



EMPLOYMENT TRIBUNALS

Claimant: Mr P Zawadzki

Respondent: CEVA Logistics UK Ltd

Heard at: Reading (by CVP)
Before: Employment Judge Cotton

On: 24 March 2021

Appearances

For the Claimant: Mr P Zawadzki (in person)

For the Respondent: Mr Oliver Lawrence (Counsel)

This has been a remote video hearing which was not objected to by the parties. A face to face hearing was not practicable and all issues could be determined at a remote hearing.

JUDGMENT

1. The claimant has not complied with the Unless Order issued on 22 December 2020.
2. It is in the interests of justice to set aside the effect of the Unless Order and, accordingly, the claim is restored.
3. The respondent's application for costs will be considered at the full merits hearing.

REASONS

1. The respondent requested written reasons at the hearing.
2. At the beginning of what was to have been a full merits hearing, Mr Lawrence, on behalf of the respondent, raised a preliminary matter. He applied for a reconsideration of a decision communicated by the Tribunal on 17 February 2021 that the claimant had successfully complied with an Unless Order dated 22 December 2020. The respondent said that, contrary to this decision, the Unless Order had not in fact been complied with, wholly or partially, and that

in consequence the claim has been dismissed.

3. The relevant correspondence was emailed to me on the morning of the hearing. The respondent also emailed written submissions arguing that in the event of a failure to comply the claim should be automatically dismissed pursuant to Rule 38 of the Employment Tribunal Rules of Procedure (“the Rules”). The procedural history is summarised below.
4. By an Unless Order dated 22 December 2020 (“the Unless Order”) the Tribunal ordered the claimant to send to the respondent ‘his written witness statement and statements by the witnesses (if any) he intends to call at the hearing on 24 March’. The date for compliance was 14 January 2021.
5. Following the Unless Order the claimant did not provide his own witness statement.
6. On 19 January 2021, the respondent wrote to the Tribunal submitting that the claim should be struck out for failure to comply with the Unless Order. The respondent said that the claimant had failed to provide a witness statement for himself; further, while he had provided statements from three other witnesses these did not comply with the requirements such that it was not possible for the respondent to understand what evidence they would be giving at the hearing.
7. A letter dated 17 February 2021 records a Judge’s decision that the claimant appeared to have complied with the terms of the Unless Order and that the claim was to remain as listed. The respondent asked for this decision to be reconsidered, stating that it in the absence of the information requested it was not possible for them to identify the issues and prepare for the hearing. This matter was left to today’s hearing.
8. At the hearing the claimant, who appeared in person and said he had not sought or received legal advice, explained that he had misunderstood the Unless Order. He had not understood that he was himself a witness in his own case and was required to provide his own witness statement as well as those of the witnesses he was planning to call. His understanding was that he had already provided his statement through his claim form and other documents provided to the respondent. Further, he had reasonably understood that the Tribunal had already decided that he had complied with the Unless Order. He said that his claim should not be dismissed.
9. Following authorisation as required by Rule 72(3) of the Rules, I find that the claimant has not complied with the clear terms of the Unless Order of 22 December 2020. This Order requires the claimant to provide his written witness statement. The claimant has not done so. In consequence, pursuant to Rule 38(1) of the Rules, his claim is dismissed as of the date of non-compliance, namely, 14 January 2021.
10. However, extending time for setting aside an Unless Order pursuant to Rule 5 of the Rules, and, pursuant to Rule 6, waiving the requirement that an

application under Rule 38(2) of the Rules should be in writing, I accept the claimant's application under Rule 38(2) that it is in the interests of justice to set aside the Unless Order. I accept the claimant's explanation for his non-compliance with the Unless Order, and note that he had come to the hearing in the genuine and reasonable belief that he had complied. His non-compliance was not deliberate but was based on a fairly common misunderstanding about the process. I have taken into account the prejudice the claimant would suffer from the enforcement of the Unless Order and the prejudice the respondent will suffer from setting aside this Order.

11. A case management order will be sent to the parties identifying the issues to be determined, as discussed at today's hearing, and setting further directions for the conduct of this case, including the date for a full merits hearing. The respondent's application for costs will be considered at the final hearing.

Employment Judge Cotton

Date: 14 April 2021

Sent to the parties on: ..26 April 2021

.....THY.....
For the Tribunal Office