



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss D Kozenecka

v

Aspire Drinks International Limited

Heard at: Cambridge (Cloud Video Platform)

On: 31 January 2022

Before: Employment Judge R Wood

Appearances

For the Claimant: Did not attend and was not represented

For the Respondent: Mr Blewitt, Director

JUDGMENT

The Claimant's claim is struck out.

REASONS

1. This claim has an unfortunate history in the sense that the Claimant worked for the respondent for a period of about one month in the summer of 2018. It is difficult to understand the full explanation as to why this claim has not been dealt with to a conclusion before January 2022. However, for the reasons set out below, one of the explanations is the Claimant's repeated reluctance to do what the Tribunal has directed her to do.
2. Even today, when the claim was listed for Final Hearing, the Claimant has still not submitted a bundle of documents upon which she wishes to rely, and which complies with directions. Neither has she provided a witness statement setting out the facts upon which she wishes to rely. There have been repeated directions that she provide such material. I will not go into the whole history of this case. For the purposes of the Order I make today, I need only go back as far as the Order of Judge Postle dated 26 July 2020. Amongst other Orders, he made an Unless Order in the following terms:

"Unless by 29 July 2020, the Claimant sets out in a schedule precise calculations of how the sum claimed for travel expenses of £700 is justified, providing the dates and times for each travel, the amounts

claimed and the purpose of each journey, together with a calculation for the holiday pay claim and how the claim for unlawful deductions of wages in the sum of £138 was calculated, namely dates, times, and hours and send to the Respondent, with a copy to the Tribunal, on or before 29 July 2020, all of the Claimant's claims will stand dismissed without further Order, notice or hearing."

3. I have examined the file today, and it appears as though nothing further was sent to the Tribunal between the making of Judge Postle's Order, and the listing of the claim for a further Final Hearing on 1 June 2021 before Judge Laidler. This appears to have been Judge Laidler's impression as well, because her notes indicate that she carried out an investigation into whether the Claimant had complied. The Claimant suggested to the Judge that she had sent an email to the Tribunal following that hearing but did not have time to go through her emails there and then (I paraphrase).
4. On 2 June 2021, Judge Laidler made an Order which stated that she could not see evidence that the Claimant had complied with Judge Postle's Unless Order. It also stated that she took the view that it was not appropriate to proceed with the claim on the basis that it might have been struck out on 29 July 2020. However, the Claimant was given until 8 June 2021, to provide the Tribunal and the Respondent evidence that she had complied with the Unless Order. The Order went on

"If such evidence is not provided and the Tribunal is satisfied the Claimant did not comply with that Order, then the claim would have been dismissed on 29 July 2020".

5. An examination of the Tribunal's records since Judge Laidler's Order has taken place today. The only correspondence from the Claimant was an email to the Tribunal (not to the Respondent) dated 8 June 2021, which reads as follows:

"Hello Dear,

I would like to refer to last hearing with the judge, where I have been asked if I have submitted exact breakdown of my travel expenses following the last email in 2020, I have looked through all my emails, and I can't see any email from the judge post remote hearing in 2020 request to break down how did I calculated this expense and last correspondence I have received is to fill in the agenda to write my expectation of compensation including my travel expenses.

I also submitted all breakdown of my expected amount for first ever hearing planned face to face in 2019 which was cancelled and the expenses were in detail.

I would like to bring to your attention that in some point I have been advised by one of your colleagues not to "cc" aspire drinks into emails as we both did not agree on so many things and it was causing

loads of stress on me, while the judge at the last hearing said that I should've "cc" aspire drinks into emails.

Another thing it would like to bring to your attention is the fact, when I went through ACAS at the start, I have made a human error mistake, as I put through the name in the director's name rather than the company name, however, I sent an email previously to get it adjusted, however, at the recent hearing the judge said that there's nothing to prove it and there's none of the evidence I have previously submitted. (I have forwarded the email)

I am looking to be advised further what to do in this situation.

Regards

Dominika Kozanecka"

6. In my view, it is clear from this email that the Claimant accepts that she did not comply with Judge Postle's Order. Indeed, she questions receiving a copy of the Order. I do not accept this. In any event, she was present at the telephone hearing and would have been familiar with its terms. I would expect that the Claimant would have been left in no doubt as to the precarious situation her claim found itself as a result of Judge Postle's Order. Yet she appears to have failed to provide the further information requested. Instead, the email of 8 June 2020 dwells on the documents she purported to have submitted in 2019, which were not relevant to the issue of the unless Order. Indeed, I note that the Claimant has chosen not to provide the requested information even after the Order made by Judge Laidler. In my judgement, the email does not provide a satisfactory answer to Judge Laidler's enquiry as to whether the Claimant complied with the Order of 26 July 2020 by Judge Postle.
7. The claim was listed for a Full Hearing today. I was presented with an email from the Claimant, received by the Tribunal on 30 January 2022, and which reads as follows:

"Dear Sir / Madam

I am currently going through bereavement of my uncle / my dad's brother. I am not fit to attend this hearing due course. I would appreciate if Judge would be able to reschedule this hearing for later date, however, I understand if this hearing will still take place while I am not present.

Yours Sincerely,

Dominika Kozanecka"

8. I do not make any findings as to whether the Claimant's personal difficulty is genuine or not. I have insufficient information to do so. However, in the

context of the long history of this case, it is unfortunate and disappointing that she was not able to tell us of her difficulties before 5.15pm on the day before the Hearing (which was not even a working day). If the bereavement had been sudden, and on the day before, then I would have expected some indication of that fact. Instead, there is no further detail of when the Claimant's uncle passed away, or as to why she could not have told the Tribunal of it sooner. I am afraid that I take the view that it is consistent with the laissez faire attitude which the Claimant has, at times, adopted towards this litigation, and to the instructions of the Tribunal.

9. In any event, the Claimant's difficulties today are of limited, if any relevance, to whether Judge Postle's Unless Order of July 2020 took effect. In my view, the Claimant has repeatedly failed to comply with directions and Orders, this being the primary example. I note she had made no further representations as to the issue of the Unless Order in her email of yesterday.
10. The claim is therefore struck out pursuant to the Order of Judge Postle.

9 February 2022

Employment Judge R Wood

Sent to the parties on: 24/2/2022

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For the Tribunal Office