



EMPLOYMENT TRIBUNALS

Claimant: Mr Tomasz Jakubowski

Respondent: CEVA Logistics Limited

RECORD of a PRELIMINARY HEARING

Heard at: Cambridge (by CVP)

On: 20 January 2021

Before: Employment Judge Cassel (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr Tom Perry, Counsel

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

ORDER ON PRELIMINARY HEARING

The Claims are struck out under Rule 37 for non-compliance with the rules and for not being actively pursued.

RESERVED REASONS

Background

- (1) The Claimant submitted a claim form which was received by the Tribunal on 3 February 2020. Within it he provided his home address and his email address. At Box 8, in which he was to indicate the type and details of his claim, the various boxes remain unchecked although the word "Discrimination" was

described in one of the boxes. There were four lines of particulars at Box 8.2 and at Box 12.1 a tick to indicate that he did not have a disability.

- (2) A response was entered and the background to his working relationship was outlined and so far as discrimination was concerned, the Respondent indicated that it was unable to respond to an allegation of discrimination as it was insufficiently particularised and unclear as to what type of claim he was bringing.
- (3) On the same day as entering the response, 2 March 2020, the Respondent's Solicitor wrote to the Claimant in terms that it could not enter the response to an allegation of discrimination in the absence of any details and reserved the right to apply to the Tribunal to have the claim struck out if he continued to fail to provide such details.
- (4) The Claimant responded the same day, but again did little but to repeat the broad allegations in the claim form and certainly did not provide any detail as to what it was that he was claiming.
- (5) The following day the Respondent's Solicitors again contacted him repeating their request and suggesting that he seeks independent legal advice. Apart from acknowledging receipt there was nothing of substance on the part of the Claimant.
- (6) On 18 March 2020, the Respondent Solicitors applied to the Tribunal for an Order for further information.
- (7) On 17 April 2020, Employment Judge Laidler Ordered the Claimant provide the following information:
 - 7.1 if the Claimant is seeking to bring a claim of discrimination, the relevant protected characteristic relied upon under the Equality Act 2010;
 - 7.2 the particular strand of discrimination alleged, (i.e. direct discrimination, indirect discrimination, harassment, victimisation); and
 - 7.3 the particular facts relied upon in relation to each alleged act and strand of discrimination, including (in each case) all relevant dates, times and any witnesses.

The dates specified for compliance was 7 May 2020.

- (8) On 13 May 2020, the Respondent Solicitors applied to the Tribunal for the claim to be struck out for failure to comply with the Tribunal's Order. That application was copied to the Claimant.
- (9) On 23 August 2020, a Strike Out Warning was sent to the Claimant indicating that Employment Judge Ord was considering striking out the claim because he had failed to comply with the Order of 17 April 2020 and that the claim had not been actively pursued.

- (10) The Claimant objected to the strike out and in a letter to him dated 8 November 2020 he was told that a Hearing, which in fact took place today, consideration would be given to the issues raised in Employment Judge Ord's warning of 23 August 2020.
- (11) There was no further correspondence to or from the Claimant save the Notice of Hearing.

The Hearing

- (12) The Claimant attended by video link. The Respondent was represented by Mr T Perry of Counsel. The Hearing had to be adjourned for an interpreter to be located and instructed as the Claimant indicated that he was unable to follow the proceedings.
- (13) The Claimant gave evidence on oath and confirmed that his home address and his email address remained the same as that which was indicated on the claim form and that he had received the various documents and emails referred to in the Background, above. He confirmed that he had not taken any action apart from the emails that had been indicated above and accepted that he had done almost nothing since 3 February 2020, just under one year. He was asked on a number of occasions why he had not done anything to proceed with his claim and could give no reason for not taking action.

Submissions

- (14) Mr Perry invited me to strike out the claims. He accepted that to strike out the claims solely on the grounds on non-compliance with Tribunal Orders was a Draconian measure to be used sparingly. However, he reminded me that it would be difficult for witnesses to recall details of any allegations that might now be made which would have occurred more than one year ago, that there had been no sensible explanation for the failure to comply with the Order and that the Claimant had been given numerous chances to give further details.
- (15) He invited me to strike out the claim on the basis that the Claimant had not actively pursued his claims, again reminding me that there had been inordinate delay and there was substantial risk for no fair hearing to take place as it was unclear what the allegations were and it would not be reasonable to expect witnesses to recall events of such age.
- (16) The Claimant invited me to allow the claims to proceed. He stated that he had nothing else to add apart from the evidence that he had given, although indicated that he could remember what had happened and he had a witness.

Conclusions

(17) The Tribunal has power under Rule 37 of the Rules of Procedure to strike out all or part of the claim on a number of grounds. Of relevance to the proceedings today are the power to strike out for:

- “c) the non-compliance with any of these rules or with an Order of the Tribunal; and
- d) that it has not been actively pursued.”

(18) I will deal with the second ground first. The House of Lords in Birkett v James [1978] AC 297, set out principles to be followed in the High Court and a Tribunal can strike out the claim (following Evans and Anor v Commissioner of Police of the Metropolis [1993] ICR 151 CA) where,

“...there has been delay that is intentional or contumelious (disrespectful or abusive to the Court)”

Or,

“...there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, which is likely to cause serious prejudice to the Respondent”.

(19) The first category is to some extent coextensive with 37(c). The second category does require the Tribunal to focus on the likely effects on the Respondent and the likely prejudice. Mr Perry gave some detail as to the difficulties that would be faced by the Respondent if this claim were allowed to proceed. It would appear that for the most part it is likely that allegations of language are the basis of the complaint or complaints made by the Claimant. The events by their very nature would be in excess of one year old. It would be wholly unreasonable to expect witnesses for the Respondent, who even at this late stage have yet to be identified, to recall events. I do find that that concern is well founded. Furthermore, although English is not the Claimant’s first language, it was apparent that he had lived in England for some considerable time and that he had been able to undertake work for the Respondent for two years or so and had sufficient command of English to understand and respond to requests and orders and so on in his work as a warehouseman. He gave no reason why he had failed to respond to requests for further information and to the Order of the Tribunal made nine months prior to the hearing today and to which he still was not in a position to provide details. I concluded that his default was intentional and showed disrespect for the Tribunal and its procedures.

(20) It is principally on this ground that I Order the claim to be struck out.

(21) I also Order the claim to be struck out on the grounds that the Claimant had failed to comply with an Order of the Tribunal. In so doing, I bear in mind the overriding objective provided for under Rule 2. There had been no attempt on his part to comply with the Order by 7 May 2020 and at no stage thereafter had

he attempted to do so, and even at today's hearing was not in a position to provide those particulars. The Claimant accepted that he had received all of the correspondence and emails and the failure to respond was his responsibility alone. The delay would cause considerable prejudice to the Respondent and in my judgment it would make a fair hearing no longer possible. A lesser sanction, given all the circumstances, was not an appropriate response as there was no indication, or evidence, that that would have made any difference so far as the provision of details is concerned.

Employment Judge Cassel

28.1.2021

Sent to the parties on:

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For the Tribunal:

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