



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms G Kauser

V

**UK Hairdressers 2019
Ltd**

Heard at: Watford (Tel)

On: 21 August 2023

Before: Employment Judge G D Davison

Appearances:

For the Claimant:

**Mr S Hussain (Solicitor, assisting as a family
friend Pro bono)**

For the Respondent:

Mr H Asif, Guardian Support

RESERVED JUDGMENT

1. The claimant's application to strike out the respondent's response for non-compliance with a Tribunal Order is dismissed.

REASONS

The issue

1. On 6 June 2023 the employment tribunal wrote to the representatives and enclosed Case Management Orders ('the June 2023 CMO'). The issue for consideration was whether the respondent's failure to comply with the June 2023 CMO should lead to a strike out of the response. The skeleton argument also raised an issue, in paragraph 21(ii), concerning whether the response should be struck out under Regulation 37(1)(e) due to destruction of documents. Mr Hussain for the claimant confirmed this argument was not being advanced. The argument under Regulation 37(1)(e) still relied upon was that because the claimant had complied and

produced all relevant documents it was no longer possible to have a fair hearing.

The evidence

2. A bundle of 105 (PDF) pages was submitted. In addition both representatives made extensive submissions.

Findings of fact

3. On 6 June 2023 the employment tribunal wrote to the representatives and enclosed Case Management Orders ('the June 2023 CMO'). On 3 July 2023 the claimant's representative wrote to the respondent enquiring when they wished to exchange documents. The June 2023 CMO had provided a date of 4 July 2023 for compliance. The respondent replied to the claimant on 3 July 2023 seeking to amend the June 2023 CMO and the timeline for disclosure, bundle preparation and witness statement exchange. The claimant responded and submitted the claimant's list of documents but stated that they were unable to consent to the respondent's proposed (revised) timetable. No reason was advanced as to why the amended timeframes were not acceptable given they were well before the final listing date in May 2024. The claimant's representative did seek to be copied in on any application that was made to the Employment Tribunal. The respondent, on 13 July 2023, wrote to the Tribunal requesting both clarification regarding the final hearing and clarification over the June 2023 CMO. The claimant was copied into this application. The respondent believed there had been an error in the June 2023 CMO as exchange of witness statements was scheduled to be completed prior to the completion and agreement of the final hearing bundle. The claimant continued to comply with the June 2023 CMO and served a witness statement on 31 July 2023. On 14 August 2023 the claimant made the application for strike out currently under consideration.

The law

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

Striking out

37.—(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—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;

(e)that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(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.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

Conclusions

4. In considering whether a party's case should be struck out in whole or in part due to non-compliance the Tribunal must have regard to the overriding objective of seeking to deal with cases fairly and justly. Various factors must be considered, in considering those factors I find as follows. The respondent did not comply with the June 2023 CMO. There was a total failure to comply. However, this failure must be considered alongside the respondent's application to amend the June 2023 CMO. The application to amend was made in July 2023. The matter had been listed for final hearing in May 2024. The respondent was seeking to have the Case Management Orders made in a more standardised fashion i.e. that the bundle of documents be completed prior to the witness statements. This did not entitle the respondent to ignore the previous June 2023 CMO. However, I find that the respondent made the application to amend in good time and well before the final hearing date. I therefore find that little disruption, unfairness or prejudice has been caused. The claimant alleges that the respondent now has had sight of the documents they seek to rely upon. I do not find this has caused any unfairness or prejudice, that this would happen in normal case preparation. The claimant also avers that as a witness statement has been served this placed the respondent at an advantage. The respondent has not looked at this witness statement and believed it had been sent to them in error. I do not therefore find that there has been any prejudice caused. I do not find the respondent has taken any unfair advantage. I find that a fair hearing is still possible, the respondent will have to comply with the amended Case Management Orders. Any non-compliance with the same can be addressed at the further Preliminary Hearing scheduled for 10 January 2024.
5. Whether strike out is proportionate also has to be considered. Given that there is time for documents to be exchanged and witness statements to be prepared and for a further preliminary hearing to be conducted prior to the final hearing of this matter I do not find strike out to be a proportionate measure. I do not find the respondent has conducted the proceedings so far in a scandalous, unreasonable or vexatious manner.
6. For the above reasons the claimant's application for strike out is dismissed.

Employment Judge G D Davison

22 August 2023

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Sent to the parties on

12 September 2023

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For the Tribunal

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