



EMPLOYMENT TRIBUNALS

Claimant Mr P Tamiz
Represented by in person

Respondents Brook Learning Trust
Represented by Mr C Rajgopaul (counsel)

Before: Employment Judge Cheetham QC

**Preliminary Hearing held on 19 November 2020 at
London South Employment Tribunal by Cloud Video Platform**

JUDGMENT

1. The claims under the Equality Act 2010 are struck out for non-compliance with the Tribunal's orders.
2. The claim for wrongful dismissal will proceed to a hearing, as set out in the separate case management order.

REASONS

1. *This has been a remote hearing, which the parties have not objected to. The form of remote hearing was: V – Cloud Video Platform. A face to face hearing was not held because it was not practicable and the application could equally be resolved using the CVP. The documents that I was referred to are those contained in the Tribunal case file, as well as the hearing bundle and respective written submissions.*
2. This Preliminary Hearing was listed to consider whether the claims under the Equality Act 2010 should be struck out on grounds that the Claimant has failed to comply with the tribunal's Orders.

Procedural history

3. This is the seventh Preliminary Hearing (“PH”) in this claim. The Claimant issued his claim on 15/11/18, alleging that he had been discriminated against because of race, disability and religion or belief. He also claimed wrongful dismissal. The claim arose out of his employment from 1/1/17 to 29/6/18.
4. At the first PH on 2/4/19, Acting REJ Davies listed a one-day PH to determine the issue of disability and ordered the Claimant to provide by 10/6/19 a schedule of allegations of discrimination, setting out the date, what was alleged, who the discriminator was, what type of discrimination it was, as well as what detriment was caused.
5. The second PH on 31/7/19 was postponed to 15/11/19, because the Claimant attended the Ashford rather than Croydon Employment Tribunal. Given that he had not complied with the original Order, at that PH (which the Respondent did attend) EJ Balogun extended the deadline for the Claimant to provide his schedule to 28/8/19.
6. In breach of that order, the Claimant did not provide his schedule by that date. Following an application by the Respondent for an unless order, he finally provided what was called a Scott Schedule on 8/11/19, but it did not actually particularise the allegations in his claim form.
7. At the third PH on 15/11/19, the Claimant did not attend, having given no reasons as to why he was unavailable. EJ Corrigan considered the evidence and held that the Claimant was not disabled. In a separate Case Management Order, she ordered him to amend his schedule of allegations by 31/1/20 to identify which were said to be allegations of race discrimination, which religious discrimination, and “*why it is said a particular allegation relates to either race or religion*” (§3).
8. On 31/1/20 the Claimant sent an amended Scott Schedule, but completely failed to comply with the Order of 15/11/2019, as he did not particularise his existing claim. Instead, he made an application to amend.
9. A fourth PH took place on 29/4/20, at which the Claimant was ordered to set out his position regarding the concerns the Respondent had (correctly) raised about the schedule and he was pointed to the Presidential Guidance on Case Management in respect of any application to amend. His subsequent response did not in fact address the concerns raised nor make any proper application to amend.
10. The fifth PH on 21/5/20 did not actually start for reasons that are unclear.
11. The sixth PH took place before EJ Wright on 9/7/20. She refused the Claimant’s application to amend to include any of the allegations contained in his Scott Schedule and noted that:

- a. the Claimant, despite being asked not to do so, talked over the Employment Judge (§4);
 - b. the “*current position of this claim is unsatisfactory ... the basis of the claimant’s claim is still not clear*” because “*the claimant has still failed to particularise his claim, despite now being directed to do so on at least three occasions*” (§5 and 7); and
 - c. “*The claimant has repeatedly failed to comply with the Tribunal’s Orders*” (§16).
14. It is helpful to set out the following extract from EJ Wright’s helpful and detailed Order (with emphasis added):

9. The Tribunal cannot reconcile the claimant's [Scott] schedule to the events pleaded in the ET1. The ET1 contains one paragraph running to 25-lines. The first seven-lines appear to refer to the claimant's disability. The eighth line contains the phrase 'that is when their bullying and discrimination started'. There is then reference to a refusal to give the claimant a letter (his case is that his employer agreed to give him a letter requesting his operation take place as soon as possible). If the refusal to give the claimant a letter is an allegation of discrimination, the Tribunal and so the respondent is still no clearer of the details. Of the allegation, the claimant needs to set out - who said what regarding the letter; when the refusal to provide the letter took place and how (was it oral or in writing and the details); were there (if so who) any witnesses; by reference to the EQA the form of prohibited conduct (what type of discrimination is alleged); and what detriment was suffered?

10. The claim form appears to plead the following allegations:

- a) a 'First Review Meeting' to discuss absence and the work the claimant could carry out;*
- b) the fact the claimant says he did work for the respondent whilst he was off ill;*
- c) a failure by the respondent to follow its own policies, including a failure to follow the disciplinary policy in respect of the allegation of gross misconduct;*
- d) tampering with the claimant's employee file; and*
- e) the circumstances surrounding the termination of the claimant's contract.*

11. None of these allegations relate to the schedule provided and as such, they remain in July 2020 unparticularised.

12. It is to be noted that the claimant's claim form and schedule refer to him having raised a grievance and it is therefore assumed that he was focused, at the time, on his complaints (the subject of the grievance).

13. *There are therefore two outstanding issues... **Secondly, the claimant's failure to particularise his claims in sufficient detail so that the respondent knows the case it is to answer and the Tribunal knows what issues it has to determine...***

19. *The second issue is therefore the claimant's failure to particularise the claims which he did plead in his ET1 and which he seeks to advance. The claimant has repeatedly refused to engage with the details of the claim which he has presented... This is the claimant's claim and he is to actively pursue it; based upon his own knowledge of his own allegations. There is no one better placed than him to particularise his claims and he does not need information from the respondent in order to do so. What is required from the claimant is set out above. **The question is, how many more opportunities is the claimant to be given to comply with the Tribunal's Orders? The Tribunal cannot keep giving the claimant opportunity after opportunity to particularise his claims. Time is of the essence as final hearing is now over four months away. The respondent is prejudiced as it is not able to respond to the claims as it is not clear what they are...***

21. *The claimant has been given numerous opportunities to set out the further particulars of his claim and he has failed to do so.*

22. In view of the claimant's repeated lack of engagement with the Tribunal and the breaches of previous Orders, the Tribunal is considering of its own motion striking out the claimant's claim under the EQA for failure to actively pursue the claim and for a failure to comply with the Orders of 28/3/2019, 29/10/2019 and 15/11/2019. The claimant therefore has 14 days from the date of this order to provide particulars as per the guidance above.

15. On 28/7/20, the Claimant sent a short document headed "Particulars of Claim". It failed to provide any of the particulars he was ordered to provide in respect of the five allegations set out at paragraph 10 of EJ Wright's Order, but instead, contained generalised assertions. This is an important finding, because the judge could not have been clearer (a) as to what was required and (b) that the Claimant was at what Mr Rajgopaul described as "the last chance saloon".
16. There was further fruitless correspondence with the Claimant, including a letter from the Claimant of 23/9/20 in which he made insulting remarks about EJ Wright, impliedly accusing her of racism.
17. That is the procedural history that led to this PH. The Tribunal was therefore considering of its own motion whether to strike out the Equality Act claims. The Respondent argued in favour of that striking out.

Striking out claims

18. The tribunal has power to strike out claims for non-compliance with its Orders (Rule 37(1)(c)). In his written submissions, Mr Rajgopaul referred to this helpful summary from **Harvey** (at Division P §387-388).

The guiding consideration, when deciding whether to strike out for non-compliance with an order, is the overriding objective (Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371, EAT...). This requires the judge or tribunal to consider all the circumstances, including 'the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is possible' (ibid at para 17, per Judge Richardson). Whether a fair hearing is still possible is to be judged objectively by the judge or tribunal, and the feeling of unfairness of one or other of the parties is not in itself a decisive factor. The EAT made it clear in Armitage that striking out should not always be the result of disobedience to an order (para 17), and that tribunals should consider whether a lesser sanction might be appropriate in the circumstances (see para 33)...

In earlier cases it had been held that, as the purpose of the rule is to achieve compliance with the order, the basic question to be asked is whether there is a real or substantial or serious risk that, as a result of the default, a fair trial will no longer be possible (Landauer Ltd v Comins & Co (1991) Times, 7 August, CA; National Grid Co Ltd v Virdee [1992] IRLR 555, EAT).

19. It is relevant also to refer to **Barton v Wright Hassall LLP** [2018] 1 WLR 1119, SC, which held that litigants in person are not entitled to any greater indulgence in complying with court rules than represented parties. That is because a repeated response from the Claimant has been to say that he is self-representing. It should be noted, however, that in the current case, the Claimant has been given a degree of latitude that a legally represented party would be unlikely to receive.

Submissions

20. For the Respondent, Mr Rajgopaul submitted that this was a paradigm case in which the claim should be struck out for repeated failure to comply with the Tribunal's Orders and warnings. In terms of the Overriding Objective, he said that:
- a. The parties were not on an equal footing because more than two years after the claim was issued and as a result of the Claimant's breaches, the Respondent still did not know what claim(s) it had to meet.
 - b. It would be wholly disproportionate to the complexity and importance of this case (said by the Claimant to be worth just over £21,000) to

permit the Claimant to continue to waste tribunal time and put the Respondent to the cost and expense of dealing with a claim which, in breach of four Orders from the Tribunal, he has still failed to particularise.

- c. The delays in this case as a result of the Claimant's conduct have been extraordinary and unless the Equality Act claims are struck out, would certainly continue.
 - d. The Respondent has been put to exceptional cost and expense in dealing with the Claimant's breaches, his correspondence and the repeated PHs that have taken place.
28. The only reason that C has given for repeatedly breaching the Tribunal's Orders properly to particularise his claim was that he was a litigant in person, but Mr Rajgopaul relied upon **Barton**. He said it rang particularly hollow in circumstances where the Claimant was an educated professional, teaching A Level students. As EJ Wright said in her Order there is no one better placed than the Claimant to particularise his claim, and he has not done so.
 29. He submitted that this was clearly a case in which there could be no fair trial of the allegations of discrimination because of the breaches of the Tribunal's Orders. EJ Wright's Order made clear that this was the Claimant's last chance, but the Respondent remained none the wiser as to the precise allegations made against it. Mr Rajgopaul pointed out that there was a 5 day hearing due to start on 7/12/20, but the Respondent was not able to respond to the claims, no disclosure had taken place - let alone exchange of witness evidence - and accordingly the hearing from 7/12/20 could not proceed.
 30. The Claimant had also produced written submissions, which he developed in his oral submissions. A flavour of those submissions can be seen from the opening line of his skeleton argument: "*The Respondent is not telling the truth and they are acting maliciously and disingenuously*".
 31. The thrust of his arguments was that the Respondent was to blame for the Claimant's failure to comply with the Tribunal's Orders, because (a) they had not sent him information he required and (b) in any event, they understood what his case was, so it did not require particularisation. He was again critical of the tribunal generally and EJ Wright in particular (although his criticisms were milder than before), although when asked, said he had understood her Orders.
 32. Strikingly, at no stage did the Claimant accept any responsibility for his failures to comply with the Tribunal's Orders. Rather, his focus was more on complaining about how he had allegedly been mistreated by the Respondent, both during and subsequent to his employment. When asked, the Claimant agreed that the hearing listed for 7 December could not proceed, although he blamed the Respondent for that.

Conclusion

33. The discrimination claim as set out in the ET1 is insufficiently particularised. It remains so after 2 years, despite repeated Orders from the Tribunal requiring the Claimant to provide those particulars, as well as detailed guidance as to what those particulars should include. I have gone through the Orders and the responses to those Orders from the Claimant and it is quite clear that there has been material non-compliance.
34. The Claimant does not appear to dispute this, perhaps because his preoccupations lie elsewhere, as his skeleton argument and oral submissions demonstrate. For reasons best known to himself, he clearly feels let down by both the Respondent and the Tribunal, but he has not begun to explain why he has not complied with the Orders, nor given any encouragement that he would do so if given any further opportunities. Even if I were minded to extend time once again, the Claimant has said nothing that would suggest he would then comply with the Order to provide particulars.
35. In these circumstances, the conclusion has to be that the discrimination claims should be struck out. There has been an extensive failure to comply with those Orders, the Claimant has provided no adequate explanation and there cannot be a fair trial. There comes a point where a line must be drawn and the Claimant has gone well beyond that line.
36. That leaves the Claimant's wrongful dismissal claim, which he values at £3,047 (see ET1). I have provided a separate case management order dealing with that claim.

Employment Judge S Cheetham QC
Dated 30 November 2020