



EMPLOYMENT TRIBUNALS

Claimant: Mr Wayne Bell

Respondent: The Commissioner of Police of the Metropolis

Heard at: London South Croydon in public by CVP

On: 19 January 2022

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: Did not attend, was not represented

Respondent: Mr O Tahzib, Counsel

JUDGMENT

The claimant's claims are struck out.

REASONS

Background

1. The claimant is employed by the respondent as a PC from 28 April 2014 onwards. He has brought two claims against the respondent.
2. The first of these was received on 3 February 2020 following a period of ACAS early conciliation and alleging race discrimination. In its response received on 13 March 2020, the respondent set out a holding defence and applied for a stay of the proceedings until 17 June 2020 pending the outcome of internal grievance proceedings. The stay was granted. The respondent also sought further and better particulars of the claim on the basis that it contained insufficient details. The respondent made a further request for further particulars on 2 September 2020.

3. A telephone preliminary hearing on case management took place on 4 September 2020 conducted by Employment Judge Balogun. The record of the hearing states that both parties attended. At this hearing the claimant was ordered to provide the further and better particulars requested by the respondent and other case management orders were set. In addition the name of the respondent was amended to that shown above. Whilst the respondent requested a further stay of proceedings this was refused on the basis that the dates for compliance with the various case management orders were far enough in advance not to affect the ongoing internal proceedings.
4. The claimant presented his second claim on 24 November 2020 raising further complaints of race discrimination, detrimental treatment because he had made protected disclosures and disability discrimination. The respondent presented a response on 10 February 2021 denying the claims and averred that because the claimant had not provided a further ACAS early conciliation certificate the claim should not have been accepted. In addition the respondent stated that the claim was in any event out of time and contained insufficient particulars. The respondent then made a further request for further and better particulars on 11 February 2021.
5. A further preliminary hearing on case management was conducted by Employment Judge Pritchard on 19 February 2021 which the claimant did not attend and was not represented. The Employment Judge consolidated the two claims but noted that the second claim was wholly unclear. The record of the hearing indicates that the claimant had sent a number of emails to the tribunal before the hearing which had been forwarded to the respondent, from which the respondent maintained that it was still very difficult to understand what it was the claim was about and to provide a meaningful response. The Employment Judge did not have these emails before him. The respondent applied for unless order but Employment Judge Pritchard declined to make one and stated that if the claimant fails to comply with further case management orders he faces a real risk that a further application will be granted and his claim struck out. The Employment Judge made case management orders for further and better particulars (in terms set out in the record of the hearing), provision of an amended response and directed that a further case management hearing be listed after 16 May 2021. It would appear that this resulted in the hearing that was set for today.
6. On 26 April 2021, the respondent emailed the Tribunal and the claimant requesting an unless order or a strike out application because of the claimant's non-compliance with the case management orders that had been set at the previous hearing.
7. On 22 December 2021, the respondent emailed the Tribunal and the claimant advising that it had been unable to amend its response because the claimant had not provided the further and better particulars that he had been ordered to. The respondent also raised its concerns that there had been no response to its previous request and reserved the right to renew this at today's hearing.
8. By letter to the parties dated 7 January 2022, Employment Judge Andrews apologise for the lack of response to the respondent's email of 26 April 2021

and advised that today's hearing had been converted to an open preliminary hearing at which the respondent's strike out application would be considered.

Today's hearing

9. The hearing was conducted by Cloud Video Platform (CVP), joining instructions having been sent to the parties in advance.
10. It was scheduled to begin at 12 noon by which time only the respondent was in attendance. I instructed my clerk to contact the claimant on the telephone number shown on his second claim form and also to email him on the email address provided. I was subsequently advised that she had spoken to the claimant and he said that he was unaware of today's hearing. She told him that we had emailed him with the date and details. His response was that he had changed his email address and had notified us of this change. She told him that I had instructed that he was required either to attend the hearing so that it could proceed or to explain why he could not. She also repeated my warning that the hearing would proceed if he failed to do either. His response was that he was working and could not attend. She invited him to put this in writing and took his new email address.
11. By 12.20 pm the claimant had not attended the hearing and had not sent an email confirming in writing why he was unable to attend.
12. By that time further enquiries by my clerk revealed that the Tribunal had not received any notification of a new email address. My own enquiries determined that there were at least three letters on the case file which the Tribunal had emailed to the claimant at the email address he had provided and which referred to the date of today's hearing; those letters being dated 11 August 2021, 15 December 2021 and 7 January 2022.
13. I therefore commenced the hearing with only Mr Tahzib for the respondent present. I apprised him of the above. He advised that the respondent was unaware of a new email address and had been writing to the claimant at the email address previously provided as recently as 18 January 2022.

The respondent's application

14. Mr Tahzib made an application primarily for the claimant's claims to be struck out. Had the claimant attended today he said he would have sought an unless order that he comply with the order to provide further and better particulars. However he is not here.
15. The strike out application was made under the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 schedule 1 rule 37 (1) (b) on the basis that the claimant has conducted proceedings in an unreasonable manner and also under rule 37(1)(d) that the claims had not been actively pursued.
16. In essence he made the following submissions:

- a. That the initial claim was not properly pleaded, although he accepts that the claimant is a litigant in person. However since then there have been two preliminary hearings and today's hearing is the third one, in which the claimant has not engaged;
- b. The claimant did not attend the first hearing on 4 September 2020, contrary to the record of that hearing, and instead sent a Mr Azah, a lay representative, who it was not authorised to act on his behalf. At that hearing he was ordered to provide further and better particulars of his first claim as drafted by the respondent's solicitors;
- c. A second preliminary hearing took place on 19 February 2021, which the claimant also did not attend and did not send anyone on his behalf. In the meantime he had made a second claim which also contained insufficient particulars of the complaints raised. The claimant was ordered to provide further information in terms set out by the Employment Judge;
- d. In the record of the hearing the Employment Judge noted that the claimant must engage meaningfully with the litigation process and will be expected to attend or be represented at the next preliminary hearing. He also made it clear that whilst he refused the respondent's application for an unless order, on the basis that he did not have certain emails that the claimant had sent to the respondent in the interim, if the claimant failed to comply with the requirements of his case management orders, he faced a real risk that a further application for an unless order may be granted and potentially faced the risk that his claims would be struck out;
- e. The emails referred to at that hearing were eight emails all sent to the Respondent on 9 December 2020 purportedly sent out further information of his claim. These simply did not comply with the order. I would add that I had copies of these emails today and had the chance to read them;
- f. The claimant has not attended the hearing today and the respondent is unaware of any new email address and clearly the onus is upon the claimant to notify any change to the means of communicating;
- g. The respondent has already been put to the expense of three preliminary hearings and the claim has not advanced any further. It would not be fair to put the respondent to the further expense of proceeding with defending the claim in these circumstances.

Conclusions

17. I carefully considered Mr Tahzib's submissions. I also took into account the Tribunal's overriding objective under the Rules of Procedure. I also note that in the record of the preliminary hearing conducted by Employment Judge Pritchard he also set out the gist of the Employment Tribunals' powers under rules 37 and rule 38.

18. I understand the respondent's concern that it needs to understand with a degree of certainty what sort of complaints the claimant is bringing and how these are put. It does appear that between the two claims, the claimant is alleging race discrimination, harassment related to race, victimisation, detrimental treatment because of whistleblowing and disability discrimination.
19. I was concerned and took some time to consider the notice requirements under rule 37(2) given the claimant's lack of attendance today.
20. However, whilst the Claimant is not here, I am not satisfied with his explanation for his non-attendance. Three letters were sent to the parties to the email addresses provided referring to the date of today's hearing (the notice of hearing dated 11 August 2021, a subsequent letter dated 15 December 2021 as to the parties' readiness for today's hearing and a letter dated 7 January 2022 identifying that today's hearing would be an open preliminary hearing to determine the respondent's strike out application). The parties had already been sent the record of the preliminary hearing held on 19 February 2021 indicating there would be a further preliminary hearing listed for a date after 16 May 2021 and indeed the claimant received this given that his email dated 6 May 2021 refers to it.
21. The Tribunal has no communication on file to indicate that the claimant notified it of a change of email address and the respondent was also unaware of the change. The claimant was advised to attend the hearing today to explain or it would go ahead in his absence. He declined to do so stating that he was working all week. He was invited to explain his position in writing. As at the point of giving my judgment he had still not provided anything.
22. I am satisfied that the claimant had sufficient notice of the respondent's intent to renew its application for a strike out: in email correspondence from the respondent dated 7 and 22 December 2020; in the record of the preliminary hearing held on 19 February 2021; in email correspondence from the respondent dated 26 April 2021; and from the tribunal in the letter dated 7 January 2021. Further the claimant acknowledges his awareness of the strike out application in his email to the respondent dated 6 May 2021.
23. I am also satisfied that he had sufficient opportunity to challenge the application either in advance in writing or by attending today's hearing. However, he has presented nothing and he has not attended and I find his explanation for not attending unsatisfactory.
24. The claimant has been given two opportunities to set out the specific heads of complaint and the basis on which each is put. Whilst he has provided a large amount of information purportedly setting out the basis of the complaints, this does not specifically answer those matters that he was required to identify by the case management order made at the second preliminary hearing, either at all or it is lost within the voluminous detail he has provided. In particular, the claimant was directed to focus on the incidents relied upon and not to include background information. Indeed I can see that Employment Judge Pritchard departed from the original request for further and better particulars, which was very formal in nature, that the claimant was required to provide in the case management order made at the

first hearing and instead adopted a much simpler wording, I have no doubt to assist the claimant as an unrepresented person in formulating his responses. I also note that Employment Judge Pritchard phrased the order in such a way as to include the second claim which by that point the claimant had presented.

25. The information provided by the claimant in his emails of 9 December 2020 and 9 May 2021 simply does not address those matters in the terms required, leaving the respondent no clearer of the specific heads of complaint and the terms on which these are put and still not in a position to amend the grounds on which it resists the claims.
26. I would add that the claimant seeks to rely on the failure to provide a copy of its response to his claims as causing him difficulties in obtaining representation from the Police Federation. This is set out in the sixth email to the respondent sent on 9 December 2020. I would point out in reply to this that representation is of course a matter between him and the Police Federation. But moreover the respondent whilst providing a response to his first claim on 13 March 2020, was unable to provide an amended response given his failure to comply with the first case management order and then provided a full response to his second claim on 10 February 2021. Both responses were copied to the claimant by the Tribunal shortly after the date on which they were received. The claimant would have been aware of the circumstances in which a holding response had been sent to the first claim and that the respondent had been ordered to provide an amended response in the light of his compliance with the further order to provide further information of his claim.
27. I accept the respondent's grounds for a strike out under both rule 37 (1) (b) that the claimant has conducted his claims in an unreasonable manner and (d), that he has not actively pursued his claims, although to a lesser extent, taking into account that he did respond but simply not in the terms required. However, by failing to provide sufficient particulars of his complaints and by not attending today it has been impossible to progress the matter any further and this does amount to unreasonable conduct.
28. His claims are therefore struck out.

Employment Judge Tsamados
Date: 2 March 2022

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