



# **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111769/2019**

**Employment Judge M Kearns**

**Mr S Morgan**

**Claimant**

**East Ayrshire Council**

**Respondent**

## **JUDGMENT**

The claim is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claim has not been actively pursued in terms of rule 37(1)(d).

# REASONS

- 1 The claimant is a continuing employee of the respondent. On 17 October 2019 he presented an application to the Employment Tribunal in which he ticked the box at section 8 to indicate that he was “*making another type of claim which the Employment Tribunal can deal with*”. In the box beneath he stated: “*Breach of contract resulting from ongoing loss of earnings*”. No further details were provided. Attached to the ET1 were 105 pages of documentation. In its ET3 the respondent called upon the claimant to provide proper specification of the claim. They asserted that the Tribunal did not have jurisdiction to hear the claim, as it appeared to relate to unfair dismissal and breach of contract. On 22 November 2019 the claimant was directed by the Tribunal to provide a written summary of his claims rather than a collection of documents or evidence. The claimant responded on 15 December 2019 to say that he was claiming breach of contract, breach of the Equality Act 2010, breach of the Health and Safety at Work Act 2005 and that he was a disabled person. He attached a lengthy chronology. The nature of the claimant’s claims remained unclear.
- 2 A case management Preliminary Hearing (“PH”) was held on 13 February 2020. On the morning of the PH the claimant submitted to the Tribunal an agenda document with ten typewritten pages attached stating that the claimant was claiming disability discrimination, and in particular, direct discrimination, indirect discrimination, discrimination arising from disability, victimization, and failure to make reasonable adjustments. He did not copy this to the respondent. At the PH the claimant clarified that he was not bringing claims of breach of contract, unfair dismissal or a claim under the Health and Safety at Work Act. However, he said that he was making a claim of unauthorized deductions from wages. This latter point was taken as a relabeling of the breach of contract claim in the ET1. On that basis, the relabeling was not objected to by the respondent and the ET1 was amended to that extent.
- 3 However, the respondent had not, at that stage, seen the claimant’s agenda or the document attached asserting Equality Act claims. Since these claims were not in the claimant’s ET1 he would have required to make an application to amend his ET1 to incorporate them. In this regard the claimant was directed by the Tribunal to set out

the factual and legal basis of the proposed claims in one document and send it to the Tribunal and the respondent on or before 12 March 2020. That document would have constituted his written application to amend in the additional claims. A document was sent to the Tribunal and the respondent by the claimant on 13 March which appeared largely to assert claims of disability discrimination. However, the claimant did not aver that he had a disability in terms of the Act. At the PH on 13 February the claimant had been directed to supply the factual information required for consideration of his disability status for the purposes of section 6 Equality Act 2010. That information was to have been provided by 12 March 2020. A further PH was fixed for 1 May 2020.

- 4 On the application of the claimant by email of 27 April the PH fixed for 1 May was postponed and the case sisted until 28 June 2020. The information the claimant had been ordered to provide by 12 March in relation to disability status was still outstanding at that point and has not been supplied at any point since. On 7 July 2020 the claimant's application to extend the sist for a further two months was granted and the claimant was directed to update the Tribunal by 7 September 2020. The claimant was absent from work on sick leave between 24 July and 19 August. However, he returned to work after that. Despite this, the claimant failed to update the Tribunal by 7 September as directed. On 15 September the respondent's representative wrote to the Tribunal inquiring whether the claimant had updated the Tribunal. This failed to prompt a response from the claimant. On 8 October 2020 the Tribunal asked the claimant to update it by 15 October 2020. The claimant failed to respond.
- 5 By email dated 19 October 2020 the respondent applied for strike out of the claim on the ground that it had not been actively pursued. The claimant emailed the Tribunal on 26 October to say that he was in better health and felt able to continue. He noted the strike out application, but did not specifically respond to it. The Tribunal accordingly fixed a telephone PH for today to consider the application. The parties were sent Notices of Hearing dated 1 December 2020. The claimant provided a telephone number to the Tribunal for today's hearing. However, he then failed to respond to several attempts by the clerk to dial him into the PH on the number he had provided. The claimant has failed to progress his claim. He has been given a reasonable opportunity to make representations, both in writing and at today's hearing

in order to give reasons why the claim should not be struck out. He has failed to do so.

- 6 The claimant has failed to give an acceptable reason why the claim should not be struck out. The Tribunal therefore strikes out the claim.

Employment Judge: Mary Kearns  
Date of Judgment: 15<sup>th</sup> December 2020  
Entered in Register: 23<sup>rd</sup> January 2021  
Copied to Parties