



EMPLOYMENT TRIBUNALS

Claimant: Mr J Rodda

Respondent: Mr K Dodman

Heard at: Nottingham

On: 19 March 2021

Before: Employment Judge Flint

Representation

Claimant: In person, assisted by Mrs C Whitmore

Respondent: Mr K Dormand (Counsel)

Preliminary Hearing (open) by video

JUDGMENT

1. The claims are struck out in their entirety because they have no reasonable prospect of success;
2. The Claimant's application to substitute the Respondent for CWK Installations Limited is refused;
3. The Claimant is ordered to pay the Respondent's costs, summarily assessed at £8325.

REASONS

1. The Claimant's claims were in respect of Unfair Dismissal and non-payment of Notice Pay, Holiday Pay and Unpaid tax and National Insurance;
2. The purpose of the hearing was "to determine the identity of the Claimant's employer and whether to strike out some or all of the claims and whether, in the alternative, a deposit should be ordered as a condition of allowing the claim to continue";
3. An agreed document bundle was provided. In addition there were witness statements from Mr Rodda, Mrs Whitmore and Mr Hudson for the Claimant and from Mr Dodman, Mr Roberts, Mrs Dodman and Mr Brown for the Respondent.
4. The Tribunal first considered the Respondent's application for the claim of unfair dismissal to be struck out pursuant to Employment Tribunals Rule 37;
5. Upon the Claimant conceding through the evidence and cross examination

of Mrs Whitmore that the earliest date upon which the Claimant's employment with the Respondent commenced was early March 2018, and that the effective date of termination was 30 December 2019, the claim for unfair dismissal was struck out. This was because the Claimant did not have two years continuous employment as required by section 104 Employment Rights Act 1996. As a consequence, the claim was struck out as having no reasonable prospect of success;

6. The Tribunal next considered the Claimant's application to substitute the Respondent for CWK Installations Limited. The remaining claims of Notice Pay, Holiday Pay and Unpaid tax and NI Contributions relied upon the substitution being allowed. The Respondent opposed the substitution. The Tribunal refused the Claimant's application, finding that the substitution did not arise out of a "genuine mistake" by the Claimant. The Tribunal also concluded that the injustice and hardship caused to the Respondent in allowing the substitution would outweigh the injustice and hardship caused to the Claimant in refusing it;
7. Upon refusing the substitution, the Tribunal struck out the remaining claims (set out in paragraph 6) in accordance with Employment Tribunal Rule 37;
8. The Respondent applied to the court for a costs order to be made pursuant to Employment Tribunal Rule 76, on the basis that the Claimant had unreasonably proceeded with the claims and that they had had no reasonable prospect of success;
9. In deciding whether to make a costs order, the Tribunal considered the evidence and representations of the parties. It gave particular weight to the correspondence between the Tribunal and the Claimant regarding who the correct Respondent should be, and letters from the Respondent's solicitor to the Claimant regarding the costs being incurred;
10. The Tribunal was satisfied that the Claimant had acted unreasonably in proceeding with the claims and also that they had no reasonable prospect of success. The Tribunal was further satisfied that a costs order should be made;
11. The Tribunal summarily assessed the Respondent's costs at £8325. It further invited representations from the Claimant regarding his ability to pay in accordance with Employment Tribunal Rule 84. Whilst the Tribunal acknowledged that the Claimant had limited ability to pay, it was satisfied that the costs order should be made in the sum of £8325.

This hearing took place by video conference with the parties' consent. This was due to the ongoing Coronavirus Emergency.

Employment Judge Flint

_19/3/21_____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

23 March 2021

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FOR THE TRIBUNAL OFFICE