



EMPLOYMENT TRIBUNALS

BETWEEN

Mr P Thakrar AND Staff Rite Recruitment Limited

Claimant Respondent

HELD AT Birmingham ON 14 September 2020

EMPLOYMENT JUDGE Self (By Telephone)

Representation

For the Claimant: No Attendance

For the Respondent: No Attendance

JUDGMENT

All Claims are struck out and dismissed pursuant to Rule 37 (1) (c) of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations because the Respondent has failed to comply with the Order of EJ Connolly on 19 June 2019 by failing to provide a list of documents.

WRITTEN REASONS

1. This Claim was lodged on 8 December 2018 and deals with allegations that took place earlier in that year. It was comprehensively case managed by EJ Connolly on 19 June 2019 when it was set down for a six-day final hearing between 10 and 17 June 2020.
2. Although the matter could not proceed as a final hearing on 10 June 2020 because of the restrictions placed upon the Tribunal system by the Covid pandemic it would also not have done so because the parties were not ready. The parties' documents were meant to be exchanged on 23 September 2019, but the Claimant did not comply with that Order. The Respondent did. As a

result, no bundle had been created for the hearing nor had witness statements been exchanged.

3. The matter came before EJ Johnson on 10 June 2020. The Claimant did not attend on that day indicating that he was unwell and suspected that he had Covid 19. There was no medical evidence to support that self-diagnosis. Mr Forrester represented the Respondent.
4. During that hearing Mr Forrester made clear that the Respondent had ceased to trade and had applied to have the Respondent struck off the Companies House Register but that had not taken place because of an objection. The Respondent was ordered to confirm to the Tribunal by 24 June what the current situation was re Companies House.
5. I can see no evidence on the file sent through to me that there was any response made to that within the time frame. The only correspondence from the Respondent was in relation to this hearing where the solicitor indicated that he was not going to be attending this hearing. That was received at 8.04 am on the date of this hearing and read as follows:

“In relation to the hearing listed later today we are not instructed to attend.

We are instructed that the Respondent Company in this case has not traded for in excess of 18 months. The Respondent Company would have been struck off the register had the Claimant in this case not objected to its dissolution. There are not (sic) assets or monies in the Respondent Company and it will be struck off the register in due course.

This firm nor the Respondent Company mean any disrespect to the tribunal by not attending today but we are unable to progress matters.

We can confirm that we have copied this email to the Claimant.

6. I have looked at Companies House and see that matters have not changed since EJ Johnson examined it back in June 2020. It remains a legal entity and capable of responding to this claim if it so chooses.
7. On 20 June 2020 the Claimant was informed that a strike out warning would be sent to him requiring him to provide the Tribunal by no later than 15 July 2020 representations as to why his claim should not be struck out for non-compliance with EJ Connolly's case management orders and /or that the claim had not been actively pursued.
8. The Claimant was warned as follows:

The Claimant must understand that if he does not provide his representations either in writing or request a hearing in accordance with Rule 37(2) by 15 July his claim may be struck out. (Para 4.2 of EJ Johnson's order).

9. I can see from the file that on 23 June 2020 a letter was sent to the Claimant repeating the strike out warning. EJ Johnson gave the Claimant at least three weeks to comply and I am satisfied it was sent to the correct address and that the Claimant has had notice of the same.
10. On 30 July 2020 I can see that the file was referred to the Duty Judge and note that the duty Judge requested that a strike out order be drawn up to be sent to the Claimant. It would appear from this note that the Duty Judge had decided to strike the claim out and was asking for the necessary paperwork to be completed so as to bring the claim to an end. I can see from the file that an order was drawn up but can see no evidence that any order was sent out or completed and there is no information on the file as to why that might have been. It may well be that the staffing limitations brought about by the pandemic affected matters.
11. I am not bound by any of those matters, but it is instructive that the view taken at the end of July was that the Claim should be struck out.
12. On 3 August, the Claimant sent in an email explaining that his mental health was such that he would not be able to cope with the preliminary hearing listed on 6 August. That was taken as an application to postpone the hearing and it was postponed until today.
13. On 21 August, the Claimant sent in a further letter which indicated that he was not fit to further his Claim. Just before this hearing the Claimant sent in a number of emails which appeared to relate to personal issues that the Claimant is dealing with at the present time and which seem to be causing him some trauma.
14. The Claimant has demonstrated that he can communicate with the Tribunal but has not responded to the notice to show cause as to why the claim should not be struck out because of a failure to comply with the directions of EJ Connolly. Had the Claimant attended today that issue could have been discussed but I am satisfied that the Claimant could and should have made written representations about that issue as he has been able to communicate on other issues.
15. I do not find that the Claimant is not pursuing his claim. He is pursuing it; all be it in a manner which means that the proceedings are moving at a glacial pace.

16. I do find however that he has failed to provide his documents without any good reason having been given and that despite opportunity being afforded to him to explain that default he has failed to do so. In those circumstances and in the absence of any proper explanation I will conclude what was intended earlier in the summer and strike out the claim pursuant to Rule 37 (1) (c) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.
17. The Claimant has not put forward his health as a reason for non-compliance.
18. Any further correspondence in relation to this matter should be referred to me for consideration to permit judicial continuity.

Employment Judge Self

16/09/2020

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