



EMPLOYMENT TRIBUNALS

Claimant: Mr Michael Webb

Respondent: (1) Warburtons Limited

(2) CORR Recruitment Limited

Heard at: Exeter

On: 21 July 2023

Before: Employment Judge Gibb

Representation

Claimant: Miss Laxton (counsel)

Respondent: Mr Cater (Peninsula Law)

JUDGMENT

The Claimant's claim is struck out pursuant to rules 37(1)(a) and 37(1)(b) of the ETs (Constitution & Rules of Procedure) Regulations 2013 on the grounds that the claims have no reasonable prospect of success and that the manner in which the proceedings have been conducted by the Claimant is unreasonable.

REASONS

1. The Claimant's ET1 was issued on 26 November 2021. It is relatively brief and sets out claims of unfair dismissal, discrimination on the grounds of race and religion or belief and detriment on the ground of a public interest disclosure.
2. On 29 November 2022, a telephone case management hearing took place but it was not possible to set out the Claimant's claims. On 3 March 2023, there was a second telephone case management hearing. At that hearing, the employment judge raised the issue of whether or not the Claimant had capacity to conduct litigation. The case management order following that hearing put the Claimant on notice of the risk of strike out of his claims.
3. On 25 April 2023, a third case management hearing took place in person. The Claimant did not attend. The Respondents applied to strike out the claims in their entirety, which was refused at that hearing. The case management order made following that hearing directed that the matter be listed to consider, amongst

other things, whether or not the Claimant had capacity to conduct litigation and if he did, whether the claims should be struck out.

4. The case was listed for a preliminary hearing on 21 July 2023. The Claimant again did not attend. The tribunal held that the Claimant had capacity to conduct litigation for the following reasons:
 - a. The starting point is an assumption that the Claimant has capacity unless it is established that he lacks capacity.
 - b. Although some of the Claimant's documents suggested that he might have some mental health issues, there was no direct evidence to show that the Claimant lacked capacity to conduct litigation in accordance with the provision of section 1-3 of the Mental Capacity Act 2005 and the associated Code of Practice and relevant case law: **Masterman-Lister v Brutton & Co [2002] EWCA Civ. 1889, [2003] 1 WLR 1511; Sheffield CC v E & S [2005] Fam 236** considered.
 - c. The Claimant did not co-operate with the directions of the tribunal regarding his medical records and GP details. There was no medical evidence before the tribunal regarding the Claimant's capacity. The tribunal held that the Claimant did not intend to co-operate in relation to this issue and that there was no likelihood that he would do so in the future.
 - d. The evidence before the tribunal was not sufficient to establish that the Claimant lacked capacity to conduct this litigation.
5. The First Respondent renewed its application to strike out the Claimant's case in its entirety on the grounds: (1) the claims had no reasonable prospects of success; (2) the Claimant's conduct in failing to particularize his claims and his conduct to date was unreasonable; and (3) the significant delay since issue which meant there could not be a fair hearing. The Second Respondent also applied to strike out on these grounds and the additional ground that the Claimant had actively failed to pursue his claim.
6. The caselaw makes it clear that a tribunal should be slow to strike out claims of discrimination and protected disclosure where central facts are in dispute. In this case, despite producing four lengthy documents, the Claimant has wholly failed to particularize any of his claims. The tribunal determined that it was unlikely that the Claimant would be able to set out his case in sufficient detail in the near future. Given that it was 20 months since the first case management hearing and the Claimant had not yet set out his case in any real detail, the tribunal held that this was an exceptional case which justified strike out on the ground of no reasonable prospect of success.
7. The tribunal further held that the Claimant's conduct in failing to particularize his case constituted a persistent disregard of the required procedural steps as required and was in breach of the directions set out in the CMOs. The Respondents did not understand any of the claims, did not know the case they had to meet or the individuals said to be involved in the claims. The tribunal held that the failure to comply with the procedures and directions constituted unreasonable conduct justifying strike out.

Case No: 1404535/2021

Employment Judge Gibb
Date **24 July 2023**

Judgment & reasons sent to the Parties on 07 August 2023

For the Tribunal Office