telephone calls to the mobile telephone number provided by the claimant on his claim form. The call could not be connected.
12. As a result of the last preliminary hearing being adjourned, the respondent incurred costs of approximately £1,500.00. The respondent's total costs of

defending the claim have been between £3,500.00 and £4,000.00. The costs include instructing counsel to attend today's hearing.

13. At today's hearing, counsel for the respondent made an oral application for a costs order, which she limited to £500.00.
14. There is no evidence about the claimant's ability to pay any costs order. The claim form indicated that he had not found another job since his employment with the respondent ended. I assume that this is still the case.
15. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides that if a party fails to attend or to be represented at the hearing, the tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, the tribunal must consider any information which is available to it after any enquiries that may be practicable about the reasons for the party's absence.
16. Under rule 76(1)(a), a tribunal may make a costs order where it considers that a party has acted unreasonably in the way that the proceedings have been conducted.
17. Under rule 76(2) a tribunal may make a costs order where a party is in breach of any order where a hearing has been adjourned on the application of a party.
18. Rule 77 requires that a costs order may not be made unless the paying party has had a reasonable opportunity to make representations in response to the application.
19. Rule 78(1)(a) provides that a costs order may order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party.
20. By rule 84, the tribunal may have regard to the paying party's ability to pay when deciding whether to make a costs order and in deciding on the amount of any such order.
21. The fact that a tribunal has the power to make a costs order does not necessarily mean that such an order should be made. Even where the conditions set out in rule 76 are met, the tribunal must still decide whether or not it should exercise its discretionary power to award costs. The tribunal should have regard to the nature, gravity and effect of the paying party's conduct. It should also examine the case in the round including any relevant conduct of the receiving party. The tribunal must also have regard to the overriding objective, which includes the requirement, where practicable, to deal with cases in ways that are proportionate.
22. I was satisfied that the tribunal had done all it could to enquire into the claimant's reasons for his absence. Despite the claimant's e-mail of 3 January 2020, I am persuaded that there is no good reason for the claimant's absence. He has been given a clear reminder of the need for medical evidence and a clear warning that the hearing might go ahead in his absence. Despite that warning he has not provided medical evidence and has not contacted the tribunal.
23. The claimant has, in my opinion, been given a reasonable opportunity to make representations in response to the respondent's costs application. The case management order sent on 15 January 2020 made clear that the application would be considered at today's preliminary hearing.

24. I consider that the claimant has acted unreasonably in not attending any of the hearings. He has no good reason for not attending this hearing. He has breached case management orders. Had they been complied with, there would have been no need for a strike-out preliminary hearing at all. The respondent's attendance at that hearing alone has caused the respondent to incur costs of £1,500.00. Those costs have inevitably increased as a result of the respondent having to attend a third preliminary hearing and be represented again by counsel.
25. In my view this is a case where I should exercise my discretion to award costs. The sum claimed by the respondent is proportionate. It is a fraction of the amount of costs that an employer would reasonably incur in attending the last two preliminary hearings. Taking account of what little I know of the claimant's ability to pay, I assess the amount of the costs order in the sum claimed by the respondent. The amount might have been higher had the respondent not limited the application to £500.00.

Employment Judge Horne

3 February 2020

SENT TO THE PARTIES ON
17 February 2020

FOR THE TRIBUNAL OFFICE