



EMPLOYMENT TRIBUNALS

Claimant: Mr M McCourt
Respondent: FGS Plant Limited
Preliminary hearing: 17 December 2021
Before: Employment Judge Pritchard

Representation
Claimant: No appearance
Respondent: Ms S Desforges, HR Advisor

JUDGMENT

The Claimant's claim under the above case number is struck out under Rule 37 of the Employment Tribunals Rules of Procedure 2013

REASONS

1. The Claimant, who had been employed by the Respondent for less than two years, was dismissed on 28 February 2020. By way of an ET1 presented on 28 April 2020 the Claimant claimed that he had been unfairly dismissed. The Respondent resisted the claim and asked for it to be struck out.
2. On 8 April 2021 the Tribunal issued a strike out warning. It explained to the Claimant that because he had less than two years' employment, he was required to say why his claim should not be struck out. He had until 15 April 2021 to reply. The Claimant did not reply.
3. A hearing due to take place on 16 April 2021 was postponed, notification being sent to the parties on 15 April 2021.
4. The Respondent again applied for the Claimant's claim to be struck out and by letter 17 September 2021 Employment Judge Burge informed the Respondent that the decision whether to strike out would be made at the preliminary hearing which was listed to take place on 17 December 2021.

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5. By letter dated 11 November 2021, the Tribunal asked the parties to confirm their email addresses by 26 November 2021 and confirm that they were ready to proceed to a hearing. The Claimant did not reply.
6. By letter dated 29 November 2021, the Tribunal reminded the Claimant that he had failed to reply to the correspondence of 11 November 2021 and asked him to respond by 6 December 2021. The Claimant was informed that if he failed to do so, an Employment Judge may consider striking out his claim as it did not appear to be being actively pursued. The Claimant did not reply.
7. Section 108 of the Employment Rights Act 1996 provides that the right not to be unfairly dismissed does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.
8. Rule 37 of the Employment Tribunals Rules of Procedure 2013 provides that a Tribunal may strike out a claim on the grounds that has no reasonable prospects of success or that it has not been actively pursued.
9. Since he was employed for less than two years, the Claimant's claim of unfair dismissal has no reasonable prospects of success.
10. The Claimant was given full opportunity to explain why his claim should not be struck out (such as might be the case if he was complaining that his dismissal was "automatically" unfair under section 100 or Part IVA of the Employment Rights Act 1993). However, he has failed to do so and he has failed to reply to the Tribunal's correspondence despite the strike out warnings given. The Claimant failed to appear at today's preliminary hearing. The Claimant's claim has not been actively pursued.

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Pritchard

Date: 17 December 2021