



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ibeziako

Respondents: 1. Kerri Milner
2. Staff Call UK Ltd

RECORD OF A PRELIMINARY HEARING

Heard on 30 April 2021

Before: Employment Judge D N Jones

Appearances

For the claimant: In person

For the respondents: Ms Owusu-Agyei, counsel

JUDGMENT and a DEPOSIT ORDER having been given and made on 30 April 2021 and written reasons having been requested by the claimant by email of 4 May 2021 in respect of his application to strike out the response or for the respondents to pay a deposit as a condition of being allowed to pursue any argument and for the deposit order made against him, in accordance with Rule 62 of the Employment Tribunals Rules of Procedure 2013 the Tribunal provides the following

REASONS

1. By rule 37
(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
 - a) that it is scandalous or vexatious or has no reasonable prospect of success;*
 - (b) (that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
 - (c) for non-compliance with any of these Rules or with an order of the Tribunal;*
 - (d) that it has not been actively pursued;*
 - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*

- (2) *A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*
- (3) *Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.*

2. By rule 39:

(1) *Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

(2) *The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*

(3) *The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.*

(4) *If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.*

(5) *If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—*

- (a) *the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and*
- (b) *the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.*

(6) *If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.*

3. The respondents made applications to strike out the above claim and claim number 1801093/2020 on grounds under rule 37(1)(a) and (b). Those applications were refused. The claimant had withdrawn claim number 1801093/2020.
4. On 14 April 2021 the claimant made an application to strike out the responses or for the respondent or to pay a deposit on the basis they had no reasonable prospect of success in terms of limitation and the content of the response enjoyed absolute immunities, namely the reference to the earlier unsuccessful claims of the claimant or that the arguments of the respondents were scandalous or vexatious.

5. The reference to limitation is developed in paragraph 3 and 4 of the application and relates to the response having been submitted late, the claimant alleges more than the 28 day period allowed in the rules. The respondents were sent the notice of the claim on 21 January 2021 and required to present the response on 18 February 2021. That is when the response was presented. Rule 16(1) provides that the response shall be on a prescribed form and presented within 28 days *of the date that the copy of the claim form was sent by the Tribunal*. The response was received in time.
6. The remainder of the application concerned absolute immunity in respect of the reference to his earlier claims. These were referred to at paragraphs 36 to 38 of the amended response (34 to 36 of the response) in support of the application to strike out the claims because they were vexatious and scandalous. As that application was dismissed the Tribunal had no need to strike out that relied upon in support.
7. Even if it had, the claimant's proposition about absolute immunity is misconceived. The authorities on which he relies concern the prohibition on bringing claims, such as libel or slander or discrimination, based upon matters arising in or from legal and court proceedings. These attract absolute immunity. Absolute immunity does not extend to preventing reliance upon previous unsuccessful claims and the conduct of a party in them within an application to strike out for vexatious conduct. Establishing vexatious conduct depends upon the misuse of the court process and litigious behaviour.
8. Because of the above, the claimant's applications for strike out or a deposit order were refused as they had no merit. There was limited time at the end of the hearing for the full reasons to be expressed, but these are the comprehensive reasons for the judgment. (see *Partners of Haxby Practice v Collen UKEAT/0120/12/DM*).
9. The reasons for making a deposit order are succinctly summarised in the Order and shall not benefit from repetition or improve with elaboration.
10. The Tribunal assessed the claimant's ability to pay in a discussion with him. The Tribunal asked the claimant what sum he could afford by way of a deposit. He said he was in work, provided details of his weekly earnings of an average of £200 to £300, but said they may be as little as £100. He was asked what he could afford and raise within a month and he initially suggested £1 in respect of each claim. In discussion with the Tribunal the claimant said that he could raise £140, that is £20 in respect of each complaint. The respondent's representative suggested he could raise significantly more on earnings of at least £800 to £1,000 but the Tribunal was satisfied that £20 for each complaint was appropriate, having had regard to the claimant's ability to pay.

Employment Judge D N Jones

Date: 13 May 2021