



EMPLOYMENT TRIBUNALS

Claimant: Dr A Kostin

Respondent: Digital Barriers Services Limited

Heard at: Watford Employment Tribunal, via CVP

On: 23/5/2023

Before: Employment Judge Lloyd-Lawrie

Representation

Claimant: In person

Respondent: Mr England of counsel

JUDGMENT having been sent to the parties on 28/05/2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Following the preliminary hearing, the judgment of the Tribunal is that the Claimant's application for strike out of the Respondent's response fails as the legal test is not met.
2. It is of course the case that rule 37 (1) of the Tribunal Rules gives the Tribunal the power to make an application to strike out a party's claim or response.
3. The strike out decision of Employment Judge Hawksworth made on 15/01/2023 stands. That decision is not before me as an appeal. The case of *Duvenage v NSL Ltd EATS 0002/20* the EAT made it clear that where a Claimant applies for a response to be struck out, they have no right to an oral hearing. Only the party against whom an application has been made has the right to insist upon a hearing.
4. I therefore consider only the application of January 2023 for strike out. The response can only be struck out for certain reasons. Firstly, if I consider it is scandalous, vexatious, or has no reasonable prospect of success. That is clearly not the case here as an arguable defence has been put forward. We are not testing facts at this stage but taking a case at its highest.

5. Further options for strike out are that the manner in which proceedings have been conducted has been scandalous, unreasonable or vexatious.
6. More grounds for strike out are for non-compliance with any of the Tribunal Rules or with an order of the Tribunal. The last grounds are that it is not being actively pursued or that it is no longer possible to have a fair hearing.
7. I find that the Respondent has attempted to deal with this case and has attempted to comply with both their ongoing obligation of disclosure and have attempted to comply with the amended case management orders of the Tribunal and have sent over versions of the bundle and have attempted to have witness statement exchange.
8. I find that the Claimant has continually asked for documents that are not relevant to the issues as he appears to have misunderstood that the Respondent was never disputing that he had worked from their offices, albeit, ones they had rented from a company he controlled, in his garden. I find that the Respondent has complied with their disclosure obligations and am grateful for their confirmation that they will re-send the Company Directive 2021 to work from home.
9. I find that no grounds for strike out are made out and I decline to strike out the response.

Employment Judge Lloyd-Lawrie

Date 17/07/2023

REASONS SENT TO THE PARTIES ON

21 July 2023

FOR THE TRIBUNAL OFFICE