



EMPLOYMENT TRIBUNALS

Claimant: Mr Sanjay Ganesan

Respondent: Altran UK Limited

Heard at: Reading **On:** 20 March 2023

Before: Employment Judge S Matthews

Representation:

Claimant No attendance or representation

Respondent: Ms. Greenley (Counsel)

JUDGMENT

The claim is struck out.

REASONS

1. The claimant issued proceedings in the London South Employment Tribunal on 8 January 2022 claiming constructive unfair dismissal, breach of contract and deductions from, or failure to pay, wages. The claim for unfair dismissal was struck out on 8 September 2022 by Employment Judge Aspinall sitting in London South Tribunal as the Tribunal has no jurisdiction to hear it because the claimant does not have sufficient service to bring such a claim. The remaining claims for breach of contract and deductions from, or failure to pay, wages were transferred to the Employment Tribunal at Watford.
2. The claimant did not attend the hearing today. He was sent Notice of Hearing with Case Management Orders on 10 December 2022. An email sent to the tribunal at 5.18am this morning states that 'I wouldn't be able to purse (sic) my claim at this point due to health reasons'. He states that he has been recovering from a major medical procedure over the last few months and has been in India over the past 12 months recuperating from his health condition. He states that he is 'putting on hold this Employment Tribunal claim' as he is unable to do the preparation in compliance with the

orders. The claimant did not copy the respondent's Solicitors into the email but Counsel for the respondent indicated that they had received an email with the same content at 8am yesterday morning (a Sunday).

3. The claimant has not provided any medical evidence or detail in respect of his condition. The Tribunal note that he has known about today's hearing since at least 19 December 2022 when he emailed the Tribunal referring to the case management orders which were sent out with the Notice of Hearing on 10 December 2022 but it was not until this morning that he notified the Tribunal that he would not be attending the hearing.
4. The claimant has not complied with the orders of the Tribunal sent out on 10 December 2022 in respect of disclosure of documents and exchange of witness evidence. The respondent served documents on 19 December 2022 in compliance with the Order.
5. Counsel has taken the Tribunal to email correspondence between the claimant and the respondent's Solicitors between 10 December 2022 and 10 January 2023. This was in a bundle of documents of 26 pages prepared in respect of the respondent's application to strike out the claim. The correspondence indicates that the respondent agreed to an extension in respect of disclosure on two occasions. There was finally an agreement that the claimant complete disclosure by 16 January 2023 and exchange of witness evidence by 2 February 2023. In the event there was no disclosure by the claimant on 16 January 2023 and the respondent applied for a strike out order on 22 January 2023.
6. A Strike Out Warning was issued by Employment Judge Gumbiti-Zimuto dated 27 February 2023. It stated that the Tribunal was considering striking out the claim because the claimant has failed to comply with various orders set by the Tribunal. It informed the claimant that if he wished to object he should give his reasons in writing or request a hearing at which he can make representations by 7 March 2023. No such reasons or request was received by the Tribunal by 7 March 2023.
7. Rule 37(1) of the Rules of Procedure provide that the tribunal has power to strike out a claim for non-compliance with an order or failure to actively pursue a claim:

*(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
[...]*

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

8. Rule 37(2) is not prescriptive as to the requirements of the notice. It requires the tribunal to be satisfied that the affected party has been given reasonable and proper notice.
9. In deciding to strike out I am satisfied that the claimant has been given reasonable and proper notice. I have considered the magnitude of non-compliance and noted that the claimant has not complied with the orders of the Tribunal relating to disclosure and exchange of witness evidence. He failed to attend the hearing today and failed to give reasons or request a hearing in response to the Order of Employment Judge Gumbiti-Zimuto by the deadline given of 7 March 2023. He has failed to actively pursue the claim.
10. I find that the claimant's conduct is such that it is not proportionate or in the interests of justice that he continue to use the Tribunal's resources. The claimant has been given sufficient opportunities to make submissions in writing or at a hearing and the claim is accordingly struck out.
11. Counsel for the respondent indicated that she was instructed to apply for a costs order against the claimant under Rule 77 of the Employment Tribunal Procedure Rules.
12. If the respondent intends to pursue such an application they are to confirm in writing to the Tribunal and the claimant within 28 days after the date this Judgment was sent to the parties and include:
a breakdown of time spent in bringing the proceedings up to the date of the hearing;
written representations setting out why they allege the claimant's conduct entitles them to a costs order.
13. The claimant is to respond within 28 days of receiving the respondent's written representations with written representations setting out why the claimant does not agree to a costs order or request a hearing at which he can make representations. If the claimant does not provide written representations by the time limit or request a hearing a determination will be made on the basis of the written representations by the Employment Judge under rule 60 of the Employment Tribunal Procedure Rules.

Employment Judge S Matthews

Date 20 March 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

8/4/2023

Naren Gotecha - FOR THE TRIBUNAL OFFICE