



EMPLOYMENT TRIBUNALS

Claimant: Mr S Knight

Respondent: British Airways Plc

JUDGMENT

1. The respondent's application to strike out the claimant's claims (dated 27 November 2022) is refused.

REASONS

1. By an email dated 27 November 2022 the respondent applied to strike out the claimant's claims pursuant to Rule 37(1)(a), (b), (c) and (e) of the Employment Tribunals Rules of Procedure 2013. The application apparently followed on from the claimant's application requesting an extension of time to comply with paragraph 4 of my case management order of 19 October 2022. No copy of the claimant's application for an extension of time was present on the Tribunal file and the respondent did not provide a copy of it with its strike out application.
2. The claimant had apparently requested a seven day extension of time to comply with paragraph 4 and confirm the dates of the events alleged in the list of issues (which had been discussed at the preliminary hearing.) The original date for compliance was 23 November 2022 and so the requested extension was until 30 November 2022. The respondent made its application on 27 November and the claimant sent through its further document, to comply with paragraph 4, at 15.38 on 30 November 2022.
3. The next case management deadline in the order of 19 October 2022 was for disclosure of documents by 19 December 2022. It is presumed (in the absence of information to the contrary) that the parties were still able to comply with the deadline for disclosure, despite the claimant's late compliance with paragraph 4 of the order.

4. I have taken into consideration the contents of the respondent's strike out application and the claimant's letter in response to the application (and exhibits) dated 1 December 2022.
5. The respondent asserts that the claimant's claims have no reasonable prospects of success based on the claimant's failure to provide the relevant information required for his claim. I am unable to come to this conclusion based on the papers available to me. The absence of the requested dates did not automatically mean that the claimant's claims were without reasonable prospects of success. Rather, the evidence in relation to the claim would need to be tested and findings of fact made based on the evidence. In any event, within seven days of the Tribunal deadline the necessary dates were provided. The gaps in the list of issues have been filled and the case can be prepared for trial where it will be determined on its merits, once the Tribunal has heard the evidence. The terms of rule 37(1)(a) are not met in this case as it currently stands.
6. The respondent asserts that the manner in which proceedings have been conducted by the claimant has been unreasonable as he had failed to provide the relevant information requested by the Tribunal on two occasions. It is true that the claimant was ordered to provide a reformulated claim by 16 September 2022 which was to stand in substitution for the original pleadings and various other documents. He provided the information but without the dates of the events referred to. Whilst the order did not specify that a list of dates should be given, it should have been apparent to the claimant's representatives that the relevant dates would be required in order for the respondent to know the case it had to meet and for the parties to prepare the case properly for a final hearing. However, when the issue arose at the preliminary hearing on 19 October 2022, it was not a sufficiently grave omission to merit striking out the claims. Instead the claimant was given further time to provide the dates. The claimant failed to meet that further deadline but the delay in compliance was short (i.e. 7 days). Whilst the claimant's original application for an extension of time is not before me, it is apparent from the claimant's response to the strike out application that the delay was for specific reasons, namely that the claimant was ill and unable to return the approved and signed documents in time. Further, due to the postal strikes the posted documents could not reach the claimant's legal representatives in time. These are substantive justifications for the delay and are matters which were largely outside the control of the claimant and his representatives. Whilst regrettable, the delay does not constitute unreasonable behaviour by or on behalf of the claimant in all the circumstances. Rule 37(1)(b) is not satisfied in this case.
7. The claimant has breached the case management order and complied after expiry of the deadline. To that extent rule 37(1)(c) is met, although a reasonable explanation for the breach has been given and the claimant did apply for an extension of time for compliance before expiry of the time limit (albeit it was not determined by the Tribunal prior to expiry of the time limit).

8. There is nothing in the papers referred to me to suggest that it is not possible to have a fair trial in this case. The required information has been provided no later than 7 days after the original deadline. The other case management orders can be complied with and the case can be properly prepared for the final hearing. It can be determined on its merits at that final hearing. The delayed compliance with the order has not had any other adverse consequence and there is nothing to suggest that the delayed compliance has adversely affected the cogency of the evidence which will be available at the final hearing. The respondent has not been unduly prejudiced by the relatively short delay in compliance by the claimant.
9. To the extent that I am required to address the matter, I am not persuaded that the Tribunal was prevented from addressing the time limit/jurisdiction point at the October hearing because of any default by the claimant. The nature of the case meant that it was inappropriate to resolve the limitation point without hearing the evidence as to whether there was 'conduct extending over a period' so as to bring earlier acts of discrimination within time. This was addressed in my October case management summary and this would have been the position irrespective of the lack of dates on the pleadings at that stage. Furthermore, my decision was in line with the representations made on behalf of both parties at the hearing and in line with the respondent's prior applications to convert the hearing into a case management hearing rather than a substantive, open preliminary hearing.
10. In light of the above, although there has been a breach of the case management order, this has now been rectified and the final hearing can go ahead as listed. Any strike out of the claimant's claim would be entirely disproportionate to the severity of the claimant's breach. The respondent's application is refused. That said, the claimant is reminded of his duty to comply with the remaining case management orders and to assist the Tribunal and the respondent in furthering the overriding objective in this case.

Employment Judge Eeley
Signed 11 January 2023

JUDGMENT SENT TO THE PARTIES ON

11 February 2023

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FOR THE TRIBUNAL OFFICE