



EMPLOYMENT TRIBUNALS

Claimant: Mr G Negara

Respondent: INWORK LTD

Heard at: Cambridge (via Cloud Video Platform)

On: 22 May 2023

Before: Employment Judge Davey

Representation

Claimant: Mr Alex Sinaevschi (the Claimant did not attend)

Respondent: Ms Joanna Veimou, Peninsula

JUDGMENT

The respondent's application to strike out the claim is refused.

REASONS

1. These reasons, which follow from Judgment given in the public domain, and therefore will be placed online, are limited to the points on which judgment on strike out was given. A separate case management order, which is not a document in the public domain, and will therefore not be posted online, should be read in conjunction with this document.
2. The claimant presented a claim for unauthorised deductions on 30 December 2022. In its ET3, the respondent defends the claim and disputes the employment status of the claimant. A final hearing was listed for 22 May 2023 via cloud video platform.
3. By an email sent to the Tribunal on 16 May 2023, the respondent made an application to strike out the claim. This was on the basis there had been non-compliance with Tribunal rules and Tribunal orders engaging Rule 37(1)(c), the claim was not being actively pursued engaging Rule 37(1)(d) and that it was no longer possible to have a fair hearing, engaging Rule 37(1)(e).

The respondent's application was based on the claimant's failure to engage with case management orders.

4. At this hearing, the respondent asked the Tribunal to consider its strike out application together with Rule 47 and considered the non-attendance of the claimant at this hearing to be a further reason to strike out the claim.
5. The claimant's lay representative, Mr Alex Sinaevschi did attend the hearing and stated that documents had been uploaded via a link on 12 April 2023. He stated that the claimant had a 'reasonable excuse' for not attending the hearing today as he was in hospital due to a medical emergency. Mr Sinaevschi stated that medical evidence confirming hospital attendance today would be supplied to the Tribunal and the respondent.
6. I have concluded that to date, there has been a failure to comply with the Tribunal's orders, at least in part. The claimant may have uploaded documents to the Tribunal via 'a link' on 12 April 2023. Even so, the claimant has not complied with Tribunal orders to provide a list and exchange documents with the respondent by 20 March 2023 or to provide a written statement to the respondent by 17 April 2023.
7. The claimant's representative did attend the hearing on behalf of the claimant so the claim is being pursued.
8. The claimant has not attended the hearing today, purportedly, due to ill health. A medical emergency constitutes exceptional circumstances.
9. In my judgment and in the context of the type of claim being pursued, I concluded it was disproportionate to strike the claim out under Rules 37(1)(c),37(1)(d) or 37(1)(e). Striking out a claim is one of the most draconian powers a Tribunal can exercise, since it brings the claim to an end and prevents a claimant's case being determined on its merits.
10. The respondent's application for strike out is dismissed. Rule 47 is not satisfied as the claimant's representative attended the hearing on behalf of the claimant.

Employment Judge E Davey

Date: 1 June 2023

JUDGMENT SENT TO THE PARTIES ON

26/06/2023

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Case No: 3315475/2022

FOR THE TRIBUNAL OFFICE