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EMPLOYMENT TRIBUNALS

Claimant: Mr D Stewardson

Respondent: Royal Mail Group Ltd

PRELIMINARY HEARING

Heard at: London East (in public by telephone conference)

On: 30 October 2020

Before: Judge Brian Doyle (sitting alone)

Representatives

For the claimant: Not in attendance or represented

For the respondent: Ms S Lewis, solicitor

JUDGMENT

The claimant's claim is struck out under the Employment Tribunals Rules of Procedure 2013 rules 37(1)(c) and (d) because the claimant has not complied with case management orders and the claim is not being actively pursued.

REASONS

1. The claim contains complaints of (1) unfair dismissal, (2) non-payment of notice pay and (3) non-payment of holiday pay.
2. This is a preliminary hearing conducted in public by telephone conference in accordance with rule 46 and the relevant practice statement and presidential guidance regarding remote hearings. The purpose is to consider the respondent's application to strike out the claim.
3. The claimant has not attended the hearing nor attempted to take part in it. The Tribunal office made several attempts this morning to contact him, but without success. The respondent's representative informed me that her colleague had

communicated with the claimant earlier this week, from which it was understood that the claimant was seeking legal representation, but that he was unlikely to participate in this morning's hearing.

4. I am satisfied that in these circumstances it is appropriate to proceed in the claimant's absence. I have done so in accordance with the requirements of rule 47.
5. I rehearsed my understanding of the history of this matter gleaned from the selected case file papers provided to me by the Tribunal office and the indexed hearing bundle prepared by the respondent in accordance with the directions for remote hearings.
6. The history of this matter is as follows.
7. The claimant complied with the Acas Early Conciliation requirements in February 2020. He presented his ET1 claim form to the Tribunal on 27 March 2020. He named his representative as Mr Ryan Ward of the CWU trade union.
8. The respondent presented its ET3 response form on 1 June 2020 and requested further information of the claimant. On 18 June 2020 Mr Ward emailed the respondent and the Tribunal in response.
9. On 14 July 2020 the Tribunal issued standard case management orders.
10. On 8 September 2020 the respondent referred to those orders and confirmed that it had made disclosure of documents to the claimant's representative on 3 August 2020. However, it believed that Mr Ward had come off the record as the claimant's representative on 5 August 2020. It had then had numerous email exchanges with the claimant himself on 17, 18 and 28 August 2020 and 1 September 2020. The respondent asserted that there was a failure to comply with case management orders on the claimant's part and applied for an unless order.
11. This prompted the Tribunal to write to Mr Ward on 18 September 2020. He was asked to reply to the respondent's application of 8 September 2020 by 25 September 2020.
12. On 5 October 2020 the respondent advised the Tribunal that the claimant had not replied to the Tribunal's request for comments. It asked the Tribunal to review the respondent's application of 8 September 2020.
13. As a result, the Tribunal issued a strike out warning to the claimant on 8 October 2020 requiring a reply by 14 October 2020. The Tribunal referred to the claimant's non-compliance with case management orders of 14 July 2020; his failure to respond to the Tribunal's letter of 18 September 2020; and the suggestion that the claim was not being actively pursued.

14. On 8 October 2020 the claimant's representative, Mr Ward, came off the record in a communication to the Tribunal. The respondent also gave notice of an internal change of representative.
15. This matter had been listed for a final hearing on 30 October 2020. On 28 October 2020 the respondent applied for the hearing to be postponed (it was not aware of the listed date and the Tribunal accepted that there had been an earlier error in issuing the notice of hearing to the respondent). The respondent again referred to the claimant's inactive pursuit of the claim and his non-compliance with orders. It asked that the final hearing be postponed or converted to a preliminary hearing to consider its existing strike out application.
16. The Tribunal agreed to convert the hearing and the matter came before me this morning. I have considered the terms of rule 37 and the history of these proceedings.
17. I am satisfied on the material before me that the claimant is not engaging properly with correspondence from the Tribunal and with the respondent; he has not complied with case management orders to any extent; he is not actively pursuing his claim; and a fair final hearing could not have proceeded today as originally listed.
18. I am suitably cautious about striking out a claim, particularly where a claimant is no longer represented and where there might be a suggestion that he is seeking alternative representation. However, even when he had a representative, it does not appear that orders were being complied with or the claim was being actively pursued. The fact that the claimant has not defended the strike out application nor sought to participate in this morning's hearing is also very telling. He has made no attempt to advise the Tribunal of any difficulties in the face of an application by the respondent and a warning by the Tribunal, either of which could lead to a strike out.
19. In conclusion, the claimant's claim is struck out under the Employment Tribunals Rules of Procedure 2013 rules 37(1)(c) and (d) because the claimant has not complied with case management orders and the claim is not being actively pursued. It remains open to the claimant to ask that this decision be reconsidered if he is able to demonstrate that he is in a position to pursue his claim, but I will need to be persuaded of that by a properly reasoned and timely application.

Employment Judge Brian Doyle

30 October 2020