



EMPLOYMENT TRIBUNALS

Claimant: Mr R Hobson
Respondent: Wessex Eagle Ltd

Heard at: Southampton (in public, by telephone) **On:** 15 June 2021

Before: Employment Judge Dawson

Appearances

For the claimant: No attendance

For the respondents: Mr Barrow, company representative

JUDGMENT AND ORDERS

1. The name of the respondent is amended to Wessex Eagle Limited.
2. The claim of unfair dismissal is struck out.
3. The claim of disability discrimination is struck out.

REASONS

1. The case started at 10 AM. By 10:25 AM, when the case ended, the claimant had not attended.
2. Having reviewed the file I was satisfied that the claimant had been notified of this hearing, as recently as 9 June 2021 when the tribunal wrote, refusing the respondent's application for an adjournment, and stated:

"The Telephone Hearing on 15 June 2021 at 10.00am has been converted to a Telephone Preliminary Hearing in public.

The Claimant does not appear to have complied with the Case Management Order of 2 June 2021 and is warned that whether the claim should be struck out may also be considered at the hearing.

To take part in the Preliminary Hearing, you should telephone 0333 300 1440 and enter the access code 557500# when prompted.

No further notice of hearing will be issued".

3. In fact, that letter followed an earlier direction of the tribunal sent on 2 June 2021 when it was directed:

The case is listed for a telephone case management hearing on 15 June 2021. In order to ensure that the case is ready for

the hearing, the parties must comply with the Order below by the date's given, failing the hearing may be converted to a public hearing by telephone at which a Judge may consider whether the claimant's claim should be struck out for non-compliance with case management orders.

4. That letter went on to direct that the claimant must identify the disability from what he suffered, disclose relevant documents and provide an impact statement as to his disability by 9 June 2021. It gave detailed guidance as to what should be in the impact statement.
5. It is apparent that the claimant received the direction of 2 June 2021 since, on 9 June 2021, he wrote to the tribunal stating "with reference to your email in reference to 1405391/2020 which states that all information be passed to the claimant no later than 9/6/2021 this was done on the 3/6/2021 the reason for the delay was that with moving house to a property more suitable to my needs..."
6. Given that the claimant was aware of the hearing and having considered the file I did not consider that further enquiries were needed and proceeded in his absence. Whilst I considered whether I should ask the tribunal service to contact the claimant on the phone number which he had given, I took the view that was not appropriate for the following reasons. Firstly, it is not unknown, in those circumstances, for there to be a later dispute as to what was said on the telephone which has the undesirable effect of meaning that tribunal staff may become witnesses at later hearings. In my judgement that is undesirable and not part of their role. Secondly, the claimant is fully aware of the hearing and it is not the role of tribunal to chivvy the parties into attending hearings.

Unfair Dismissal Claim

7. The claim form states that the claimant was employed between the 21 October 2019 and 31 October 2020 as a Plant Fitter. Although the claim form asserts that he was unfairly dismissed, neither in the claim form nor in the narrative document which accompanied it, does the claimant set out any grounds for believing that any of the exceptions to a two-year qualifying period of employment apply in this case.
8. On 3 November 2020, the tribunal wrote to the claimant stating that because the claimant did not appear to be entitled to bring his unfair dismissal claim the tribunal was proposing to strike it out. The tribunal gave the claimant until 10 November 2020 to give reasons why his complaint should not be struck out.
9. As far as I can tell from the file, the claimant did not reply to that letter but the unfair dismissal claim has not been struck out.
10. It appears to me that the tribunal has no jurisdiction to decide the claim because the claimant was not employed for two years or more prior to his dismissal and, therefore, the claim should be struck out.

Disability Discrimination Claim

11. Upon receipt of the respondent's response, Employment Judge Roper gave directions. They were sent to the claimant on 18 January 2021 and included the following:

In respect of each disability relied upon for the purposes of this claim, the Claimant is directed the following;

...

c) Serve on the Respondent the following:

(i) any medical notes, reports and any other evidence on which the Claimant relies for the purposes of proving the diagnosis and nature of this disability; and

(ii) an "Impact Statement", that is a witness statement limited to 1,000 words dealing with the effect of the alleged disability on the ability of the Claimant to carry out normal day-to-day activities. This should be by reference to the statutory definition of disability in section 6(1) and Schedule 1 EqA and any relevant provision of any statutory guidance or Code of Practice.

Please reply by 5 March 2021.

12. The claimant sent a significant amount of documentation to the tribunal on 15th February 2021 but did not include an impact statement. He did not send that information to the respondent.
13. On 18 May 2021 the tribunal's legal officer wrote to the claimant stating "it would appear that the claimant's email of the 15 February 2021... has not been sent to the respondent. The claimant should immediately forward this email onto the respondent and copy in the tribunal by 16:00 on 21 May or I will refer this case to a judge to consider whether the claim should be struck out."
14. The claimant did not comply with that order.
15. As I have indicated above, the matter was then considered by Employment Judge Midgley who gave detailed instructions for the service of an impact statement (amongst other things) on 2 June 2021. The claimant was ordered to comply by 9 June 2021.
16. On 7 June 2021, again as set out above, Employment Judge Livesey warned the claimant that he did not appear to have complied with the Case Management Order of 2 June and was warned that the claim might be struck out at the hearing.
17. The claimant replied to state that all information was sent on 3 June 2021.
18. However I am told by the respondent that it has still not received an impact statement. There is no evidence on the tribunal file that such a statement was sent to the respondent and I accept what the respondent tells me.
19. In those circumstances I must consider whether it is appropriate strike out the claim on the basis that there has been non-compliance with the tribunal orders.
20. Had the claimant attended today and given an explanation for his failure to comply with the tribunal orders then it may be that I would have concluded that a fair hearing was still possible and directions should be given to remedy his default. However he has not done so.
21. I note that the claimant has been instructed by two separate judges to provide an impact statement and has failed to do so. The respondent does not accept that the claimant is disabled and the burden of proof is upon him to prove that.

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In those circumstances the respondent is entitled to know what the claimant says about his disability and the case it has to meet.

22. The failures by the claimant to comply with the directions meant that on 18 May 2021 the tribunal's Legal Officer had to write to the claimant, Employment Judge Midgley then had to give detailed instructions to the claimant and it was the late service of some of the documents (but not all of them) that led to the respondent's application for an adjournment and, therefore, the need for Employment Judge Livesey to consider file. That is a disproportionate and unreasonable use of tribunal resources in respect of this claim.
23. The claimant has, then, not attended this hearing meaning that no real progress can be made in identifying the issues or giving directions going forward.
24. In those circumstances it seems to me that, considering the overriding objective, it is proper for this claim of disability discrimination to be struck out. The claimant does not appear to be actively pursuing his claim but, more significantly, has failed to comply with the tribunal orders without any good reason. The respondent should not be put to further expense and inconvenience of defending the claim.
25. I therefore strike the claim of disability discrimination out.
26. The name of the respondent is amended to add "Limited" as its full title.

Employment Judge Dawson
Date: 26 March 2021

Judgment and Reasons sent to the Parties: 29 June 2021

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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.

Hearing

The hearing was conducted by the parties attending by telephone. It was held in public in accordance with the Employment Tribunal Rules. It was conducted in that manner because a face to face hearing was not appropriate in light of the restrictions required by the coronavirus pandemic and the Government Guidance and it was in accordance with the overriding objective to do so.