



EMPLOYMENT TRIBUNALS

Claimant: Mr Edward Martin Drake

Respondent: Drive Software Solutions Limited

JUDGMENT

The response is struck out.

REASONS

1. By a letter dated 24 October 2022 the Claimant applied under Rule 37 of the Employment Tribunal's Rules of Procedure 2013 to strike out the Respondent's response dated 22 February 2022 on the grounds that:
 - 1.1. The Respondent has not complied with the Order of the Tribunal dated 17 May 2021;
 - 1.2. The Respondent has not actively pursued its defence of the claim by failing to respond by 28 September 2020 (as it indicated it would) to the request from the Claimant's solicitor in an email dated 22 September 2022 to Mr Fulton, a director of the Respondent, to agree a revised timetable for disclosure, bundles and exchange of witness statements and by not responding at all to the chaser email the Claimant's solicitor sent to the Respondent on 11 October 2022; and
 - 1.3. It is no longer possible to have a fair hearing of the response, because postponing the hearing would cause the Claimant to accrue further unnecessary costs and would be at odds with the overriding objective contained in Rule 2.
2. In the written application the Claimant submits that the Respondent has made it clear that it does not intend to engage in proceedings and that this would not change if the hearing was postponed allowing a revised timetable to be agreed. The Claimant states that he was dismissed in March 2020 and that he has waited two and a half years for a hearing date so a further delay because of the Respondent's non engagement is contrary to Rule 2.
3. The history to the management of this case is:

- 3.1. By Case Management Order dated 17 May 2021 a default judgment dated 16 October 2020 was set aside and the Respondent had leave to defend the matter in accordance with the ET3 served on 22 February 2021.
 - 3.2. The parties were informed of the dates of the full merits hearing by Notice of Hearing dated 5 September 2022.
 - 3.3. By email dated 8 September 2022 the Claimant's solicitor was informed by the Respondent's solicitor that it no longer acted for the Respondent. On 22 September 2022 the Claimant's solicitor wrote to Mr Fulton, a director of the Respondent, to agree a revised timetable for disclosure, bundles and exchange of witness statements.
 - 3.4. Mr Fulton replied the same day, asking for some time, until 28 September 2022, to consult with his colleagues and reply. This was a reasonable response. However, the Respondent did not reply by 28 September or at all. On 11 October the Claimant's solicitor emailed the Mr Fulton again. The Respondent did not reply.
 - 3.5. The final merits hearing was listed for 5 days during the period 14 – 22 November 2022. On 7 November 2022 the Tribunal notified the parties that an open preliminary hearing would take place on 14 November 2022 to consider whether to strike out the response. Therefore, in accordance with Rule 37 the Tribunal gave the Respondent an opportunity to make representations at a hearing as to why the response should not be struck out.
4. At the hearing the Claimant's solicitor noted that the Claimant was dismissed March 2020 and while some of the delays in the proceedings were due to the Covid-19 pandemic, she submitted that the Respondent was not taking proceedings seriously as evidenced by its failure to comply with the Tribunal Order or to engage in correspondence to agree to amend the timetable set out in this Order.
 5. The overriding objective of the Employment Tribunals (Rule 2) is to deal with cases fairly and justly, avoiding delay, so far as compatible with proper consideration of the issues; and saving expense. The parties and their representatives shall assist the Tribunal to further the overriding objective and shall co-operate generally with each other and with the Tribunal. In failing to agree a revised timetable for disclosure, witness statements or a Tribunal bundle the Respondent has caused unnecessary delay, resulting in 4 hearings days being vacated at late notice. Further, my not responding to the requests to agree a timetable for the hearing, notice of which the Respondent received in September 2022 or indeed engage with process at all the Respondent is not engaging with the claim.
 6. The Respondent did not attend the hearing to make representations as to why its response should not be struck out nor has it made representations in writing, despite being given the opportunity to do so. The response is therefore struck out.

Employment Judge Hutchings

Date: 14 November 2022

JUDGMENT SENT TO THE PARTIES ON
18 November 2022
FOR THE TRIBUNAL OFFICE