



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105968/2019

Mr Michael Boyd

Claimant

Common Thread Limited

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim is struck out under Rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claim has no reasonable prospect of success in terms of Rule 37(1)(a).

REASONS

1. On initial consideration of the claimant's claim to the Employment Tribunal, an Employment Judge (EJ Robinson) noted that the claimant does not appear to have sufficient qualifying service of two years to make a standard unfair dismissal claim. A letter was sent to the claimant from the office of the Employment Tribunals (Scotland) on 26th of May 2019, noting that, and stating that if the claimant intends to pursue a claim of automatic unfair dismissal, then he should write to the Tribunal to explain on what grounds he intends to pursue the claim.
2. On 4 June 2019, the respondent's representative sent by email (at 15.29) correspondence to the Employment Tribunal copied to the claimant, including the following:-

"The Tribunal will be aware that in this matter, the claimant is claiming unfair dismissal, though he does not have the requisite length of service to sustain an ordinary unfair dismissal claim (as he was employed for a period of less than two years). In his ET1, the claimant gave no indication / made no reference to anything that might suggest an automatically unfair reason for dismissal.

By letter dated 26 May 2019, the Tribunal asked the claimant to explain the grounds on which he intended to pursue this claim. This information was required by no later than 3 June 2019. The claimant failed to provide this information.

Pursuant to Rule 37(1)(c) and 37(1)(d) of the Employment Tribunals Rules of Procedure 2013 therefore, the Tribunal is requested to consider striking out the claimant's claim. The claimant has disregarded the Case Management Orders of the Tribunal and compromised the respondent's position in these proceedings. We believe that it may assist the progress of this case to schedule an open preliminary hearing in person to consider: the respondent's strike out application, whether the claimant is seeking to rely on any automatically unfair reason for dismissal, issues of the case and Case Management Orders."

3. Also on 4 June 2019 (by email sent at 21.56), the claimant sent an email to the respondent's representative, copied to the employment tribunal office, stating

"I did receive an email dated 26/5/19 however no attachment was present. The reason for the delay in querying this is because I was out of the country. Is there any way at all of preventing the case from being dismissed at this point? As you can imagine I am eager to have my case heard and if that can't happen it would be extremely disappointing at this stage."

4. There was no substantive attachment with the correspondence sent to the claimant from the Employment Tribunal office on 26 May 2019. On 13 June 2019, correspondence was sent by email to the claimant and to the respondent's representative from the Employment Tribunal office stating:-

"I refer to the above named proceedings and the correspondence received 4 June 2019 from both parties.

Employment Judge S Walker has directed to remind the claimant to respond to the Tribunal's correspondence which was sent on 26 May 2019. I have attached the original correspondence to this email for reference.

A reply from the claimant is due by 20 June 2019.”

5. On 14 June 2019, the claimant sent an email to the Employment Tribunal office (not copied to the respondent’s representative) in the following substantive terms:-

“I am having difficulties with the attachment on the previous email(s) you have sent me. I would like to pursue the claim on the grounds of disability discrimination due to stress at work, my view is my employer failed to adequately address this in my case at the workplace.

I am a little concerned that the Judge required a response by 3rd June and I am only auctioning (sic) this now. (This was solely down to me being out of the country at that time, and having no access to my emails) I received a further email on 13th June stating a response was now required by 20th June. I trust this does not disqualify my claim.

If you require any further details on the matter please let me know.”

6. On 26 June 2019, correspondence was sent by email from the employment Tribunal office to the claimant and to the respondent’s representative with the following substantive terms:-

“The Employment Judge has directed as follows:-

- 1. The correspondences is acknowledged*
- 2. The claimant is reminded that under the terms of Rule 92 of the Employment Tribunals Rules of Procedure 2013, correspondence submitted to the Tribunal should be copied to the respondent’s representative and the Tribunal advised that this has been done.*
- 3. On this occasion, the Tribunal provides a copy of the claimant’s correspondence for the respondent’s representative’s attention and written comments by 3rd July 2019.”*

7. On 27 June 2019, the respondent's representative wrote by email to the Employment Tribunal office, copied to the claimant, objecting to the claimant's application that this be considered a disability discrimination claim, objecting to any application by the claimant to amend the claim to bring a disability discrimination claim, denying that the claimant meets the definition of a disabled person for the purposes of the Equality Act 2010 and applying for strike out of the claimant's claim and / or in the alternative a Deposit Order and reserving the respondent's position in respect of seeking costs against the claimant on the basis that the claimant has acted / is acting vexatiously or otherwise unreasonably in attempting to amend this claim and to include a previously not completed a claim, all for the reasons as set out in their email correspondence of 27 June 2019.
8. On 12 July 2019, correspondence was sent by email to the claimant and to the respondent's representative, stating that an Employment Judge (EJ Maclean) had directed for the claimant to provide comments by 19 July 2019 on the content of the respondent's representative's correspondence of 27 June 2019. That email also stated that should the claimant wish to amend his claim (ET1), he is required to submit a formal application to the Tribunal, setting out his reasons for the application and the amended grounds of claim.
9. On 15 July 2019, the claimant sent an email to the Employment Tribunal office (not copied to the respondent's representative) in the following substantive terms:-

"In response to the above email, I would like to clarify I do not wish to change the grounds of my claim.

I must admit, I feel a little lost in regards to my claim. There has been a lot of communications between different parties in the last few weeks and I don't quite know where I stand right now. I haven't been through this type of thing before so this is all a bit confusing to me. Would I be able to politely request an update as to where my claim lies."

10. On 19 July 2019, correspondence was sent by email from the Employment Tribunal office to the claimant and to the respondent's representative including the following substantive terms:-

“Employment Judge M Whitcombe has directed to confirm that, at present, the Tribunal has sought the claimant's comments on the content of the respondent's representative's correspondence dated 27 June 2019. The claimant's comments are now requested by 25 July 2019. Since the claimant has confirmed that he does not intend to amend the claim, it concerns only unfair dismissal, and not disability discrimination. His urgent comments has been requested on the issue in his unfair dismissal claim that he appears to lack the two years qualifying service necessary to bring a claim.”

11. No response to that correspondence was received by the office of the Employment Tribunal from the claimant.
12. On 1 August 2019, correspondence was sent by email from the Employment Tribunal office to the claimant, copied to the respondent's representative in the following substantive terms:-

“Employment Judge M Robison has directed to issue you a second reminder to provide comments on the respondent's representative's correspondence dated 25 July 2019. A reply is now due by 8 August 2019.”

13. On 12 August 2019, correspondence was sent by email from the Employment Tribunal office to the claimant, copied to the respondent's representative setting out a Strike Out Warning to the claimant. This included the following substantive terms:-

“The respondent has made an application to the Tribunal for your claim to be struck out on the grounds that it has no reasonable prospects of success in terms of rule 37 (1)(a) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judge M Robison has directed that if you disagree, you should set out your reasons for disagreeing in writing by 26th August 2019 or tell us by that date that you want the Employment Judge to fix a hearing, so that you can put forward your reasons in person. You must copy any communication to the other party and confirm to us that you have done so.

If nothing is heard from you in the timescale set out above, then the Employment Judge will decide whether to strike out your claim, or part of it as the case may be, on the basis of the information which is otherwise available.

14. No reply to that correspondence has been received by the Employment Tribunal office from the claimant.
15. The claimant has been given the opportunity to give written reasons by 26 August 2019 or to request a hearing in order to consider why the claim should not be struck out.
16. The claimant has failed to give an acceptable (or any) reason why a judgement to strike out this claim should not be made or to request a hearing.
17. This claim is struck out under Rule 37(1)(a) for the above reasons, and on the basis of information available to the Employment Tribunal that:-
 - the only claim made by the claimant against the respondent before this Employment Tribunal in respect of his ET1 submitted on 25 April 2019 and proceeding under case number 4105968/19 is one of unfair dismissal,
 - the claimant's dates of employment with the respondent were from 15/01/2018 until 31/01/2019
 - the claimant does not have qualifying service to being a standard unfair dismissal claim (with regard to section 108 of the Employment Rights Act 1996)

- the claimant does not pursue a claim of automatic unfair dismissal
- the claimant does not rely on disability discrimination
- The claimant does not rely on any statutory provisions in this claim which do not require the qualifying length of service of 2 years
- The claimant does not seek to amend his ET1 to bring any additional claim.
- The claimant's unfair dismissal claim has no reasonable prospects of success because the claimant does not have the necessary qualifying length of service of 2 years.

Employment Judge: C McManus
Date of Judgment: 03 September 2019
Date sent to parties: 04 September 2019