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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr K Henson

and

Respondent

Toilets + Limited

Held by CVP on 18 November 2020

Representation

Claimant:

Mr S Phillips, Friend

Respondent:

Mr S Taylor, Director

Employment Judge Kurrein

JUDGMENT

The Claimant's claim is struck out for non-compliance with the Order made on 14 January 2020, and because he is not actively pursuing his claim.

REASONS

- 1 This was an open preliminary hearing to consider whether or not to strike out the Claimant's claims. The chronology is as follows:-
 - 1.1 The Claimant's effective date of termination from his job as a delivery driver was 21 June 2019
 - 1.2 He presented his claim, alleging unfair dismissal and disability discrimination on 28 October 2019.
 - 1.3 The Response was presented on 19 November 2019
 - 1.4 Directions were given on 14 January 2020. They included a direction that the Claimant should provide a disability impact statement, and medical evidence to support his claim to be dyslexic, by no later than 11 February 2020.
 - 1.5 On 10 February the Claimant:-
 - 1.5.1 Provided a very brief disability impact statement; and

- 1.5.2 Told the Tribunal office he was waiting for his GP to respond to a request.
- 1.6 On 28 May 2020 a preliminary hearing took place at which Mr Phillips assured EJ Postle that the Claimant was chasing his GP. The full merits hearing was listed for today.
- 1.7 On 3 July 2020 the Respondent sought an Unless Order in respect of the medical evidence.
- 1.8 On 21 September 2020 the Claimant was warned that if he did not comply with the direction for medical evidence his claim might be struck out for that failure and because he was not actively pursuing his claim.
- 2 That issue has come before me today. Shortly before the hearing started I was informed that the claimant had sent the tribunal an email with an attached letter from his GP that was important. That letter was from the GP's practise, dated 17 November 2020, and addressed, "To whom it may concern" it said,
- "I can confirm that we did receive a request from Mr Henson asking for a copy of his medical records on the 27th March 2020.
- Unfortunately, this request was never actioned, the reason for this is unknown."
- 3 The claimant did not produce any documents or make a statement or offer to give evidence in the course of this hearing. It was said on his behalf that he had been advised by Mr Phillips to contact his GP and that it would be unfair to "knock out" his case at this stage and contrary to the overriding objective.
- 4 I concluded that the failure of the claimant to make any medical or similar evidence available, or to provide any evidence of his attempts to do so, was contumelious. He told the tribunal that he had been in touch with his GP in about January 2020 but there was no evidence to support that. Following his contact on 27 May 2020 there was no evidence to show that the claimant had made any contact to chase his GP until yesterday. It appeared to me that the claimant only took steps to pursue his claim when a hearing or other deadline was imminent, and then only at the last moment.
- 5 In light of the above chronology I concluded that the claimant was not actively pursuing his case. His case had been active for over a year and had not moved forward from the date when directions were given in January 2020. Today's hearing date had been lost, and another was very far in the future, at best.
- 6 I have therefore concluded that it is appropriate in this case to strike out the claimant's claims.
- 7 I should add, for completeness, that had I not been of that view I would have given serious consideration to ordering the claimant to pay a deposit as a condition of continuing with either of his claims on the grounds that they had little reasonable prospect of success. I was of that view because:-
- 7.1 I thought it unlikely the claimant would establish that he was a disabled person for the purposes of the Equality Act 2010, or that he had been placed

at a substantial disadvantage by a PCP, in light of the health declarations he signed for the respondent on 30 January 2018 and 22 January 2019

- 7.2 On that basis I thought it even less likely that he would establish the respondent knew that he was a disabled person.
- 7.3 It did not appear to be in dispute that following a road traffic accident in early 2019 he was given a final written warning in March 2019 because of his accident record.
- 7.4 It did not appear to be in dispute that he had a further accident in May 2019 for which he was dismissed with notice.

Employment Judge Kurrein

18 November 2020

Sent to the parties and
entered in the Register on : :

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For the Tribunal

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