



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 23/3/2022

Claimant: Mr W Goodfellow

Respondent: Ministry of Defence

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Ms J Gray (Counsel)

JUDGMENT

1. To the extent necessary, and by consent, the name of the Respondent is amended so it reads as above.
2. The claim is struck out under Rule 37 (a), (b), (c) and (e) in Schedule 1 of the 2013 procedural rules.
3. The Claimant must pay the Respondent's costs of £10995 by 6/4/22.

REASONS

For paragraph 2 of the judgment:

1. The Claimant having worked for the Respondent in Saudi Arabia for 2 years of a three-year contract, in respect of which he received salary and benefits valued in total at about £50000 per year, on 19/2/21 resigned with effect from 11/3/2021 and thereafter returned to the UK where shortly afterwards he took up a new job with a third party at considerably higher remuneration, (in excess of £65000 per year), which new job he retained as at 23/3/22.
2. He issued an ET1 on 4/6/21 claiming unfair constructive dismissal but also referring in his ET1 to "bullying and harassment" and completing box 9 of the claim form with reference to a complaint of discrimination; and claiming damages of £180000. Following a query from the Tribunal on 29/10/21, he confirmed on 15/11/2021 that he was not claiming under the Equality Act 2010 but was claiming constructive unfair dismissal only.
3. The matter was listed for hearing on 9/3/22, and on 2/8/2021 directions and information were issued to the parties and received by the Claimant, requiring the usual steps to be taken for disclosure, a bundle to be prepared and witness statements to be prepared and exchanged in good time before that hearing. The information sent included the following: "*The claimant and respondent must send each other copies of all documents they have relevant to the claim. This includes documents relevant to financial losses and what the claimant has done to find another job... two weeks before the hearing date...the claimant and the respondent must send each other copies of all their witness statements. A witness statement is a document containing*

everything relevant the witness can tell the tribunal. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement..." (emphasis added). The Claimant confirmed today that he received and read that information.

4. The trial listed for 9/3/22 was vacated and relisted for three days starting today 23/3/22.
5. On 1/3/22 the Respondent's solicitor sent the Claimant a final hearing bundle and emailed the Claimant as follows: *"I propose that we exchange witness statements on Friday 11 March 2022, please confirm your agreement to this date."*
6. On 7/3/22 the Claimant wrote to the tribunal asking for guidance.
7. On 10/3/22 the Respondent's solicitor emailed the Claimant as follows: *"As I am yet to hear from you, I propose that we now exchange witness statements on 18 March 2022. Please can you confirm your agreement."*
8. On 15/3/22 the Respondent's solicitor emailed the Tribunal copied to the Claimant as follows *"For the avoidance of doubt, the Respondent has forwarded a list of documents and prepared a hearing bundle for the Claimant's agreement. The Claimant has not responded to the Respondent in this regard. The Respondent has also been ready, willing and able to exchange witness statements since 11 March 2022. As we had not heard from the Claimant, we proposed a revised exchange date of 18 March 2022. We are yet to hear from the Claimant and await his response....We confirm the Respondent will provide the hearing bundle it has prepared and witness statements to the Employment Tribunal on 21 March 2022."*
9. On 15/3/2022 a Tribunal Legal Officer sent the parties an email issuing the following further guidance:
"The steps that the parties need to take to ensure the case is ready for the hearing are set out below. Please would the parties confirm by return email whether the steps have been taken and if the case is ready to proceed.
"Documents; The claimant and the respondent should have sent each other a list and copies of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. (emphasis added)
Final hearing bundle; The should have agreed parties which documents are going to be used at the final hearing. The respondent should then have paginated and indexed the documents, put them into one or more files ("bundle"), and provided the claimant with a copy of the bundle. This must be by way of an electronic or hard copy depending on the claimant's preference, which must be communicated to the respondent in advance.
Witness statements; The claimant and the respondent need to have prepared full written statements containing all of the evidence they and their witnesses (emphasis added) intend to give at the final hearing and should provide copies of their written statements to each other (called exchange) by a certain date. Witness evidence that has not been prepared in writing and exchanged in advance will not be allowed at the final hearing without the Tribunal's permission.
Final Preparation; In addition, by 21 March 2022 at the latest the respondent should email a copy of the bundle, the witness statements and any other relevant documents, or a link to a site from which they can be downloaded, to londoncentralet@justice.gov.uk for the tribunal's use."
10. This email was received and acknowledged by the Claimant who on 17/3/22 confirmed that *"I had received information from the respondent, however, without the Case Management Orders I was not aware that direct communication with the respondent's lawyer was standard practice or indeed the procedure to follow. I will now send information that I am planning to submit at the hearing to the Respondent's lawyer"*.
11. On 21/3/22 the Claimant gave disclosure to the Respondent of 106 pages of new documents.

12. On receipt of this material, the Respondent's solicitor requested from the Claimant disclosure of documents relating to the Claimant's new job (job offer, job acceptance, new job including salary and payslips), which are relevant as to the issues of remedy and reasons for his resignation. The Claimant refused to provide this material and even now (23/3/2022) has failed to provide it.
13. The Respondent's solicitor filed the trial bundle and its witness statements on the Tribunal on 21/3/22.
14. In response to a query from the tribunal judge sent early on 23/3/22 the Claimant replied "*As confirmed in correspondence to respondent and further emailed to the tribunal, I do not have any witness statements to submit. I have communicated with Mr Miles Tooke on numerous occasions, who I was intending to be my only witness, however he has failed to respond. It is my intention to raise this in the hearing and ask for the hearing Judge to order him to attend as a witness.*".
15. Once the hearing started today the Claimant suggested that he did not understand that he himself had to serve his own witness statement. In the light of his admitted receipt and previous perusal of the material sent out by the Tribunal as referred to in paragraphs 3 and 9 above, I am unable to accept this as a reasonable excuse.
16. The Claimant is an intelligent and highly paid person who was quite capable of understanding and complying with the straightforward basic directions which he had been sent. Furthermore, as he is in receipt of a substantial salary he could have afforded to obtain any necessary legal advice from an Employment lawyer.
17. Insofar as Mr Tooke's proposed evidence is concerned, it is unreasonable to wait until the first day of the trial to apply for a witness summons and no draft statement of Mr Tooke's evidence has been served in any event.
18. The Claimant has without reasonable excuse failed to give disclosure of his main documents at a reasonable time, and has failed altogether and despite specific request, to give any disclosure at all of highly material documents (about his new job) which go to the heart of his claim both as to liability and remedy. He has been told at least twice previously that such material should be disclosed.
19. During the course of my discussions with the Claimant this-morning and in only in response to persistent direct questioning, he disclosed that his new job which he took up shortly after his employment with the Respondent ended, is far better paid than was the Respondent job from which he resigned, a matter which he failed, notwithstanding specific demand, to reveal or disclose previously, and which now shows that even if he had succeeded on liability, his claim for £180000 would have been wholly misconceived and unjustified.
20. It is impossible to have a fair hearing (Rule 37(1)(e)) without a witness statement from the Claimant. The Claimant having failed to serve a witness statement for himself is unable to give evidence without permission of the tribunal judge. I refuse to give that permission because it is not reasonable for Claimant to give evidence without serving a witness statement of that evidence in advance, particularly as the facts leading up to the termination of his employment are complex and he has not particularised the alleged bullying and harassment which he has referred to in general terms only as part of the reason for his resignation on which he bases his constructive dismissal claim. Without giving evidence the Claimant cannot present a prima facie case of constructive dismissal which it would be incumbent on him to do. Hence the claim now has no reasonable prospect of success. ((Rule 37(1)(a))
21. The Claimant has failed to comply with the directions. (Rule 37(1)(c))

22. The Claimant did not apply for an adjournment and in any event given the scarcity of resources and the needs of other tribunal users, it would be disproportionate and unreasonable to vacate and relist a three-day trial simply because the Claimant has been unwilling to prepare reasonably. If I did adjourn I doubt whether the Claimant would have complied by the time the adjourned trial came on.
23. The Claimant has conducted his case unreasonably by not complying with directions, failing to give disclosure and bringing a grossly inflated claim (Rule 37(1)(b)).
24. I am aware that strike out is draconian but sometimes it is the only reasonable response. This is such a time.

For paragraph 3 of the judgment:

25. Under rule 76 I may make a costs award against a party who has acted unreasonably in bringing proceedings or in the way they have been conducted. I have found that the Claimant has acted unreasonably in both respects and, on the Respondent making a costs application, and following costs submissions from both sides, find that a costs award against him in the sum of £10995 is appropriate. The Respondent served and filed a schedule of costs and disbursements in this amount plus VAT. As the Respondent is VAT registered, no VAT is awarded but otherwise I regard the Respondent's costs as reasonable given the issues and number of its documents and witnesses statements served for a three-day trial, and my finding is that the Claimant must re-imburse the Respondent in that amount.

J S Burns Employment Judge
London Central
23/3/2022
For Secretary of the Tribunals
Date sent to parties: 23/03/2022
