



EMPLOYMENT TRIBUNALS

Claimant: Mr M A L Mohamed Bayoumi
Respondent: The Berkeley Hotel Limited
Date: 5 November 2021
Before: Employment Judge A James (sitting alone)

AMENDED JUDGMENT

1. The claimant's claims for unfair and wrongful dismissal and unauthorised deduction of wages are struck out due to the claimant's failure to comply with the unless order dated 30 September 2021 (Rule 57 Employment Tribunal Rules of Procedure 2013 and Rules 37(1) (c) and (d).

REASONS

2. An unless order was made on 30 September 2021, ordering the claimant to provide further information about his involvement in a company, R.S. Agency Limited. The reason given in the covering letter of the same date was as follows:

The claimant's involvement or otherwise in the company is central to his unfair dismissal and wrongful dismissal claim. The claimant's refusal to answer questions and to provide relevant documents prevent a fair and proportionate disposal of the claims. If the claim proceeds on the basis that the claimant is not willing to provide the information, or related documents, to the tribunal prior to the hearing, it will most likely fail. This is because the respondent will be likely to establish that there was a potentially fair reason for the dismissal and that it was fair in all the circumstances; and that he was dismissed because of a repudiatory breach of contract (namely, the allegations of misconduct against him). Employment Judge A James considers that it would be unjust to put the respondent to the expense of compliance with tribunal orders, and representation at a final hearing, if that is the likely result.

3. The claimant has failed to comply with the terms of the order. In an email dated 18 October 2021, the claimant stated:

As you will be aware that there is a criminal investigation against me which is still ongoing and my bail has now been extended to the 1st March 2022. I do not know when a decision would be made in relation to this matter but should be by the end of February 22.

In light of this it is my view that I should not be giving evidence in any civil proceedings or provide any statement in relation to civil proceedings until I know what criminal action, if any, the police are going to take.

Furthermore, if I am to be charged with any criminal offence the civil proceedings need to be adjourned pending the outcome of those criminal proceedings.

4. As was also stated in the covering letter of 30 September 2021, the claimant's application for a stay of the Employment Tribunal claim pending the outcome of the criminal proceedings was refused as the hearing on 15 June. To the extent that the claimant is attempting to renew that application, it is again refused for the same reasons as before.
5. It is also noted that the claimant has not provided a witness statement for the final hearing, in line with the order following the preliminary hearing on 15 June. It is apparent that he has no intention of taking part in the proceedings which are listed for final hearing between 24 and 27 January 2022.
6. Since the unless order has not been complied with, and bearing in mind the ongoing non-compliance, and the previous non-compliance with tribunal directions which resulted in his disability discrimination claims being struck out in June, the claimant's claim is struck out.

Employment Judge A James

05 November 2021

Amended on 5 November 2021 under Rule 69

Sent to the parties on:

05/11/2021.

For the Tribunal:

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