



EMPLOYMENT TRIBUNALS

Claimant: Mr M Moor
Respondent: Gateway Housing Association Ltd.
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 15 February 2021
Before: Employment Judge B Elgot

Representation

Claimant: In person
Respondent: Ms K Anderson (Counsel)

JUDGMENT having been sent to the parties on 22 February 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. The Claimant's claims of unfair dismissal, race discrimination, disability discrimination, victimisation and breach of contract were struck out and dismissed pursuant to Rule 37(1)(c) Rules of Procedure because the Claimant has not complied with orders of the Tribunal. Judgment was given with oral reasons and a written Judgment sent to the parties on 18th February 2021.
2. It was only brought to the Employment Judge's attention on 26 March 2021 upon re-reading the tribunal file that the Claimant had sent an email on the afternoon of 15 February 2021 requesting written reasons for the judgment.
3. The Claimant has also made two requests for reconsideration dated 25 February and 1 March 2021 which are dealt with together in a separate document entitled 'Decision on Application for Review'. This decision will be sent to the Claimant under separate cover.

4. The Preliminary Hearing on 15 February 2021 was listed to consider the Respondent's application to strike out the Claimant's case on the ground that it had not been actively pursued and/or on the ground that the Claimant had failed to comply with orders of the tribunal. The Preliminary Hearing took place 15 days before the full merits hearing was due to commence on 2 March 2021. It was agreed by both parties that this case was not and could not feasibly be ready to proceed on 2-5 March 2021 and that hearing has been vacated.
5. I am satisfied that the Claimant, despite some discomfort in speaking for long periods as a result of previous treatment for throat cancer in 2010/11 and again in 2016 was able to effectively participate in the Preliminary Hearing using the Cloud Video Platform. He told me he could 'get by' and was able to speak for up to fifteen minutes at a time. He was given one break of ten minutes to rest his voice between 11.15 -11.25. He was not represented but I am certain that he received the Notice of Hearing dated 29 January 2021 and knew the purpose of the Hearing. The Claimant has no literacy difficulties and he owns and can use a laptop device; he is able to send and receive emails.
6. He was supplied with the relevant links and pass codes so that he and any representative he wished to attend were able to access this remote hearing without any breach of the covid 19 Regulations particularly since the Claimant states that he is shielding. Any representative he chose to assist him was able to log on from a separate location using the information supplied by the Tribunal. He was unrepresented.
7. The Claimant did produce on screen a large black plastic bag which he said contained documents he would now send. He told me that he thought that the content of his ET1 form contained all the information which was needed '*to answer your questions*'. He said he did not understand what he needed to do before speaking to the Employment Judge today. He is adamant that he wishes to pursue his claims to a final hearing.
8. In the circumstances set out below and for the reasons explained below I do not find that the Claimant, albeit unrepresented, can credibly have believed that he need do no more than set out his claims in the ET1. He has not put forward that argument before.
9. The Claim on form ET1 was lodged on 5 November 2019. The Particulars of Claim consist of two pages the first of which is page 7 together with one other unnumbered page at the back of the ET1. Page 7 sets out a list of his claims, a brief narrative (four short paragraphs) of the events leading up to his dismissal and a final paragraph consisting of four lines which state that he '*has been the subject of a pattern of Discriminatory Victimization, Harassment, Breaching of Equality and Data Protection Act, treatment on racial grounds afforded to him by the Respondent line managers from April 2013*'. There is no detailed or specific information about any of his claims particularly the allegations of discrimination.

10. The further unnumbered page gives details of the Claimant's alleged disability, refers to his Freedom of Information Act requests and sets out further brief details of the Claimant's allegation that he was dismissed for non-specific discriminatory reasons.
11. On page 12 of the ET1 the Claimant states '*I have all the exhibits...can I post the exhibits*'. He indicates that he does not want to send the 'exhibits' on line. This statement does not support the Claimant's contention made at this Hearing that he thought all the information which was needed by the Tribunal and which the Respondent is entitled to see was already contained within the ET1. He indicates clearly that there is other information he has in his possession and which he wishes to post rather than send electronically.
12. The Respondent resists all the claims and provides detailed Grounds of Resistance. It is unsurprising that the Response on form ET3 at paragraphs 49-54 requests further information, sometimes called 'particulars', of the complaints of race and disability discrimination, victimisation, breach of contract, fraud and failure to comply with the Data Protection Act.
13. Both parties had the benefit of a telephone case management Preliminary Hearing (PH) on 12 October 2020. The PH was conducted by Employment Judge Lewis who sent a comprehensive Case Summary and Case Management Orders to the parties on 23 October 2020. The Claimant did not attend the telephone PH despite being telephoned several times to ascertain whether there was any barrier to his participation; he did not answer those calls.
14. The Claimant had already failed to comply with the Tribunals' orders and reminders to produce medical evidence regarding adjustments for the telephone PH. The Respondent asserted at the PH that the Claimant had entirely failed to engage in agreeing any directions or a List of Issues. This was the start of the Claimant's extended and repeated history of failure to comply with Tribunal orders. In paragraph 11 of EJ Lewis's Summary she makes it clear that '*if the Claimant continues to refuse or fail to co-operate in the preparation of the case it may come to a point where a strike out is appropriate, we have not reached that point yet*'.
15. I am satisfied that the Claimant has seen the Case Management Summary and Orders. He was forewarned of the risk of strike out. He was sent clear orders for the provision of further information about his claims (Annex A) and a timetable, also in the form of tribunal orders, setting out the detailed steps required for preparation for the final hearing. The Claimant has not complied with any of these Orders.
16. His request dated 4 November 2020 for an extension of time in which to provide medical evidence (due on 27 November 2020) was refused not least because the Claimant says he is in possession of his medical records from May 2010 onwards. Those records have not been sent to the Respondent or to the Tribunal. The Claimant's response dated 6 November 2020 is inexplicable '*tell the judge he have*

got some off the information already so I will send the rest'. In fact none of the information ordered to be provided on 12 October 2020 had been sent.

17. On 2 December 2020 EJ Lewis agreed to extend time for the provision by the Claimant of the information described in Annex A due on 27 November 2020 to 18th December 2020. This gave the Claimant three additional weeks. He did send a small amount of medical information to the Respondent which I have not seen.
18. In compliance with the overriding objective the Respondent's representatives have sought to provide further explanation to the Claimant in order to obtain information and efficiently prepare this case for the final hearing. On 11, 14 and 15 December 2020 the Respondent's solicitors set out in the form of a table in Word format a list of the questions (sometimes called a Scott Schedule) the Claimant should answer in order to comply with the Tribunal Orders and wrote to him patiently and empathetically explaining what was required. It was necessary to correspond with the Claimant at more than one email address having had correspondence which bounced back unexpectedly.
19. The Claimant's response in emails dated 18 November, 15 December 2020, was to accuse the Respondent's solicitors of *'cover up', 'harassment' and 'lying'*. On 16 December 2020 he wrote *'you are a liar liar liar and I have the evidence for it full stop'*(sic). On 20 December 2020, the extended time limit having passed and the Respondent having made further courteous enquiry, the Claimant wrote *'you are a dam liar, I didn't receive anything i do have evidence that you and the court is taking sides against me. This is a cover up. Shame on you all do what you like but I will not give up.'*
20. The Claimant sent a You Tube video link with the title 'Global Banning of all Privateers' which the Respondent wisely declined to open.
21. I find that these were not the responses of a Claimant who had any intention of complying with the orders of the Tribunal which had been copied and explained to him on several occasions even to the extent of preparing a schedule for him to fill in. In none of his emails does the Claimant put forward the explanation he gave to me which was that he believed he had already given all the necessary information in his ET1. He has not produced a Schedule of Loss.
22. I find that the content and nature of the Claimant's responses indicate that he did not and does not in future intend to take the necessary steps to comply with the Tribunal's orders and progress to a fair trial on any date in the foreseeable future. The wording of his emails shows disrespect and contempt to the Respondent and its efforts to comply with the overriding objective and to bring this case to a final hearing at which the Claimant's claims can be resolved. I anticipate that he will continue to remain in breach and intentionally or otherwise delay these proceedings.

23. The Respondent is placed at obvious and continuing prejudice by extended delay particularly given that some of the incidents to which the Claimant refers in his Claim go back to 2013 and his grievance is dated September 2017. He was dismissed in December 2019.
24. The Tribunal further extended time for compliance with its orders to 13 January 2021 and warned the Claimant that he was at risk of strike out. On 30 December 2020 and 4 January 2021 the Claimant sent emails complaining that he was being harassed '*by draconians behaviour against me*' which he said emanated from '*the court and my employer*'. He states that he does not understand '*what more you want from me*'.
25. The Respondent's solicitors sent another courteous letter of reminder and explanation dated 8 January 2021 offering assistance with compliance. That correspondence was met by two emails from the Claimant on 9 January 2021 in effect declining to cooperate at all. He says on 9 January 2021 that he is '*self isolated*' and '*not well enough to do anything*'. However he made no application to the Tribunal for a further extension on grounds of ill health and sent no additional medical evidence to support this assertion even once he had received the Notice of Hearing on 29 January 2021. He was well enough to participate fully in the Hearing on 15 February 2021 at which he submitted that he should be given another chance. However the history of the Claimant's non-compliance with orders does not persuade me that this opportunity would result in any change to his level of meaningful participation in these proceedings.
26. I repeat what is stated in paragraph 4 of the Judgment which is that I am satisfied that the seriousness and magnitude of the Claimant's failure to comply with Tribunal orders taken together with the Claimant's responses in correspondence to the notification of his failures means that even if the full merits hearing is postponed and further orders are made (including unless orders and costs penalties) there will be continuing and intractable prejudice to the Respondent and a fair trial cannot be achieved.

Employment Judge Elgot
Date: 6 April 2021