



EMPLOYMENT TRIBUNALS

Claimant: Mr Chibogu Eze

Respondent: Pilgrim's Pride Limited
(formerly Tulip Limited)

Heard at: Huntingdon (by CVP)

On: 13 June 2022

Before: Employment Judge Ord (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms J Oliver, Solicitor

JUDGMENT on PRELIMINARY ISSUE

- (1) No Order is made on the Respondent's Application to Strike Out the Claimant's complaint, either because a fair trial is not possible or because it has not been actively pursued.
- (2) No Order is made on the Respondent's Application for a Deposit Order.

REASONS

- (3) The Respondent has made two Applications to Strike Out the Claimant's complaint. The first was dated 5 July 2021, where the Respondent sought Striking Out or a Deposit Order on the basis the claim had not been actively pursued (Rule 37(1)(d)). The Second Application was dated 29 October 2021, made under Rule 37(1)(e) on the basis that it was in the Respondent's submission impossible to have a fair Hearing due to delay.
- (4) The matters in dispute between the parties relate to the Claimant's assignment through an Agency with the Respondent between 18 September and 26 October 2018. The Claimant engaged in ACAS Early Conciliation between 13 November 2018 and 13 December 2018 and presented his claim form to the Tribunal on 22 January 2019.

- (5) The history of the matter in summary is as follows:-
- 5.1 30 October 2019, there was a Preliminary Hearing which the Claimant failed to attend as a result of which Unless Orders were issued;
 - 5.2 11 January 2020 was the date for compliance with those Unless Orders;
 - 5.3 On 23 January 2020, the Claimant made a request for extra time to comply with the Unless Orders which had already expired and that request was granted notwithstanding the expiry of the period in the unless order;
 - 5.4 19 March 2020 was the new deadline for compliance with the Orders. After that date the Respondent advised the tribunal that not all the information required had been provided;
 - 5.5 On 24 April 2020, there was an Application to Strike Out or for a Deposit Order on the basis of non-compliance with Orders, that the claim was not being actively pursued and that it had no reasonable prospect of success;
 - 5.6 The Claimant then obtained legal assistance;
 - 5.7 On 4 September 2020, the Claimant's complaints of unfair dismissal, unlawful deduction from wages, failure to pay notice pay and for matters relating to Health and Safety, were all Struck Out on the basis of a lack of jurisdiction;
 - 5.8 On 14 September 2020, a Preliminary Hearing was held on what would have been the first day of the Final Hearing. The case was relisted for hearing in September 2021 and further dates for compliance with Orders relating to information and a Schedule of Loss were made;
 - 5.9 The case was listed for three days in September 2021 with the Respondent's intention to call between 6 and 8 witnesses;
 - 5.10 The Claimant provided further and better particulars on 30 September 2020, two days later than the Ordered date and a Schedule of Loss some 23 days later on 23 October 2020. Disclosure took place on 26 October 2020;
 - 5.11 On 14 June 2021, having previously agreed to exchange Witness Statements on 16 August 2021, the Respondent suggested exchange a little earlier on 9 July 2021;
 - 5.12 On 28 June 2021, the Claimant applied to postpone the Final Hearing because of imprisonment. That Application was granted and the case was stayed until 1 November 2021; and

5.13 On 29 October 2021, the Respondent made its Application to Strike Out the claim, which was heard today.

- (6) The grounds of the Application were as follows:
- (7) First that a fair trial was not possible due to delay. It is approaching four years since the incidents complained of and any further Hearing would be ten months or so hence. The Respondent says that memories will

“without doubt be severely compromised”

and attributes delay to the Claimant's,

“own actions and unlawful conduct”

leading to his imprisonment.

However, in the Bundle of documents before me there are notes of a contemporaneous meeting with the Claimant held by Mr Steve Roach and Mr Richard Cooper, a three page statement from Dorina Rosa and a short statement from a Miss Sadu.

- (8) I am not told who the other witnesses the Respondent intends call are, but the Respondent was in a position to exchange Witness Statements in July last year and was not alleging at that time that there was a problem with a fair trial. I am told that one of the witnesses Ms Sadu has left the Respondent's employment and is now overseas. I am also told, however, by the Respondent's Solicitor that no information has been sought to find out whether or not that witness is still contactable. Further, her evidence relates, on the basis of the short statement I have seen, to the Claimant's conduct towards her and not to the allegations to which the Claimant makes regarding the conduct of the Respondent and its employees towards him.
- (9) In any event, there is at least the contemporaneous note of her evidence and I am not told whether or not a full witness statement had been taken from her prior to the ordered date for exchange.
- (10) Other than that, the Respondent has not adduced any evidence to suggest that a fair hearing of the issues between the Claimant and the Respondent is no longer possible, other than to assume memories have further failed.
- (11) I have been referred to three cases by the Respondent. First, Peixoto v British Telecommunications Plc EAT 22/07. That was a case where the Claimant would never be able to give oral evidence and the case could not be decided on the papers so a fair trial was not possible in what the EAT described as a truly extraordinary case. No such considerations apply here.
- (12) Second, Riley v Crown Prosecution Service [2013] IRLR 966; a case where the Court of Appeal upheld the Tribunal's Order to Strike Out. In that case there was no prognosis of when the Claimant could give evidence and on

consideration of the balance of prejudice it was appropriate to strike the case out.

- (13) Third, Elliott v Joseph Whitworth Centre Limited EAT 030/13; in that case a Claimant and his Representative had failed to pursue a claim of unfair dismissal for two years and had on their own admissions, simply “*sat on their hands*”. That case was struck out because of inexcusable delay.
- (14) Based on the information which I have been provided today, I am not satisfied that it is appropriate to strike out the Claimant’s case because I am not satisfied that a fair trial is no longer possible. The three cases referred to above are clearly fact sensitive and the nature of the matters in those cases is easily and substantially distinguishable from the situation in this case.
- (15) All that remains for the matter to be heard is for the hearing to be re-listed and for the Witness Statements that were ready a year ago, to be exchanged. There is no evidence before me to suggest that a fair trial is no longer possible, particularly bearing in mind the Respondent’s fully prepared witness statements and the contemporaneous notes and statements which I have seen.
- (16) I can deal shortly with the Respondent’s earlier application for Strike Out or Deposit Order because the case had not been actively pursued. I have not had any representations about that today. All steps outstanding, other than the exchange of Witness Statements, have been complied with, progress has been made albeit slow progress, and all that remains is for the case to be re-listed and Witness Statements to be exchanged. The delay in re-listing is entirely due to the plethora of cases in the Tribunal’s lists, but it would be wrong to prejudice the Claimant because of that.
- (17) The Respondent has not raised this ground today, either for Strike Out or Deposit Order, but I have dealt with the Application as it appears to remain extant. This case is all but ready to be heard, the balance of prejudice rests in favour of the Claimant as a fair trial is, as I have said, possible and it would be more prejudicial on him to have his case Struck Out in circumstances where a fair trial is possible than to strike the case out in circumstances where the Respondent has fully prepared for a Hearing.
- (18) On those bases, no Order is made on the Respondent’s Application.
- (19) At what I understood to be the conclusion of the Hearing, the Respondent made an Application in the face of the Tribunal for a Deposit Order on the basis that certain aspects of the Claimant’s complaints had in their view little reasonable prospect of success. The Application in writing for a Deposit Order is dated 29 October 2021 and is made on the basis that the claim is not being actively pursued, conduct of the Claimant has been unreasonable and it is no longer possible to have a fair hearing of the claim. There was no Application before me for a Deposit Order on the basis that specific allegations made by the Claimant had little reasonable prospect of success and I declined to consider such an Application made in the face of the Tribunal without any prior warning

to the Claimant who is unrepresented today and without any such Application having been identified to the Claimant in writing.

- (20) There was no good reason why such notice could not have been given, both to the Claimant and to the Tribunal and it is unreasonable to expect a litigant in person to be able to deal with such an Application without any prior notice whatsoever.
- (21) I declined to make enquiries about this of my own motion and as the Respondent had not made any such Application prior to oral submissions today, declined to consider the Application.
- (22) The Claimant is unrepresented today and had no warning whatsoever of this Application which had not been made in writing for reasons which I received no explanation.

Employment Judge Ord

10 August 2022

Sent to the parties on:

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For the Tribunal:

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