



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000137/2022

Decision made on documentation

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Employment Judge A Kemp

Mrs C Vickers

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**Claimant
In person**

Altea 4 Restaurants Ltd

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**Respondent
Represented by:
Ms A Turnbull,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal strikes out the Claim under Rule 37 of the Employment Tribunal Rules of Procedure.

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REASONS

Introduction

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1. In this case the claimant did not attend a Preliminary Hearing on 27 March 2023. Various orders were made following that hearing. The claimant did not comply with them.

2. The Tribunal sent an email to the claimant on 13 April 2023 with regard to that non-compliance. She did not reply to that.
3. On 20 April 2023 a strike out warning letter was sent to the claimant seeking a response by 27 April 2023. The claimant has not responded in any way.
4. The respondent has made an application for strike out.
5. The matter was then referred to me.

The law

6. A Tribunal is required when addressing matters such as the present to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

“2 Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

(i) *Strike out*

7. Rule 37 provides as follows:

“37 Striking out

5 (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-compliancewith an order of the Tribunal.....

(d) that it has not been actively pursued.”

10 8. The EAT held that the striking out process requires a two-stage test in *HM Prison Service v Dolby [2003] IRLR 694*, and in *Hassan v Tesco Stores Ltd UKEAT/0098/16*. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion
15 whether to strike out the claim. In *Hassan* Lady Wise stated that the second stage is important as it is ‘a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit’ (paragraph 19).

Discussion

20 9. The claimant has not attended a Preliminary Hearing, has not complied with a number of case management orders, and has not responded to the date listing letter. That means that the respondent is not able properly to prepare for the Final Hearing. The hearing has not been arranged, and it appears to me that the claimant is both not in compliance with orders and
25 not actively pursuing the claim.

10. The respondent is suffering prejudice as a result of that. It is represented by solicitors. There has been expense and delay, which is liable to continue unless the claim is struck out.

11. The claimant has been given more than one opportunity to address the
30 issues, with case management orders, an email and a letter.

12. In light of the circumstances set out above, and having regard to the terms of the overriding objective, I am satisfied that it is appropriate for me to strike out the Claim on the basis of both a failure to comply with orders, and not actively pursuing the claim.

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Employment Judge : A Kemp

Date of Judgment : 9 May 2023

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Date sent to parties : 16 May 2023