Case: 1805068/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr J Bassey

Respondents:
(1) The Commissioners for Her Majesty's Revenue and Customs
(2) Katie Finn
(3) John Ritchie
(4) Gemma Cooper
(5) Nigel Lodge
(6) Michael Rhodes
(7) Peter Atkinson
(8) Ayesha Khan
(9) Kirsty Roger
(10) Steve Billington
(11) Andrew Winkworth
(12) Toni Bovill

And

Claimant: Mr J Bassey

Respondents: Mr P Smith, counsel
Mr O Wilton, solicitor

AT A RULE 38 (2) HEARING

Heard at: Leeds **On:** 18th February 2020

Before: Employment Judge Lancaster
Appearance:
For the Claimant: In person
For the Respondents (and any other named persons): Did not attend

JUDGMENT

1. The Claimant's application to set aside the order resulting in his application of 9th October 2019 having been automatically dismissed with effect from 16th January 2020 is refused.
2. The dismissal of the application, notified on 20th January 2020, is confirmed. There are therefore no longer any proceedings currently pending in this tribunal.

REASONS

1. Written reasons are given because the Claimant, after a brief attendance, elected to leave the Tribunal and not actively to participate in the hearing.

2. The Claimant made an application (dated 9th October 2019) for a preparation time order against all the Respondents, and also purportedly against their legal representatives (Mr Wilton and Mr Leonard, solicitors, as well as the GLD generally and Mr Smith and Mr Anderson of counsel. He has also made a similar application in respect of those acting for Mr Smith at the wasted costs hearing (that is Mr Bennett of DWF solicitors and Mr Moretto of counsel, though Mr Bennett was not in fact present personally on that occasion).

3. A preparation time order cannot, by definition, include compensation for time spent at a final hearing. Even if it were a permissible application to make in respect of individual legal representatives, the claim specifically against Messrs Anderson and Moretto in connection only with their appearances at the last costs hearing must therefore be vexatious.

4. This was, in any event, on the face of it an extraordinary application given that the Claimant had been wholly unsuccessful both in his substantive claim and in his previous applications for a preparation time order and for wasted costs orders.

5. In fact the Claimant has been ordered to pay a proportion of both the costs on the substantive claim and the costs of Mr Smith in successfully defending the wasted costs application against him.

6. Nonetheless, following his application, the Claimant was informed by letter dated 18th October in the following terms:

   “In so far as this application relates to the conduct of the combined cost hearing on 16th September 2019 where judgment was sent out on 19th September with written reasons following on 23rd September 2019 it is made in time.

   Therefore there will need to be a determination of the application by the full tribunal which heard the costs applications. This will be conducted on the papers when the potentially paying parties have had the opportunity to make representations in writing, as I now order pursuant to rule 77.

   Before this can happen, however, the Claimant will need to identify the precise basis (both factual and legal) upon which he claims to be entitled to an award against each and every one of the named persons. He will also need to specify the amount of the time spent in preparation and the period covered in respect of the claims against each person or persons.

   When this has been done, and it must be copied by the Claimant to all interested parties or their representatives, and when the potential paying parties have had a full opportunity to respond the tribunal will be reconvened.”

7. This letter was accompanied by a case management order of the same date in which I required him, by 15th November 2019, to "provide additional information in respect of his application for a preparation time order."

8. When the Claimant completely failed to comply with that order I made an Unless Order, with reasons, dated 7th January 2020 requiring compliance by 16th January 2020.

9. The Claimant applied on 16th January 2020, the last day for compliance, that the Unless Order be set aside and that the proceedings be stayed. I refused both those applications with reasons on 17th January, and the decision was sent to the parties on 20th January 2020. In the meantime, the time for compliance having passed, the 9th October application was dismissed without further order.

10. On 20th January 2020 The Claimant applied, as he was entitled to, under rule 38 (2) that the order be set aside: that is usually referred to, for convenience, as "an application for relief from sanction". He also, as he was entitled to, required that there be a hearing to consider that relief from sanction rather than it be dealt with on paper.

11. The Claimant has never complied with the order that he provide additional information about his application of 9th October 2019. He has therefore provided no basis whatsoever upon which he might conceivably be entitled to recover financial compensation for any part of his time spent in preparation for a case which he lost.

12. Despite having been requested to do so, nor has the Claimant ever explained why it would be in the interests of justice to give relief from sanction in the event of his non-compliance with what was, in the circumstances, a perfectly reasonable and necessary order if any possible merits of his application were to be considered by the Tribunal.

13. All that the Claimant has said is:

    "I am requesting that the order is set aside in the interest of justice as there is no legal basis for the order or EJ Lancaster's continuing involvement in this case due to the appearance of bias, perversity and obvious misconduct."

14. I have refused previous applications that I recuse myself. Reasons for the most recent non-recusal were given with the costs judgment on 23rd September 2019. Nothing has changed since then, as has been clearly stated in the letters to the Claimant dated 11th and 13th February 2020.

15. It is now entirely appropriate that I deal with the specific question of relief from sanction that arises from my own order, and where I chair the tribunal panel that was seized of this matter at both of the final hearings, and would therefore be required to go on to hear the Claimant's application if that relief were granted.

16. The Claimant has refused at this hearing, despite being repeatedly invited to do so, to make any representations which deal with the application actually before the Tribunal. He has not explained why he has not done what he was ordered to do four months ago, nor why he should not therefore bear the proper consequences of that wilful refusal to comply.

17. There is therefore no argument advanced by the Claimant as to why this application should be granted.

18. I note that at a much earlier stage in these proceedings, on 26th September 2018, His Honour Judge Barklem in the Employment Appeal tribunal observed:

    "I do not understand the basis for a proposed application for costs which the Claimant says he intends to make in relation to the Hearing in which his application for interim relief was refused."

    Nevertheless, the Claimant made just such an application and persisted in it right up to 16th September 2019, when it was rejected with costs awarded against him. He now makes a further application for a preparation time order following on from that costs hearing in September last year when his applications for both wasted costs and preparation time were, similarly to his interim relief application, also refused.

19. In the absence of any purported justification ever having been provided for the making of such a further application it is, in fact, an abuse of the process and clearly misconceived. It is not in the interests of justice to grant relief from sanction and permit such a hopeless application to proceed, particularly where the Claimant has deliberately and over a substantial period disobeyed an order of the Tribunal.

EMPLOYMENT JU DGE LANCASTER

DATE 18th February 2020