



Case No. 1301938/2019

EMPLOYMENT TRIBUNALS

Claimant: Mr S Pointon

Respondent: Alpha Omega Securities Limited

Heard at: Birmingham (By CVP) **On:** 16 September 2021

Before: Employment Judge Self
Mr P Tsouvallaris
Mrs S Campbell

Appearances

For the Claimant: Ms R Levene - Counsel

For the Respondent: Mr S Redpath - Counsel

JUDGMENT ON STAY APPLICATION

The Respondent's application for a stay of these proceedings pending the Respondent's appeal to the Employment Appeal Tribunal is rejected and the Remedy Hearing will proceed to its conclusion.

WRITTEN REASONS

1. The Tribunal have recently handed down a reserved decision in relation to the compensation payable by the Respondent to the Claimant. Prior to that remedy hearing the Respondent had applied for a stay of the remedy hearing on account of an appeal being lodged by the Respondent against the Liability

Judgment previously promulgated. The tribunal heard submissions on that matter at the start of the remedy hearing and refused the application.

2. Shortly after the Remedy Judgment was sent out the Respondent stated that the Tribunal had failed to give reasons in respect of that application within the Remedy Judgment. This short Judgment remedies that failing and should be seen as an addition to the previous remedy written reasons.
3. These reasons were initially sent to the lay members for approval on 25 November 2021 and chased in mid-December but final approval was only obtained on 29 December 2021. It would appear that previous messages of approval had somehow been held up somewhere in the mysteries of the internet system.
4. The parties are referred as background to the two Judgments with accompanying reasons that have previously been sent to the parties. In respect of the discrimination claims, there were a substantial number found proven over a substantial period of time and it is understood that the appeal does not challenge a substantial number of those findings but solely goes to the discriminatory dismissal and the unfair dismissal finding.
5. As at the date of the remedy hearing the appeal had not been sifted at the Employment Appeal Tribunal and so whatever the outcome of that process a final hearing would be a substantial and unknown time in the distance. If the Claim were sifted out initially then the route would be an even longer one as a 3 (10) hearing would be required.
6. There is no specific Rule within the ET Rules of procedure that specifically deals with staying claims in the circumstances of this case although it is acknowledged that there is a general power to do so and Rule 66 specifically states that a party must comply with a Judgment for the payment of money within 14 days unless there is a stay of proceedings.
7. We note there is no automatic right and that we have a broad discretion as to whether to grant the stay or not and primarily in exercising that discretion we need to consider the overriding objective and in particular to deal with this case fairly and justly.
8. We note that this is an old claim which took a substantial time to move through the Tribunal system. As things stand the Claimant had been successful on his claim and was entitled to the remedy that flowed from it. We note that the overriding objective states that delay should be avoided and it is clear that a stay of the remedy hearing would delay a final resolution for an indeterminate lengthy period possibly for no reason at all. In addition, the remedy Judgment would crystallise the potential payment to the Claimant and so the costs and the time to be expended on the appeal can be considered in the context of a

fixed sum as opposed to the Claimant's schedule of loss. We consider that to be of further benefit to the parties and a further positive matter in favour of proceeding with the remedy hearing.

9. In contrast any benefit from the stay is contingent upon the appeal succeeding and so is speculative. As the application was made at the remedy hearing itself the costs of that remedy hearing would be payable anyway and delaying the remedy hearing would incur a second fee. This potential additional cost to the parties is also a factor to be taken into account.
10. The Respondent would be entitled to make representations in any enforcement proceedings that were brought to enforce the Judgment.
11. When balancing the two options we are quite satisfied that proceeding was in accordance with the overriding objective. No further application was made at the hearing to stay the remedy hearing on the basis that this decision (to refuse the stay) was to be appealed.

Employment Judge Self
30 December 2021