



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Oyebisi

Respondent: Hyde Housing Association Limited

JUDGMENT having been sent to the parties on 1/11/2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Tribunal apologises for the delay in providing these written reasons. The claimant's request however was not referred until recently.
2. On the second day of an open preliminary hearing (on the 8/10/2021) the respondent's application to strike out the claims under Rule 37(1)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 was successful as:
 - the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious; and
 - the claimant had not complied with the Order of the Tribunal dated 9/4/2021.
3. The proceedings have been conducted scandalously, vexatiously and unreasonably by the claimant's representative and although less serious, there have been repeated non-compliance with the Tribunal's Orders.
4. The Tribunal was satisfied and as had been demonstrated over the two day hearing, that Mr Ogbonmwan sees this case as a crusade. He is not acting in the claimant's best interests and is pursuing his own agenda against the respondent. His conduct has been disrespectful and that was evidence by him laughing and smiling when Mr Cook was making his application. There has been a persistent disregard of the Tribunal's orders and during the course of this hearing and flagrant breaches of protocol. The Tribunal reminded the parties at the start of the hearing that although this hearing was a formal hearing (even though it was conducted via CVP) all of the usual protocols applied.

5. In addressing the 3 stage test in Bolch v Chipman 2004 IRLR 140, the Tribunal did find Mr Ogbonmwan's conduct of the proceedings and during the hearing amounted to scandalous, unreasonable and vexatious behaviour.
6. The Tribunal then had to consider if a fair trial is still possible and concluded that it was not. Even with the threat of the two claims being struck out, Mr Ogbonmwan continued to make scurrilous allegations, entirely without foundation. Furthermore, he would not engage with the Tribunal when attempting to identify the issues, which was a matter which this hearing was clearly listed to consider.
7. The Tribunal has considered whether another penalty is appropriate, such as a costs order. As Mr Cook submitted, even if the claimant or her representative could meet any costs award made, it is clear that Mr Ogbonmwan would not be prepared to conduct himself appropriately.
8. The claimant was present throughout the hearing (it is accepted she may not have attended the final session, it was not clear) and she was aware of how Mr Ogbonmwan was behaving and how he has behaved in the past in his conduct of the proceedings. She has seen the responses from him in respect of Tribunal outcomes, for example his response to the failed Interim Relief application.
9. The Tribunal accept the submission made about Mr Ogbonmwan's repeated outrageous allegations and was taken to various examples in the bundle. He was warned, referring to the exchange the previous day when it was said that the Interim Relief application was concluded, it had been reconsidered and there had been no appeal. Mr Ogbonmwan was asked to move on and to respond to the application to reject the ET1 and he replied that the Tribunal was biased and had pre-judged matters. Despite that warning, he continued to make allegations against Judges and on this occasion Mr Cook (and previously in writing against Mr Caiden – whom he accused of criminal acts).
10. Mr Ogbonmwan repeatedly made misleading statements. He said for example Judge Andrews agreed the claimant had made protected disclosures, she clearly said the opposite. He said in response to the strike out application that Judge Truscott had listed this case for a final hearing and that he himself was going to hear the case. In fact Judge Truscott listed this preliminary hearing and expressly said it could be heard by any Judge.
11. Mr Ogbonmwan was discourteous and had to be muted on occasions so that Judgement could be delivered. He disregarded clear instructions, such as re-joining times.
12. It is also accepted there has been non-compliance with Orders of the ET so as to fall within Rule 37 (1)(c). Mr Ogbonmwan demonstrated that, irrespective of what he was directed to do and when, that he submitted whatever it was he wanted to submit when he chose to do so. The respondent did not object to the very late submission of the response to

(what was referred to as) the strike out application. As observed, there was no evidence for the excuses Mr Ogbonmwan provided and it was probably not cost effective for the respondent to object and it was better served to proceed with its application. That however demonstrates Mr Ogbonmwan's contemptuous disregard for the Tribunal's Orders.

13. The previous day's application took so long due to Mr Ogbonmwan incoherent and unstructured pleadings which as a result took a considerable and disproportionate amount of time to read. The respondent reasonably offered Mr Ogbonmwan a final chance at 12.10pm when the hearing resumed to co-operate with progressing to agree a list of issues without disruption. He did not take that opportunity and continued to argue. Another example was, when asked a very simple question, had anything arisen overnight or could the Tribunal move onto giving Judgment? Mr Ogbonmwan instead attempted to re-open the time limit given to him the previous day. It had been made perfectly clear that he had limited time to speak and it was suggested that he set out the claimant's position in response to the respondent's application. His interruptions resulted in him being muted in order to continue.
14. Mr Ogbonmwan was warned that he could not continue to behave with impunity and that if he continued to do so, that there was a risk of a costs order or the claim being struck out.
15. Due to Mr Ogbonmwan's disruptive and therefore unreasonable conduct, what should have been more than ample time of two days to deal with the five matters listed, resulted in unsuccessfully attempting to identify the issues at 11.35am on the second day, when Mr Ogbonmwan did not re-join and did not provide any explanation after a break (which was granted to assist the claimant).
16. To conclude, Mr Ogbonmwan has demonstrated contempt towards the Tribunal and the processes to be followed. Both his behaviour and conduct of the proceedings amounts to scandalous, vexatious and unreasonable conduct so as to warrant striking out the claim. Although of itself, the Tribunal would not have found the non-compliance with the Orders of the Tribunal enough to warrant strike out, that coupled with the conduct does lead to striking out the first two claims.

Employment Judge Wright

12/5/2022