



EMPLOYMENT TRIBUNALS

Claimant: Mr R Sidhu

Respondent: Hovis Limited

Heard at: East London Hearing Centre

On: 11 October 2021

Before: Regional Employment Judge Taylor

Representation

Claimant: Ms N Kaur, representative

Respondent: Mr Hickford, Solicitor

JUDGMENT having been sent to the parties on 12 October 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Strike out application

1. On an application of the respondent, dated 18 June 2021, this matter came before the employment tribunal to consider an application to strike out the claim on one or both of the following grounds:

1.1 Failure to comply with multiple orders of the tribunal and/or

1.2 Failure to actively pursue the claim.

2. The background to this claim is that the claimant presented a claim form on 2 October 2019. The claimant made several claims and allegations against the respondent including unfair dismissal, age discrimination, race discrimination, disability discrimination and religion or belief discrimination.

3. The case first came before the tribunal for hearing at a case management hearing held on 1 July 2020. Case management orders for preparation of the final hearing were

made or confirmed on that occasion, including that documents must be exchanged by the parties on 31 July 2020 and witness statements must be exchanged on 31 July 2020. The orders were sent to the parties on 9 July 2020.

4. The claimant did not comply with any of the tribunal's orders and as a consequence several of the claimant's claims were eventually struck out. In a judgment of the tribunal sent to the parties on 11 March 2021, it was confirmed that the only claim that remained to be heard in this case was a breach of contract claim, concerning non-payment of sick pay. This remaining matter was listed for hearing on 11 October 2021, with a time estimate of one-hour.

5. On 15 June 2021 the claimant applied for an extension of time for the submission of witness statements on the grounds of his ill-health. In a reply from the respondent dated 18 June 2021 the respondent set out in full all of the efforts it had made up to that date to liaise with the claimant to ensure that the case was properly prepared in time for the hearing. The respondent's efforts had not lead to the claimant providing it with a witness statement or the relevant documents related to this claim. For this reason, the respondent applied to the tribunal for the remaining claim to be struck out, firstly because of the claimant's failure to comply with multiple orders of the tribunal and secondly because of the claimant's failure to actively pursue the remaining claim.

6. The claimant was warned by the tribunal in a letter dated 24 July 2021 that the tribunal was considering striking out the claim because of his repeated failure to comply with the tribunal's orders and because it appeared that he was not actively pursuing the claim. The claimant was given the opportunity to provide a response to the proposed strike out and to provide any medical evidence that might explain why he could not currently comply with the tribunal's orders, on or before 16 August 2021.

7. The claimant did not reply by 16 August as ordered. In an email dated 17 August 2021, the claimant sent photographs to the tribunal. These photographs were not sent to the respondent at the same time, in breach of rule 92, Employment Tribunals Rules of Procedure 2013. This rule requires all correspondence sent to the tribunal to be sent to the other party. Therefore, these photographs were not copied to the respondent and the tribunal took no action in respect of them.

8. In a letter sent to the tribunal, dated 25 August 2021, the claimant sent a letter to the tribunal part of which read '... I do not wish to share my medical evidence with the respondents...'. Accordingly, this letter was also not copied to the respondent.

9. A letter was sent to the claimant on 22 September 2021 explaining that: 'you do not appear to have copied the 25 August 2021 email and enclosures to the respondent. Until you do so the document cannot be relied on by you at the hearing.'

10. At the direction of Judge Gardiner, on 11 September 2021, the tribunal wrote to the parties:

"Both parties to confirm to the Tribunal by 22 September 2021 that they are fully ready for the one hour final hearing listed to take place on Monday 11 October 2021 at 12:00pm with a time estimate of one hour. The strike out warning

previously issued still applies in the event that there remains persistent non-compliance with the tribunal's orders."

11. The respondent wrote to the tribunal in a letter dated 20 September 2021 maintaining its strike out application. The respondent confirmed it had itself complied with the disclosure order but despite chasing the claimant it continued to be unaware of any documents the claimant intended to rely on or wishes included in the hearing bundle. Without knowing what, if any, documents the claimant intends to rely at the tribunal the respondent would be seriously prejudiced if it drafted its witness statements based on its own documents alone. The claimant had continued to fail to comply with any orders of the tribunal, severely prejudicing the respondent.

12. In a letter to the parties dated 25 September 2021 the tribunal directed:

"The hearing will proceed as listed. The claimant must liaise with the respondent to ensure the case is prepared for hearing. The tribunal that hears the case will decide whether any claim or allegation should be struck out and dismissed because of the claimant's failure to comply with the tribunal's orders."

13. In a letter dated 22 September 2021 the claimant wrote:

..."the respondent is abusing advantage of my health, and court process with the striking out knowing that it is non-subject matter jurisdiction, therefore it's rebutted in its entirety.

An ex-employee of the Hovis company has come forward as a witness in this matter, who has agreed to give all evidence therefore it is estimated a minimum of one day is required for the submissions of evidence in fact to be presented...."

14. In another letter from the claimant dated 7 October 2021 the claimant applied for an 'extension of time' due to the respondent's delay in submitting the bundle to him and its volume, giving him insufficient time to answer, stating: 'I have prior commitments, and it is unreasonable or unlawful to require a party to perform the impossible.'

15. That letter was treated as an application to postpone the hearing and the tribunal wrote to the claimant:

"Application for postponement of the hearing

The claimant is referred to the tribunal's letter dated 25 September 2021. The application for postponement is refused. The case is old and it is not in the interests of justice for it to be unduly delayed.

Delayed bundle

The claimant has complained that the respondent had delay preparation the bundles. The parties must liaise to insure the bundle is prepared for the hearing.

Any outstanding matter can be considered by the tribunal at the outset of the hearing.

Late provision of witness statements

If the claimant wants to apply to add a witness statement is a late stage must send a copy of that witness statement to the respondent. He must then answer tribunal for permission to allow that witness statement to give evidence. Witness statements were first ordered to pitch date in July 2020. The claimant must attend the hearing prepared to provide an explanation to the Tribunal for the delay.”

16. At the outset of this hearing the respondent repeated its application for the claim to be struck out on the grounds that the claimant had failed to comply with the tribunal’s orders. The respondent submitted that up to the date of the hearing, the claimant had not disclosed any relevant documents, he had not contributed to the bundle and he had not prepared his own or any other witness statement. The respondent had, nevertheless sent a bundle index to the claimant and had continued to chase for an agreed date to exchange witness statements. The claimant had not responded and therefore the respondent was forced to send a witness statement, even though the claimant had failed to supply his own witness statement. The claimant has entirely failed to comply with the tribunal’s orders and the claim should be struck out in accordance with Employment Judge Gardiner’s warning.

17. The claimant was represented by Ms Kaur. Ms Kaur did not profess to be a professional representative but explained that she was a family friend of the claimant. On behalf of the claimant Ms Kaur disputed all that had been said by the respondent, alleging that medical evidence had been produced by the claimant and the respondent had received the medical statement and evidence, and they had it in their bundle.

18. On behalf of the respondent, it replied and explained to Ms Kaur that the medical evidence she was referring to was evidence relevant to preliminary hearing that was held over a year ago to determine whether the claimant had a disability. The medical evidence had not been produced in response to Employment Judge Gardiner’s orders.

19. Ms Kaur then said that the claimant’s witness statements had not been received by the tribunal or the respondent because the file was too large, even though she had sent it in two parts (part 1 and part 2). In answer to a direct question Ms Kaur explained that the claimant’s witness statement has 7 pages long. Ms Kaur could not explain why any such seven-page witness statement had not been sent separately to the respondent or the tribunal, in compliance with the tribunal’s order. Ms Kaur replied stating that it had been put into a PDF file which was too large.

20. The relevant rule giving the tribunal power to strike out claims is rule 37 Employment Tribunal Rules of Procedure 2013. An employment tribunal has the power to strike out the whole or part of the claim or response where the relevant party has failed to comply with any of the tribunal rules or with an order of the tribunal under rule 37(1)(c). A tribunal can exercise its power under rule 37(1)(d), to strike out the claim if it has not been actively pursued.

21. Before a claim is struck out the claimant must be given a reasonable opportunity to make representations, either in writing or at a hearing. Before arriving at a decision, the tribunal must bear in mind all of the relevant circumstances including whether the conduct is deliberate and persistent and whether a fair hearing is still possible.

22. Having heard the submissions made on behalf of the claimant the tribunal was satisfied that he had not complied with the tribunal's orders. The tribunal is satisfied that the claimant was given an opportunity to make representations in writing before this hearing and orally at this hearing.

23. The tribunal bears in mind, that this claim had been presented over a year ago, yet despite the orders and directions made, the respondent had still not received the relevant documents in pursuance of this remaining claim. The claimant had been given ample opportunity to comply with the tribunal's orders and no adequate reason have been provided for his failure to do so.

24. The Tribunal accepted the respondent's submissions that the claimant's failure to comply with the tribunal's order had put it to a substantial disadvantage. The Tribunal was satisfied that the claimant had persistently disregarded the required procedural steps required of him to prepare for the hearing and had failed to actively pursue the claim. Ms Kaur's contention that it had not been possible to send a seven-page witness statement to the tribunal was simply not credible. The Tribunal is satisfied that a fair hearing was not possible, as a consequence of the claimant's disregard of the tribunal's orders the respondent was not in a position even at the time and date fixed for the hearing to know what allegations were being made against it and precisely, what the claim was about. The respondent has had no opportunity to adequately prepare for the hearing or defend the proceedings.

25. The claimant had been given sufficient warning and many opportunities to prepare this for the hearing of this claim. The tribunal was satisfied that the claimant had failed to comply with the tribunal's orders and had failed to actively pursue the claim and that striking out the claim was an appropriate and proportionate sanction, in all the circumstances of this particular case.

26. Therefore, claim of breach of contract was struck out.

27. This judgment brings an end to these proceedings.

**Regional Employment Judge Taylor
Date: 23 December 2021**