



EMPLOYMENT TRIBUNALS

Claimant: Mr D Moore

Respondents: 1. Westlake Civils Limited
2. Chad Burrows

JUDGMENT

It is the judgment of the Tribunal that :

1.The claimant having failed to comply with the conditions upon which he was granted permission to amend his race discrimination claims to advance those claims on the basis that he was a contract worker pursuant to s.41 of the Equality Act 2010 , that permission is rescinded, and as all his other claims were struck out pursuant to rule 37 of the 2013 rules of procedure, he no longer has any claims before the Tribunal, as all have been dismissed.

2.Any application for costs by the respondent shall be made on at least 7 days notice to the claimant, and shall specify the amount of costs being sought, providing a breakdown of the work done, hours and rates claimed, and all facts relied upon in support of the application.

3.The hearing listed for **22 and 23 June 2020** is vacated.

REASONS

1. In this case the claimant brought two claims, one of unlawful deduction from wages and the other for race discrimination, both of which arise out of his engagement by the respondent which came to an end on or about 1 April of 2019 , having started in July of 2018.
2. The respondent resisted the claims, on the basis that the claimant was neither an employee nor a worker . Application was made to strike out the claims, and at the hearing on 16 and 17 December 2019 those claims were struck out.
3. After the Tribunal's determination of the application to strike out the claims as they stood, however, the claimant made an application that the claims be amended to put his race discrimination on the basis of Section 41 of the Equality Act, i.e. on the basis of the claimant , although not an employee or

worker of the respondent, as the Tribunal determined, was nonetheless was a contract worker. The respondent objected to that amendment. The Tribunal, however, was minded to grant it, but given the claimant's inability to produce adequate coherent or cogent documentation to support such a claim, the Tribunal gave only conditional permission to amend.

4. Those conditions were that the claimant complied with the following orders of the Tribunal:
 - a) The claimant do by **31 January 2020** provide to the respondent (and not the Tribunal) hard copies of all documents that he intends to rely upon to show that he was employed by Pavemoore Limited ; and
 - b) The claimant do by **17 February 2020** make and serve upon the respondent (and not the Tribunal) a further witness statement setting out full details of his employment status with Pavemoore Limited; and
 - c) Setting out with more detail each and every occasion upon which he claims that he was subjected to any detriment (e.g, being verbally abused, being denied payments that were due, or any other form) by the respondent.

It was also expressly provided that , for the avoidance of doubt, if the claimant failed to comply with any of these provisions, his claims could not be amended, and as none will then remain, all his claims would stand dismissed.

5. The Tribunal added a postscript to the judgment , to make clear exactly what the claimant needed to do to comply. Also as there was some delay in promulgation of the judgment and orders, the dates for compliance with the Tribunal's orders were varied from those discussed in the hearing , to allow for the delay in promulgation.
6. By letter of 26 February 2020 from the respondent's representative, the Tribunal was informed that the claimant had failed to comply with paras. 2(a) and 2(b) of the Tribunal's orders. Compliance was required with 2(a) by 31 January 2020, and 2(b) by 17 February 2020. Accordingly, the respondent sought a judgment that the claims were all struck out.
7. This letter was copied to the claimant , but he has not communicated with the respondent or the Tribunal.
8. In the circumstances, it is manifestly clear that the claimant has not complied with the conditions upon which permission to amend his claims was granted. He was given longer to do so than was first stated in the hearing, but he has still failed to do so. He could be in no doubt as to the consequences, nor as to what he needed to do. He does not appear to have attempted to comply by sending anything at all to the respondent, as ordered.
9. The Tribunal accordingly, the conditions of its permission to amend not having been fulfilled, rescinds any such permission. As all the claimant's other claims

were struck out, he has no claims before the Tribunal, all have been dismissed.

10. The respondent's letter of 26 February 2020 includes an application for costs, to which the Tribunal will return below. It also, however, contains what may be a misleading statement, which may mislead the claimant, a layman with no representation, as to what course may now be open to him. In the letter Mr Hoyle states "The correct course for the Claimant if he disputes the dismissal of the claim is to lodge an appeal with the EAT...". Mr Hoyle may consider that the correct course, but that should not be taken to mean that it is the only course. Any party can apply for reconsideration of a Tribunal's judgment, pursuant to rule 71, as the accompanying notes explain. Any such application, of course, would need to explain, assuming non-compliance was accepted, why there was non-compliance, give an indication of when compliance will occur, and why the Tribunal should now allow the amendment that it has disallowed.
11. Turning to the costs application, the respondent is entitled to make such an application. It has not, however, specified the amount of costs that are sought, or provided any breakdown of work done, rates, evidence of retainer or other liability on the part of the client to pay for the work done. If, therefore such an application is to be pursued, these must be provided, and the claimant given an opportunity to respond, either at a hearing or on paper. If he wishes his means to be taken into account, he must provide full details with supporting evidence.

Employment Judge Holmes

Date: 11 March 2020

JUDGMENT SENT TO THE PARTIES ON
12 March 2020

FOR THE TRIBUNAL OFFICE

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.