



EMPLOYMENT TRIBUNALS

Claimant: Mr N Henley

Respondent: Windmill Property Services Ltd

JUDGMENT

1. All the claimant's claims in these proceedings are struck out, including his claims for notice pay, holiday pay, arrears of pay and any other payments allegedly due to the claimant in relation to his employment with the respondent.
2. The claimant is ordered to pay the respondent's costs in the sum of £250 (inclusive of VAT) because of the unreasonable way in which he has conducted proceedings.

REASONS

1. By a letter dated 1st November 2021 (also re-sent by 1st class post on 8th December 2021) the Tribunal gave the claimant an opportunity to make representations or to request a hearing, as to why the claim should not be struck out because it
 - has no reasonable prospect of success.
 - the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious;
 - the claimant had not complied with the Order of the Tribunal dated **9th May 2021**
 - it has not been actively pursued.
 - "When given the opportunity to respond to the respondent's application dated 4 August 2021 you have given no explanation of your failure to comply with requests and orders to date. You had also given no indication whether (and, if so, when) you intend to provide the documents and

information requested so that your claim can be prepared for the full merits hearing. At present the Tribunal can have no confidence that you intend to pursue your claim so that a fair hearing can be achieved.”

2. The claimant has failed to make representations in writing, or has failed to make any sufficient representations, why this should not be done or to request a hearing.
3. The sole correspondence sent by the claimant to the Tribunal was his email dated 2 November 2021. In that email he requested that paper copies of the correspondence should be sent to him in the post by the Tribunal as he was unable to open email attachments. He therefore required time with the paper documents in order to respond appropriately. He seems to have alleged that he had done everything that was required of him by the Tribunal and the respondent within the relevant timeframe and that he had proof of this. However, he has provided no such proof to the Tribunal. He also asserted that the defendant has had everything that they ask for from the Tribunal and that the claimant has received nothing from the Tribunal.
4. As requested by the claimant, all of the Tribunal correspondence was re-sent to him by first class post on 8 December 2021. The Tribunal and the respondent waited for the claimant to respond to that further postal correspondence. To date there has been no such response either via email or by post. The Tribunal and the respondent are therefore still in the position outlined by the respondent in its application dated 4 August 2021. The claimant has still failed to supply the further information required of him, has not provided his list of documents and associated disclosure documents in order to substantiate his claim despite numerous requests from the Tribunal and the respondent. As a result, the respondent is still unable to prepare its witness statement for the final hearing.
5. For the avoidance of doubt, the relevant chronology, discerned from the Tribunal file, is that:
 - i. In compliance with the Tribunal’s letter of 5 April 2021, the respondent wrote to the claimant setting out its request for further information with an appropriate deadline. That letter was sent on 15 April 2021. The date for compliance was 13 May 2021. The claimant did not respond to or comply with the request in the respondent’s letter of 15th April.
 - ii. The respondent sent a letter to the Tribunal (with a copy to the claimant) on 18 May 2021 pointing out its correspondence of 15th April and the claimant’s non-compliance and requesting a Tribunal order for provision of the requested information failing which the claim be struck out.
 - iii. On 13 June 2021 respondent wrote to the Tribunal with a copy to the claimant making an application for an extension of time for it to send its witness statement to the claimant. The existing deadline for exchange of witness statements was 21st June but the respondent felt unable to comply with that deadline as the claimant had, as yet, not provided clarification of the nature and basis of his claim and had not provided disclosure in support of his claim. On that basis it was difficult for the respondent to properly prepare a witness statement in compliance with the Tribunal deadline.

- iv. On 21 June 2021 the claimant emailed the Tribunal asking for an extension of time as he had only had the paperwork for a week whereas the respondent has had it for a lot longer. He also requested an order that the respondent provide copies of telephone bills. He did not send a copy of this email to the respondent.
- v. On 29 June 2021 the respondent sent a letter to the claimant via post reiterating that they were still awaiting the information and disclosure from the claimant in support of his Tribunal claim. The respondent's solicitors asserted that it was apparent that the claimant was not actively pursuing his claim. They noted that if the claimant did not withdraw his application before 31st July they would invite the court to strike out the claim and seek the Tribunal's decision on costs.
- vi. On 4 August 2021 the respondent issued an application for strike out and an order for costs which it copied to the claimant. It reiterated that the claimant still had not provided the required information or disclosure.
- vii. On 18 September 2021 the Tribunal wrote to the claimant directing that he should provide his comments on the respondent's application of 4 August by 27 September 2021. (On the same date a separate letter directed the claimant's attention to rule 92 of the Tribunal Rules of Procedure requiring that the claimant's correspondence be copied to all of the parties. In respect of his correspondence 21st of June 2021 he had not complied with this rule and so he was notified that his correspondence would not be considered until he had done so.)
- viii. On 26 September 2021 the claimant emailed the Tribunal (with a copy to the respondent's solicitor) confirming that he had received the Tribunal's letter of 18 September on 25 September. He went on to state that he disagreed with what the respondent had asked the Tribunal to do. He referred to the fact (as he saw it) that the courts are some 18 months behind. He noted that he had asked the court to make an order some eight weeks before the respondent had asked the court and confirmed that the respondent was notified of that application at the same time as the Tribunal.
- ix. The strike out warning letter was sent to the claimant on 1 November 2021 giving a deadline for compliance of 19 November 2021
- x. On 2 November 2021 the claimant emailed the Tribunal as he was unable to open the email attachments. He complained that the Tribunal was still sending email attachments. He complained that it was unfair that the court was taking the defendant's side and giving them more time to respond. He asserted that he had done everything that needed doing within the timeframe and that he had proof of this. (He did not enclose any proof). He asserted that the defendant had had all that they had asked for from the court and he had received nothing from the court. He had not received the order he had requested 16 to 20 weeks ago.
- xi. All of the Tribunal correspondence was re-sent by first class post to the claimant on 8 December 2021

- xii. No further representations were received from the claimant.
 - xiii. The respondent's solicitors sent an email on 22nd December 2021 enquiring as to whether a strike out order had been issued.
6. The claimant has failed to make representations in writing, or has failed to make any sufficient representations, why there should be no strike out or to request a hearing. The claim is therefore struck out. Furthermore, it appears that the claims have no reasonable prospects of success; the manner in which the claimant has conducted proceedings has been unreasonable; the claimant has still not complied with the Tribunal's order of 9th May 2021 and has not provided the information requested by the respondent in their letter of 15th April 2021. All in all, the claim has not been actively pursued and there is no indication that the claim will be properly prepared and pursued to the final hearing currently listed for 11th March 2022. The claimant's claims in case number 3312896/2020 are therefore struck out.
- 7. The hearing currently listed for 11 March 2022 will now not take place.**
8. Further, the claimant has not provided his comments in relation to the respondent's costs application. He has not requested a hearing to make any such comments or representations. In light of the currently available information, it appears that the respondent has incurred legal costs as a result of the claimant's unreasonable behaviour in the way he has conducted the claim and failed to respond to correspondence or comply with Tribunal orders. Consequently, the claimant is ordered to pay the respondent's legal costs in the sum of £250 inclusive of VAT. The claimant has provided no evidence as to his ability to pay costs to be taken into consideration by the Tribunal.

Employment Judge Eeley
Signed 14th January 2022.

JUDGMENT SENT TO THE PARTIES ON

12/2/2022

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FOR THE TRIBUNAL OFFICE