



EMPLOYMENT TRIBUNALS

Claimant: Mr G Mather

Respondent: 1. Nationwide Accident Repair Service Limited (in administration)
2. Secretary of State for Business, Energy & Industrial Strategy

JUDGMENT

1. The claimant's claim of unfair dismissal is struck out.
2. All of the claimant's claims have now been determined.

REASONS

1. The claimant brought claims of unfair dismissal and for a protective award, by a claim form presented on 1 December 2020.
2. The respondent company is in administration. Under the Insolvency Act 1986 (paragraph 43(6) Schedule B1), the claimant requires the consent of the Administrator or the permission of the court to commence or continue with the proceedings. The Employment Tribunal cannot give permission.
3. As is common, the Administrator in this case gave consent for protective award claims to proceed, but not for other employment claims. The claimant's claim of unfair dismissal has therefore been stayed since its commencement. A protective award Judgment was made in favour of the claimant on 1 December 2021.
4. The Tribunal has written to Mr Mather on numerous occasions from 9 August 2021 onwards explaining that his unfair dismissal claim is stayed and the reason for this. Neither the consent of the Administrator nor the permission of the court has been obtained for that claim to be instituted or continued. Mr Mather has consistently asked for the Employment Tribunal to lift the stay or provide him with advice/assistance and has consistently been informed that the Tribunal is unable to do so.
5. On various occasions, including 14 March 2022, the Tribunal sent a standard letter to the claimant giving him opportunity to give written reasons why the unfair dismissal claim should not be struck out as no permission had been obtained for it to continue.
6. However, in correspondence the Administrators indicated that, whilst not consenting to the lifting of the stay, they had admitted sums in relation to the unfair dismissal claim as unsecured claims in the administration. In the circumstances, and given Mr Mather's continued correspondence, I decided that it was appropriate to allow the stay to continue rather than to strike out the claim. This was a cautious approach, in order to preserve Mr Mather's status as a creditor.

7. In response to correspondence from the Tribunal, the Administrators wrote on 21 October 2022 stating that Mr Mather had been paid sums as a preferential creditor on 10 August 2022 and as an unsecured creditor on 16 August 2022. This was a first and final distribution and was in addition to sums Mr Mather received from the Redundancy Payment Service.
8. Mr Mather still wishes his unfair dismissal claim to proceed. He has had almost two years since the start of his claim to obtain permission of the Administrators or the court and has been unable to do so. I consider there is no prospect of him being able to obtain such permission now. Dividends in relation to his claims in the Administration have been paid out, so there is no need (if there ever was) to maintain the stay of proceedings in order to preserve his position as a creditor. In those circumstances, I am satisfied that the claim must now be brought to an end, and I therefore strike it out.
9. Within the terms of the Employment Tribunal rules of procedure, the basis for striking the claim out is that it has not been actively pursued. I appreciate that may seem odd to Mr Mather, as he has been very active in attempting to pursue it, but the claim itself has not been active due to the stay. He has been unable to actively pursue the claim due to the circumstances outlined above.

Employment Judge Dunlop

30 November 2022

JUDGMENT SENT TO THE PARTIES ON
1 December 2022

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FOR THE TRIBUNAL OFFICE