



EMPLOYMENT TRIBUNALS

Claimant: Miss Amanda Doughty

Respondents: CDX Security Ltd

Record of an Open Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham

On: 26 October 2022

Before: Employment Judge P Britton (sitting alone)

Representation

Claimant: In person

Respondent: Mr Mark Higgins, Solicitor

JUDGMENT

1. The Claimant having failed to comply with the Unless Orders in this matter her claim is dismissed in its entirety.

REASONS

1. I heard a first very detailed Case Management Hearing in this matter on 21 July 2022. As is self-evident my record of that hearing, and which was sent to the parties on the 8 August 2022, is very comprehensive indeed. I really did try to assist the Claimant to try and construct her case in a meaningful way and I took into account her previous failures to do so all of which are rehearsed therein. In that context therefore I made the Unless

Orders, items 1, 2, 7(1) therein. These three orders are all emphasised in bold in terms of that I was making Unless Orders and that if the Claimant did not comply fully with what I was ordering then the claim would be struck out. My order 7 required that the Claimant was to provide a list of the documents or other materials such as electronic recordings in a list format by not later than 14 days from the issuing of my orders. So that deadline would expire on 22 August. The reason I wanted her to put it in a list could not have been more comprehensively explored by me in the 33 paragraphs which run in my Case Management Summary before I came to making my orders. One of the reasons for making the Unless Order in relation to the list was the fact that up till then the Claimant hadn't complied at all really with the discovery orders previously made. This was despite the efforts of the Trainee Solicitor in the firm of the Respondent's solicitors, Mr Davis¹, to try and get her to do so. He went far more in that respect than he needed to do so in trying to get her to co-operate.

2. Despite my Unless order the same scatter gun approach continued by the Claimant. She provided on a piecemeal basis various documents starting with supplying the Respondent with a memory stick which relates to a discussion she had with James of CDX and which I would gather must have been after she raised what I will describe as an appeal against her dismissal, if that be the case, which resulted from the incident on 11 November 2021 following a serious incident at Lincoln Magistrates Court all of which I referred to last time.

3. On 28 July she supplied the Respondent with some screenshots from WhatsApp and also around that time with a handwritten letter which she had sent to OCS. I remind the parties and in particular the Claimant in terms of the scenario, that the Claimant had been placed by the Respondent, which is a recruitment type of organisation, with OCS which is a lead security company which in turn had a contract to supply security guards to the Lincoln Crown and Magistrates Courts. I made clear last time that in any event it struck me that primarily if the Claimant had a claim in relation to the behaviour of the lead security guard for OCS and in terms of the incident that happened on 11 November, then prima facie it was in any event difficult to see how there was a claim against CDX. Be that as it may for the purposes of what I am dealing with today at the first stage, depending on my decision I would only then get to whether or not I should now allow what seems to be an application by the Claimant for joinder of OCS dated 29 July 2022. The reason being that if I find that she has not complied with my Unless Orders the automatic consequence therefore is strike out of the claim. Thus issues as to joinder of OCS or for that matter other organisations she refers to namely Apple and Louis Vuitton is irrelevant because there would be no claim left for them to be able to bolt on to.

4. So, going back to the first issue namely; has there been compliance with my order number 7 as to proving a list of documents, I have therefore rehearsed what she did. The Respondent's Solicitors, via Mr Davis, again were bending over backwards to try and get her to comply with the order and pointing out that she wasn't doing so. Matters weren't helped in the sense that she was sending emails to the Tribunal and not copying the Respondent and in relation to which Employment Judge Clark on 17 August reminded her that she must do so.

¹ See his statement provided for this hearing.

5. So, the position I have is this. The requirement that the Claimant provide the list given the context of this piecemeal approach to discovery was intended to ensure that she committed herself to what she was relying upon in terms of documentary or electronic evidence and so that the Respondent knew what she was relying on thus preventing subsequent further reliance on further such evidence without the Respondent thus knowing what might be coming. And so, I couldn't have made it clearer that this is what I wanted. As it is the Claimant has not provided such a list at all let alone by the deadline which I imposed.

6. I have listened at length to her this morning. I shall start by saying that the Claimant had initially informed the Tribunal that she couldn't take part today because she felt unwell and also had difficulty being able to use the CVP process for taking part today. I got one of the clerks to talk to her who ascertained that she appeared to be perfectly okay to take part and so it was arranged she should take part by telephone and which she has done. All I would say is that although I realise the Claimant may have health problems unspecified, nevertheless, she has been able to take part today very well and make her case very clearly. So, I am satisfied in that respect that it was right to proceed.

7. On the issue of the list basically she sought to say that she didn't know what to do because she hasn't got Solicitors. But I explained to her last time absolutely what was required as have the Solicitors for the Respondent. And it is not a difficult exercise. All she has to do is to list each document or electronic recording that she wishes to rely upon. She said that she didn't feel well enough to do so and that she "*had taken an emotional battering*" post the events of 11 November last year. But she has been able to send in a good many emails to the Tribunal which show her to have intellectual capacity and therefore I fail to see why she couldn't provide the list. She also in effect said that she didn't see the need to do so given she had been supplying the emails and that she was otherwise preoccupied looking for work. I find that explanation wholly unsatisfactory, I do not accept that she was doing her best. I conclude that she simply ignored my order. Unless Orders are there to be complied with. Given the history of non-compliance prior thereto which I rehearsed it follows that the Unless Orders implications having been spelt out by me in the clearest possible way to the Claimant at the last Case Management Hearing and reinforced in my orders, that I find that there has been non-compliance with that Unless Order. It must logically follow that the claim is dismissed. Thus, it is.

8. In relation to my other Unless orders just dealing with them briefly as it doesn't really matter given what I have now concluded; as to my Unless Order 1 requiring full particularisation as to how she could bring a claim for unfair dismissal pursuant to sections 95 and 98 of the Employment Rights Act 1996 given she does not have qualifying service, her attempt to provide an explanation as per her email to Mr Davies, who appeared before me last time and copied in fact to the Tribunal on 22 July, doesn't go anywhere near sufficient compliance with my order. She makes a reference to health and safety but she doesn't say how that would engage for the purposes of the unfair dismissal and any exemptions to the 2 year qualifying service rule. As to the 2nd order that I made requiring her to fully particularise as to how is sex or race discrimination

engaged, she made an attempt at answering that on 26 July (Bp99²) and the following day (Bp100). It could just about be established that the behaviour of the senior security officer on site on 11 November for OCS could be said to have directly discriminated against her in that she said towards the end of that email *“He wanted and believed deliberately wanted to ruin me. That is why it is discrimination he was White only British male I’m a mixed female”*. I suppose that could be just about gleaned as being a claim for section 13 direct discrimination pursuant to s13 of the Equality Act 2010. But she made no reference to and thus did not address what I spelt out in the case management hearing, namely that she had also referred to a female of apparently Asian ethnicity also perpetrating the deed. Thus how could it be direct race or sex discrimination if she was involved? She didn’t deal with that at all in terms of that attempt of particularisation albeit I had made it so clear that it was a requirement in my Case Management Summary.

9. Finally, and most important of all, she didn’t address at all as to why an act of discrimination by a third party employed by somebody else ie the security guard being employed by OCS meant that there had been race or sex discrimination by CDX. So again, woefully deficient and falling far short of what I had ordered her to provide and thus also non compliance with that Unless Order.

10. It follows that for those reasons I am wholly satisfied that the Claimant has failed to comply with my orders. For the sake of completeness when I dealt with matters last time, I directed that depending on what happened there would be a further Case Management Hearing, but it might have to be an Open Preliminary Hearing dependent upon whether there were any applications by the Respondent.

11. Well against the background to which I have now referred the Respondent did indeed apply for strike out for non-compliance of these Unless Orders on 25 July. Another Judge initially listed this matter for a Case Management Hearing and those Solicitors pointed out that that would not be in keeping with the orders I had made and so the matter was put before me by the clerks and I thence ordered today’s hearing would be an Open Preliminary Hearing to determine the Respondent’s application.

12. So in conclusion the claim is struck out in its entirety for non compliance with those Unless orders.

Employment Judge P Britton

Date: 10 November 2022

² Bp = page reference in the bundle of documents prepared for today by the Respondent’s solicitors.

CASE NO: 2600565/2022

JUDGMENT SENT TO THE PARTIES ON

22 November 2022

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