



EMPLOYMENT TRIBUNALS

Claimant: Mr R Grozdanov

Respondent: Redstone Converged Solutions Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (by CVP) **On:** 12 May 2021

Before: Employment Judge Daniels (sitting alone)

Appearances:

For the claimant: In person

For the respondent: Mr N Caiden (Counsel)

JUDGMENT

1 The claimant's contention that he was employed under a contract of employment within the meaning of s 230 (1) ERA 1996 and the Employment Tribunal had jurisdiction to hear a complaint of unfair dismissal under s94 ERA 1996 and/or for notice pay are struck out under Rule 37 of the Employment Tribunal Rules of Procedure, with immediate effect, as having no reasonable prospect of success.

2 The application by the respondent that the claimant's contention that he was engaged as a worker within the meaning of s 230 (3) ERA 1996 should be struck out or subject to a deposit order (under Rule 37 or Rule 39 of the Employment Tribunal Rules of Procedure) is not well founded.

3 The claims for race/nationality discrimination and for holiday pay may proceed, but only those claims (and only in so far as itemised at the previous case management hearing).

CASE MANAGEMENT SUMMARY

A 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. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are in a preliminary hearing bundle, the contents of which I have noted.

B The claimant was assisted by a Bulgarian Interpreter, Ms Desizlava, duly sworn in, for the first part of the hearing, from 10.05am after which he later stated that she was not needed further and she left the hearing with the consent of the claimant. The claimant stated that as the Tribunal was helping to explain things he did not understand he was content to proceed without an interpreter.

C Due to some time elapsing from the hearing to the date of this order, some of the dates have been amended by the Tribunal, in the interests of justice.

Final hearing

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, **Watford**, on **16 May 2022**, starting **at 10 am** or as soon as possible afterwards. The time estimate for the hearing is **5 days**. A Bulgarian interpreter is required for the claimant.
2. The claimant(s) and the respondent(s) **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

The claims

The claimant has withdrawn the claims for disability discrimination, for unlawful deductions from wages, for a redundancy payment and for other payments. He had sought to pursue claims for unfair dismissal, race/nationality discrimination, for notice pay and for holiday pay under the Working Time Regulations 1998.

The issues

3. The issues between the parties which potentially fall to be determined by the Tribunal were helpfully identified in the previous case management order. The claims now capable of being pursued are only the race/nationality discrimination claim and the holiday pay claim.

Other matters

4. Free sources of legal advice are available as set out in the attached documents.

- 5 The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
- 6 The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- 7 The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- 8 The following case management orders were made reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Applications

The respondent sought an unless order in regard to disclosure of documents. It asserted that the claimant had still not complied with many parts of the Tribunal Order dated 21 September 2020 as regards disclosure of documents, the provision of transcripts, the provision of audio recordings etc.

It appeared to be the case that the documents disclosed by the claimant which he appeared to wish to rely upon included, it appears, amongst others: (i) almost 1,000 photos; (ii) over 10 hours of recordings; (iii) 80 videos; (iv) around 100 screenshots of WhatsApp messages / texts (much of these apparently regarding him trying to locate keys and apparently with little or nothing to do with the allegations before the Tribunal); (v) his handwritten notes of around 100 pages.

The Tribunal had great difficulties in establishing the potential relevance of any of these documents. This potentially unreasonable stance was of great concern to the Tribunal.

The respondent's application was granted as it appears the claimant was not taking sufficiently seriously compliance with tribunal orders.

Accordingly, it is ordered that: **Unless;**

- (i) Within 14 days of this order the Claimant provides typed transcripts of the handwritten diary notes he has disclosed that he intends to rely upon (and which are relevant to the issue in dispute); and
- (ii) Within 14 days of this Order the Claimant provides notification in writing to the respondent of which of the audio recordings he intends to rely upon and typed transcripts of the same (and which are relevant to the issue in dispute);

and/or he provides good reasons for not doing so by that date,

the claims he now pursues **may be struck out** without further notice to the parties.

2. Judicial mediation

- 2.1 The parties are referred to the “*Judicial Mediation*” section of the Presidential Guidance on ‘General Case Management’, which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.
- 2.2 They must inform each other and the tribunal in writing within 14 days whether or not they are in principle interested in judicial mediation and if not, why not.
- 2.3 If they change their minds, they must inform each other/the other party and the tribunal of this as soon as possible.

3. Complaints and issues

- 3.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

4. Statement of remedy / schedule of loss

- 4.1 The claimant must provide to the respondent within **28 days of this Order** a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.

5. Amended Response

In so far as the respondent wishes to file an Amended Response it shall have leave to do so **by 24 June 2021**.

6. List of Issues

The parties are to agree an updated list of issues by **31 July 2021**.

7. Documents

- 7.1 Disclosure has taken place, at least to some degree.
- 7.2 The respondent have prepared and provided to the claimant a proposed core bundle of documents.
- 7.3 The claimant appears to wish to rely upon a vast set of additional documents, some (or indeed many) of which may not be relevant to the issues now in dispute and/or may be disproportionate to the issues or to the fair disposal of the matter.
- 7.4 These documents appear to potentially include vast amounts of audio transcripts or recordings apparently unrelated to the issues in dispute.
- 7.5 The claimant is strongly urged to produce a focussed and limited supplementary bundle relevant (only) to the allegations of discrimination as listed in the previous case management order or to the holiday pay claim.
- 7.6 On or before the **date 28 days from this Order** the claimant must send to the respondent:
 - 7.6.1 A paginated indexed bundle of all additional documents they wish to refer to at the final hearing (“the Supplementary Bundle”) or which are relevant to any issue in the case, including the issue of remedy, (that the respondent didn’t provide them with when complying with any case management order made above and which are not in the Core Bundle).
 - 7.6.2 There should be no documents in the supplementary bundle which are already in the core bundle.
 - 7.6.3 This supplementary bundle must be in date order so far as possible and be organised and paginated clearly. There should be written transcripts of any audio extracts or videos relied upon.
 - 7.6.4 The supplementary bundle should only include documents relevant to the issues in dispute and/or necessary for a fair disposal of this matter.
 - 7.6.5 In the event that irrelevant documents are included in the supplementary bundle of documents (or the core bundle) and/or a disproportionate number of documents, or documents that are not necessary to a fair disposal of the case the Employment Tribunal has various powers at its disposal to address this, including orders as to costs.

7.6.6 The claimant must pay for all costs of producing a copy of the supplementary bundle. The respondent is to pay for the core bundle.

8. Final hearing bundle

- 8.1 By **30 September 2021**, the parties must seek to agree the documents to be included in the agreed and supplementary bundle to be used at the final hearing.
- 8.2 By **30 September 2021** the respondent must paginate and index the documents in the core bundle and provide the claimant with a 'hard' and an electronic copy of the bundle by the same date (if it has not done so already).
- 8.3 By **30 September 2021** the claimant must paginate and index the documents in the supplementary bundle and provide the respondent with a 'hard' and an electronic copy of the bundle by the same date.
- 8.4 In preparing the supplementary bundle the following rules must be observed:
 - unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
 - the documents in the bundle must follow a logical sequence which should normally be simple chronological order (oldest first, newest at the end of the bundle).
 - No irrelevant documents should be included;
 - No documents should be included regarding something which is not in dispute-for example, the claimant's job duties.
 - No documents should be included which are not going to be drawn to the express attention of the tribunal.

9. Witness statements

- 9.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **15 January 2022**.
- 9.2 No additional witness evidence will be allowed at the final hearing without the Tribunal's permission.
- 9.3 The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

10. Final hearing preparation

- 10.1 On the working day immediately before the first day of the final hearing (but not before that day, the following parties must lodge the following with the Tribunal:
 - 10.1.1 7 copies of the core bundle **by the respondent** (including a copy available for inspection by the public/media if applicable);
 - 10.1.2 7 copies of the supplementary bundle **by the claimant** (including a copy available for inspection by the public/media if applicable);
 - 10.1.3 7 hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 10.1.4 7 hard copies of any written opening submissions/skeleton argument, by whichever party is relying on them/it;
 - 10.1.5 7 hard copies of the following, agreed if possible, by the respondent a neutral chronology, a 'cast list' and a key reading list.

11. Other matters

- 11.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 11.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 11.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 11.4 **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 11.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 11.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Daniels

28 May 2021

Sent to the parties on:

.....

For the Tribunal:

.....