



EMPLOYMENT TRIBUNALS

Claimant: Mr V Gorret

Respondent: Discovery Communications Europe Limited

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT LONDON CENTRAL (BY CVP)

On: 22 November 2023

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In Person

For the respondent: Mr R Bhatt (Counsel)

JUDGMENT

- 1. The remaining claims (unfair dismissal and discrimination on grounds of race and religion or belief) are Struck Out under Rule 37 of the Tribunal Rules of Procedure 2013: the claimant has not complied with Tribunal Orders and has not actively pursued the claims.**
- 2. The Respondent's Costs Application dated 18 November 2023 shall be dealt with on the papers. The following directions apply:**

a. The claimant shall no later than 15 December 2023 send to the Tribunal (copied to the respondent) a written response to the application for costs, explaining why he says he should not have to pay the respondent's costs as claimed;

b. The claimant shall no later than 15 December 2023 send to the Tribunal (copied to the respondent) a written summary of his financial situation including details of his earnings (including benefits) following the termination of his employment on 26 March 2022; details of his personal savings and other financial information, such as other

sources of funding (family/friends etc) and details of his regular outgoings and liabilities;

c. The respondent shall no later than 12 January 2024 send to the Tribunal (copied to the claimant) its written reply to the claimant's responses.

NOTE: I confirmed with the claimant at the hearing that he understood what was required of him as regards the costs application and that he understood that this was separate from his claims and the Strike Out application. If he does not respond, the Tribunal may deal with the Application for Costs in any event.

REASONS

1. This was a public Preliminary Hearing (PH) heard by video to consider “afresh” whether the claimant's remaining claims should be struck out for failure with Tribunal orders and/or because the claims have not been actively pursued.
2. The hearing had been listed for 2 hours and having heard from the claimant and the respondent's counsel we ran out of time. I reserved my decision which I now give with the Reasons in writing. Page references are to the 603-page electronic bundle which was provided for the PH.
3. I did check with the claimant if he felt he needed an interpreter but he confirmed that he did not.

Strike Out on 10 November 2023

4. The remaining claims (unfair dismissal; discrimination on grounds of race and religion/belief) were struck out under Rule 37 of the Tribunal Rules of Procedure 2013 (**the Tribunal Rules**) in a Judgment of EJ Goodman dated 10 (or 11) November 2023 (page 297). This was because the claimant had not complied with Tribunal orders and had not actively pursued the claims. EJ Goodman gave thorough, and detailed Reasons for her Judgment and I do not propose to repeat these here.

Revocation of Strike Out Judgment on 14 November 2023

5. However, EJ Goodman then revoked her Judgment based on her own reconsideration of that Judgment under Rule 70 of the Tribunal Rules (page 307). This was essentially due to problems with the administration system sending out incomplete and confusing strike out warnings. Also, there had been no hearing at which the claimant was given an opportunity to give his reasons for opposing the strike out application. Accordingly, EJ Goodman listed today's PH for that purpose.
6. I note that in the last paragraph of her Revocation Order, EJ Goodman said as follows:

“To help the claimant focus on what will be considered at this hearing,

he is reminded that the orders he was to comply with are those contained in Judge Webster's case management summary and orders dated 25 September 2023. He was asked on 7 November by Judge Smart to say whether he had complied, and he did not reply. He was warned by Judge Nash on 9 November to reply to this by 10 am on 10 November but did not. "

7. I also note that having indicated that he wanted a hearing to deal with the Strike Out application, on 16 November the claimant applied to postpone this hearing, which was refused by EJ Goodman.

Background

8. The claimant was employed by the respondent (as Media Sales Operator) from 21 March 2012 until his dismissal on 26 March 2022. The respondent says the dismissal was for gross misconduct. The claimant issued Tribunal proceedings on 7 July 2022 bringing various claims for unfair dismissal; discrimination including disability discrimination (failure to make reasonable adjustments). However, his claim for breach of contract was dismissed upon withdrawal at any early stage, and his disability discrimination claim could not continue as the Tribunal found at an earlier PH (in June/July 2023) that the claimant was not disabled within the meaning of the Equality Act 2010.
9. EJ Goodman's Strike Out Judgment sets out the chronology of this case in detail (paragraphs 4 to 9) and I do not propose to repeat it here. However, I do note that there have already been three case management hearings and one other PH in this case. There have also been two postponements of Final Hearings listed for June and November 2023 respectively.

Respondent's Submissions

10. These were in writing and Mr Bhatt also made oral submissions. The respondent relied on three grounds under Rule 37: the claimant had conducted proceedings in an unreasonable manner (37 (1) (b)); the claimant had not complied with ET Orders (37 (1) (c)) and the claimant was not actively pursuing his claim (37 (1) (d)). Mr Bhatt noted the claimant's disregard for Orders and Strike Out warnings; the claimant's failure to give any reasons for his non-compliance and the resulting costs to the respondent and the waste of Tribunal time and resources. He noted that a lesser sanction was inappropriate in this case as the claimant had already been given several chances to comply with Orders and pursue his claims, but he had not done so.
11. Mr Bhatt set out the key legal principles and tests in his written submissions, none of which were in dispute.
12. Mr Bhatt's submissions then outlined the various failures by the claimant to comply with the Tribunal Orders made at the various Case Management Hearings. The claimant did not dispute that he had failed to comply with the Orders.

13. I suggested to the claimant that he take notes of any points made by Mr Bhatt which the claimant may wish to respond to, rather than interrupting Mr Bhatt's submissions.

Claimant's Submissions

14. I noted that the claimant was not legally represented, and I asked him whether he had received any legal assistance during the course of the proceedings. The claimant said he had some legal advice before he begun the proceedings and also to help him prepare his impact statement for the PH in June 2023 about his disability status. The claimant had received the list of Sources of Free Legal Advice from the Tribunal but seemed to say that when the legal advisors heard that DLA Piper were representing the respondent, they did not want to help him. The claimant subsequently backtracked from that statement but was vague and unclear as to why he had been unable to seek legal assistance.
15. I also noted that at the Case Management Hearing (EJ Webster) on 25 September 2023 the claimant had asked for more time to seek legal representation, but he did not explain why he had been unable to do so.
16. I explained to the claimant that the purpose of this PH was to give him a full opportunity to explain why he had not complied with Tribunal Orders and why he said that his claims should not be struck out. The claimant said he understood this.
17. The claimant said that he had complied with the first Case Management Order of EJ Glennie on 29 September 2022 (page 53) and had submitted his "witness statement". On further enquiry, it transpired that the claimant was referring to his impact statement to determine the preliminary issue of whether he was a disabled person. He accepted that he had not complied with the other orders for disclosure etc leading to a Final Hearing.
18. I asked the claimant why he had not complied with Orders to disclose the recording which he said he had of the investigatory meeting into his alleged misconduct. The claimant said that his previous solicitor had lost it. The claimant did not explain why he had not given this information earlier. This was also not consistent with the claimant saying that he had not had formal legal advice.
19. I referred the claimant to the Order of EJ Webster of 25 September 2023 (page 204) and in particular to paragraph 4 where the Judge said:
- I set out here that the Claimant appeared initially to resist all attempts to case manage this matter but once the conversation started, he was helpful and articulate. Nevertheless, when I made subsequent Orders he appeared to suggest that he did not want to comply with the dates given for those Orders. I informed him that it was not a matter of choice whether he complied or not and that he must do so".*
20. I asked the claimant for his comments on this. He said that the Judge was "lying" and that he had been "attacked" by the Judge at the hearing. (This

interpretation of EJ Webster's behaviour was challenged by Mr Bhatt who had been present at that hearing). I asked the claimant if he had challenged the Order as drafted. He said he had done so and that it was "all on record" but accepted that no such documents were available for today's hearing.

21. I do not accept the claimant's account of the Hearing on 25 September and of Judge Webster's behaviour. It may be that the Judge was "firm" with the claimant about complying with Tribunal Orders, but that is not equivalent to "attacking" him.
22. I referred the claimant to paragraph 7 (Disclosure of Documents) of the 25 September 2023 Order. He accepted that he had not complied with any of the Orders for disclosure. I asked him why he had not done so. He said that after the Order he "went into a really bad place" and had been suicidal and so could not comply. He said that he had not mentioned this before as he did not want to use it as an excuse.
23. I explained to the claimant that if individuals brought Tribunal proceedings, they must be prepared to engage with the process and take the necessary steps to bring their case to a Final Hearing. I asked the claimant if he now wanted to continue with his case. He said that he wanted to put it on "hold" for an indefinite period until he could get "back on track". He said he had medical evidence to support this but accepted that he had not produced any such evidence to date.
24. The claimant also said that he had been having technical problems with his email account recently and went a whole week without access to emails, though he did not specify any exact dates or provide any evidence to support this assertion. I also note that this would not explain the claimant's earlier non-compliance with Orders.

Relevant Law

25. Tribunal Rule Rule 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.*

Conclusions

26. Having given the claimant a full opportunity to make representations at the hearing (he chose not to submit any representations in writing), I find that the claimant has not satisfactorily explained why he failed to comply with Tribunal Orders. The claimant's referred to his medical condition, but had never raised this before as a reason for non-compliance.
27. The reasons he gave for not actively pursuing his claims appeared to be inconsistent and somewhat "ad hoc". I also note that the claimant said that he does not wish to pursue the claim but seeks the equivalent of a stay of proceedings, appearing to rely on his ill-health, although no medical evidence was produced to support this assertion.
28. I refer to the Judgment of EJ Goodman (paragraphs 10 – 12) with which I agree. Judge Goodman said:

"10. I have concluded the claims should be struck out. The claimant is not represented. However, the nature of the orders and why they are made has been explained to him at several case management hearings. He should know by now what is required and why it is required. He has also been told firmly that he must comply. His deadlines have been extended. He has been given an opportunity to explain. He has not responded to the respondent or to the tribunal.

11. Failure to comply with the orders places the respondent at severe disadvantage in preparing for the hearing. Disclosure is not complete because the claimant has not disclosed relevant documents which he says are in his possession. That is not just – parties are obliged to disclose everything relevant, whether it is to their advantage or not. That means the respondent may have to revise their witness statements if the claimant decides to disclose documents later. It rules out an alternative solution, which is to treat the respondent's bundle as final and require the respondent to disclose statements but password protected until the claimant discloses his. The claimant has given no indication that he has a witness statement to disclose, or why he is not ready, or when he may be ready. The tenor of his discussion with Employment Judge Nash suggests it is not question of some difficulty or delay, but a refusal to consider that directions apply to him at all. The claimant's failure to comply would cause injustice to the respondent. The

hearing might have to be postponed. The claimant might decide not to attend at all. The considerable costs of preparing for the hearing, would be wasted. The tribunal could make an order that the claimant pay costs. I do not know his means, but he may well not be able to pay any order made, so the respondent would still be left with a substantial bill to pay. So the claims should be struck out for failing to to comply with orders, and also because the claimant's lack of engagement suggests it is not being actively pursued.

12. I heed the overriding objective to deal with cases justly and fairly. Given the delay and cost to the respondent facing a five-day hearing, not knowing if the claimant will comply, or even attend the hearing, and the absence of any communication from the claimant as to why he has not complied, despite explanation and warning, I conclude that striking out the remaining claims is the just solution. “

29. At the hearing today, the claimant did not provide any satisfactory explanation for his non-compliance with Orders (other than to raise allegations against EJ Webster which there was no evidence that he had ever raised before). He also indicated that he would, in fact, wish to stay proceedings rather than commit to engage with pursuing his claim. The claimant said nothing which would counter the matters cited in EJ Goodman's Strike Out Judgment or which lead to any conclusion other than that striking out the remaining claims is the just solution in this case.

Respondent's Costs Application

30. The respondent also raised an application for costs in the sum of £10,800. There was insufficient time to deal with this application at the PH today and I gave directions (see above) for further information to be provided by the parties so that the application could be dealt with "on the papers".
31. I stressed to the claimant that he must comply with the directions for dealing with the application for costs as this was separate to the Strike Out issue. The claimant said he understood this.

D Henderson
Employment Judge Henderson

JUDGMENT SIGNED ON: 29 November 2023

JUDGMENT SENT TO THE PARTIES ON

29/11/2023

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>