



EMPLOYMENT TRIBUNALS

Claimant: Mr C Walsh

Respondent: The London Borough of Barking and Dagenham

JUDGMENT

The claims brought by the Claimant are struck out

REASONS

1. The Claimant had brought claims of unfair dismissal, discrimination, based on sexual orientation, claims relying on protected disclosures and a claim for breach of contract.
2. The matter was listed before me for a preliminary hearing on 12 July 2021 for the purposes of case management. The Claimant failed to attend that hearing. I reviewed the file and noted that the Claimant had failed to comply with case management orders to serve a schedule of loss, to provide further information about his claim and an order that he provide the first draft of a list of issues. At the hearing documents provided by the Respondent disclosed that correspondence from the Respondent had gone unanswered. In advance of the hearing the Respondent had made an application to strike out the claim and had copied that application to the Claimant. The preliminary hearing was not a public hearing and I did not entertain that application at the hearing.
3. By my case management summary written on 12 July 2021 and sent to the parties on 15 July 2021 I made an order that unless the Claimant wrote to the Tribunal by no later than 29 June 2021 making representations why his claims should not be struck out on the basis that he had failed to comply with orders of the tribunal and/or that he was not actively pursuing his case then the matter would be considered by an employment judge without a hearing.
4. The Claimant did not write to the tribunal as I directed or at all. I have therefore considered the matter without a hearing.
5. I find that the Claimant has breached several orders of the tribunal. The first to provide a schedule of loss and the second to provide further information

about his case. The ET1 completed by the claimant is unclear and the order that the Claimant provide further information was clearly necessary in order for the claims to make any progress. The failure to provide that further information is in my view a serious breach of the tribunal's orders. The Claimant had also been required to prepare the first draft of a list of issues in advance of the preliminary hearing. He took no steps to do this and in particular failed to respond to correspondence from the Respondent.

6. The Claimant failed to attend the preliminary hearing and has failed to respond to my order that he explain why he did so. He has not corresponded with the Tribunal and failed to provide telephone contact details in order that he could participate in a telephone hearing. He has not contacted or written to the Tribunal asking about the arrangements for the preliminary hearing. I find that that is a clear indication that the claim is not being actively pursued and it is also a further breach of the orders of the Tribunal.
7. I recognise that striking out a claim is a serious step but, in circumstances where the Claimant has done nothing to progress his claim for several months, and has failed to provide any explanation or correspond with the Respondent or the tribunal, I am satisfied that I can properly hold that the Claimant is not actively pursuing his claim.
8. The test that I should apply when considering whether I should strike out the claims on the basis of a failure by the Claimant to comply with the orders of the tribunal is to ask whether, despite the past failures, a fair trial is still possible. Where a party gives an assurance that they will make good any past breaches and where it is possible to reset the trial timetable without any serious prejudice to the other party, or the other court users, generally it would be inappropriate to strike out a claim. Here the Claimant has breached several orders of the tribunal and has failed to give any explanation for that. He has given no reassurance that he will remedy the situation. In those circumstances I have no evidence that he intends to comply with any further orders. As such I am satisfied that a fair trial cannot take place in those circumstances.
9. I am not obliged to strike out the claims but must consider whether it is in the interests of justice to do so. I consider that it is in the interests of justice to strike out the claims. The Claimant has had several opportunities to remedy his past breaches and to show that he wishes to progress this claim. He will have received my case management order and was aware that his claims might be struck out. He has failed to engage at all.

—
Employment Judge Crosfill

10 August 2021