



EMPLOYMENT TRIBUNALS

Claimant: Mr M Gregory

Respondents: Kronospan Ltd (R1)
Kronoplus Ltd (R2)

HELD AT: Mold **on:** 12th January 2024

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Absent – attendance not excused; absence not explained.

Respondentss: Mr R Pasha, Solicitor

DECISION

The decision of the Tribunal, announced today, is that

1. The Claimant's claim is struck out on the following grounds:
 - 1.1. the Claimant has not actively pursued the claim.
 - 1.2. the Claimant has not complied with Orders of the Tribunal dated 19th June 2023 and 21 August 2023.
 - 1.3. The Claimant has conducted these proceedings in an unreasonable way.
2. The Tribunal has not adjudged that the claim in full should be struck out because it has no reasonable prospect of success.
3. The Tribunal considers that it may have been possible for there to be a fair hearing subject to the Claimant's reasonable and active pursuance of the claim in compliance with Orders, but does not consider (at the moment and in the current circumstances) that it is possible to have a fair hearing in the foreseeable future.

REASONS

1. Introduction:

- 1.1. This written Reasoned Decision has been prepared notwithstanding that an Oral Decision was announced today, to assist the Claimant.
- 1.2. Today's hearing was listed as a public preliminary hearing to consider whether or not the Claimant's claims should be struck out on any one of a number of grounds owing to an apparent disengagement by the Claimant in this litigation.
- 1.3. A similar situation was reached last year in other litigation involving the Claimant. I recall that I struck out his claim on that occasion also and in circumstances similar to those facing us today. That said, I did not revise any notes, submissions, or judgment in the other proceedings as I do not consider that that to do so would have been in the interests of justice. I want to deal with today's matter on its own merits. I sought to avoid the possibility of my being influenced by arguments put on the other occasion and my rationale at that time. Today's decision is based upon my reading of this file and situation, having heard from the Respondents and having heard nothing from the Claimant in opposition.
- 1.4. A notice of this hearing was sent to the parties on 6 December 2023. The notice sets out the potential grounds for a strikeout. The notice was sent to the Claimant at the Th correspondence address notified by the Claimant to the Tribunal. He did not respond to the Tribunal's notice by corresponding with either the Tribunal or the Respondents. That notice was triggered by a written application for strike out dated 1st November 2023 made by the Respondents. The Respondents had sent a copy of their application to the Claimant. It did not receive a response to its written application from the Claimant.
- 1.5. The Claimant had not attended the hearing centre today by 10:00 AM. The Respondents' representative was in attendance at the hearing centre. I waited until 10:15 AM before requesting that the administrative staff telephone and, subject to that, e-mail the Claimant as to his whereabouts and intentions, whether or not he wished to attend. A message was left for the Claimant on his answering service. An e-mail was sent to him asking whether or not he was attending the hearing. A further telephone call was made to him and once again the call was put through to an answering service. I received notifications at 10:22 AM and 10:35 AM that the administrative staff had been unable to obtain a response from the Claimant. In those circumstances I decided that it was fair, proportionate, and in the interests of justice to proceed in his absence.

2. Background:

- 2.1. I was referred to the minutes and case management Orders that I prepared following a preliminary hearing on 19 June 2023 when the Claimant was in attendance along with Mr Pasha who is present today. Those minutes set out

the chronology of the claim at that stage in paragraph 51. There is a case summary that commences at paragraph 51. The Claimant makes a number of claims that are complex and involve allegations of unlawful discrimination and of his being subjected to detriments for having made public interest disclosures relating to issues concerning health and Safety at work in a factory environment. He makes serious allegations and indicated that he had a considerable amount of evidence in support. Were the Claimant to succeed with the majority of his claims then any award could be of high value; any judgment against the Respondents could give rise to reputational and commercial damage, let alone exposure to a substantial award and costs liability (in respect of their own costs alone).

- 2.2. I am aware, and it is a matter that the Claimant raised on the last occasion, that Mr Gregory is an experienced litigant in the Employment Tribunal. He knows the procedure that is adopted and in particular the importance of compliance with case management Orders together with the implications of any failure by the on the part of either party to comply. He knows the significance of a request for further and better particulars and the importance of providing sufficient particulars so that he knows the details of his claim, the Respondents know the claims facing them and the details they need to investigate for purposes of disclosure and the preparation of witness evidence, and so that a list of issues can be agreed with the Judge for use at a final hearing. That list of issues will form the basis of the consideration of the claims by the Tribunal leading to a judgment on all claims. Notwithstanding the fact not the Claimant has this experience I spent some time at the June preliminary hearing discussing what was required of him and the potential implications of his failure to engage appropriately and to focus on what was required. The Respondents referred me to paragraphs 6, 7 and 8 of the minutes where I record part of that discussion. The minutes and Orders were sent to the Claimant on 20 June 2023.
- 2.3. I am satisfied that the Claimant was aware of today's proceedings, their implications, and the risk posed to his claim by any non-attendance.
- 2.4. The Respondents made detailed submissions confirming that the only engagement with it from the Claimant since the June preliminary hearing was in June 2023 and then again in August 2023 when he unsuccessfully applied for a stay of these proceedings. The Respondents have not received a response to its request for further and better particulars, schedule of loss, disability impact statement, or medical records in support of the Claimant's claim to be a disabled person by virtue of a number of disabling conditions (all of which are listed in the said preliminary hearing minutes). In short, this case has not progressed at all since the 19 June 2023 hearing.
- 2.5. On 23rd June 2023 the Claimant confirmed in writing that he wished to withdraw his claim against a third named Respondent but that he wished to pursue his claims against R1 and R2; he provided his unavailability in the period requested inclusive October 2023 to April 2024. His correspondence was further to the case management Order made on June 19 2023. That is the full extent of the Claimant's compliance with the original Orders of 19 June 2023 and those Orders as extended by Regional Employment Judge Davies on 21 August 2023 in the light of the Claimants stated ill health. It was

noted that the fit note referred to below was for a period of two months and this was the length of the extension of time for compliance with the June Orders granted by Regional Employment Judge Davies.

2.6. The Claimant provided a certificate of unfitness to work dated 24th July 2023. It certified that he was unfit to work for eight weeks from that date with the suggestion of a gradual return to work. The eight week period suggested would have elapsed on 18 September 2023, some 17 weeks ago. The Claimant also submitted to the Tribunal and to the Respondents an undated letter from his doctor saying that the Claimant was not coping with the strain of litigation and would benefit from a six month stay. This letter was sent to the Tribunal around the time of the fit note of the 24th of July. The Respondents made the point that the doctor's stated opinion was that the litigation was causing difficulty for the Claimant, but there is no reference in that letter to any of the alleged disabling conditions. The point was made in submission that if the Claimant was incapacitated or in any sense prejudiced in the preparation of his case by virtue of a disabling condition it is more likely than not his doctor would have referred to that fact; the doctor did not.

2.7. The above history coupled with the Claimant's silence in response to the notice of hearing and correspondence from the Respondents, together with his non-attendance today, indicates a complete disengagement by the Claimant in this litigation. Bearing in mind the Claimant's serial failure to provide essential information to the Respondents and to the Tribunal in relation to his claims it is not possible to progress them.

3. The Law:

3.1. Rule 37 ETs (Constitution & Rules of Procedure) Regulations 2013 sets out the grounds for potential strike out of any claim or response, all of which were reiterated in the notice of hearing for today. 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.

3.2. Rule 38 explains the nature and effect of Unless Orders.

3.3. Rule 39 sets out details in relation to Deposit Orders where a Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success.

3.4. Rule 54 sets out the requirements in relation to notices of preliminary hearing including that a party must receive 14 days' notice of any substantive preliminary issue that is to be determined at a preliminary hearing.

4. Submissions:

4.1. The Respondents made legal submissions to the effect that deliberate and persistent failure to comply with Orders in itself amounts to unreasonable conduct justifying strike out.

- 4.2. Non-compliance with Orders should be considered in the light of the Tribunal's overriding objective set out in Rule 2.
- 4.3. All the circumstances in the case should be considered before a Tribunal makes its decision including delay, cost, and the deleterious effect on the quality of evidence caused by vague allegations and a delay in the final hearing of a matter which is fact sensitive.
- 4.4. Because the allegations made are fact sensitive and in the light of the effluxion of time without any appropriate progress, in circumstances when a fully contested final hearing is not likely before the end of 2024 or early 2025 (which would be more than two years from the events of which the Claimant complains), the Respondents say that a fair hearing is no longer possible. Some of those who would be essential witnesses may have left the Respondents' employment, but it is likely that all witnesses will have some memory loss in respect of the specifics of any allegation being pursued. That said, the Respondents still do not know the required details of the allegations.
- 4.5. For a case to be not actively pursued there must be an intentional default amounting to disrespect, an inordinate and inexcusable delay giving rise to an injustice to a party. The Respondents says that this adequately summarises the Claimant's deliberate and persistent failure to engage in this litigation to date.
- 4.6. The Respondents conceded that some of the claims may have a prospect of success, but at the same time gave details of particular claims that were so vague that on the face of them they had no such prospect, examples where the Claimant was unlikely to establish that he had made protected disclosures but, even if he did, the alleged detriment could not reasonably be seen to be such. All the time the point was made however that the Claimant has completely failed to rectify any defects or to supply information where there was an omission in his claim form. The Respondents' position on prospects of success is that the majority of the Claimant's stated claims have no reasonable prospect of success.

5. Application of law to facts:

- 5.1. I keep using the word "disengagement". The Claimant has ceased to litigate. I have no way of knowing whether this is because he has given up, and does not want to proceed, that he wants to proceed but does not know how to do so given that he's overwhelmed, or that he is ill. He has not provided me with any explanation, excuse, or mitigation for his persistent failures to pursue his claim actively and to comply with Orders. For all I know he would prefer the Tribunal to strike out his claim and take the decision away from him than for him to withdraw the claims. He knows that if they are withdrawn they will be dismissed. I cannot speculate as to the Claimant's rationale for his absolute disengagement.
- 5.2. I fully accept the chronology outlined by Mr Pasha today. There's been a complete failure to comply with Orders. His last active involvement was a request for a stay, which in itself was not progressing the claim. The claim

has not progressed since last June, and there is no indication of any intention or willingness on the part of the Claimant to pursue it actively henceforth. The medical certificate no longer appears to have relevance in it they covered a period to 18 September 2023 at latest.

5.3. The failure to comply is persistent, and I have no reason to doubt that it is deliberate in the circumstances described above. That is unreasonable conduct of the litigation. This unreasonable conduct alone justifies strike out of the claim. The case management Orders made in June and extended in August to accommodate the Claimant are of fundamental importance to the progress of this claim. The extension was at his behest. He is aware of the importance of the outstanding information without which the claim cannot proceed. The Claimant has failed to provide essential information or explain why, even today, he has difficulty in complying with the Orders. The breaches of case management Orders are so significant that they justify strike out of the claim. Even if the Claimant were to comply with the Orders starting from today it is unlikely that the case would be ready for hearing before the Summer and it is reasonably foreseeable that it could not be listed before the Autumn of 2024 or into 2025. This was a point forcibly made by the Respondents. Sadly, it is the case in many Regions that claims are currently being listed into 2025. That alone does not render it impossible to have a fair hearing. I am concerned that the allegations upon which the Claimant bases his claim date from 2022. The quality of the evidence will not be improved by any delay. I accept the Respondents' reservations about the fairness of a hearing some three years after the making of allegations or allegations that in any event require further and better particulars. I cannot say, however, that it would be impossible to have a fair hearing. I am able only to say that as things currently stand I cannot envisage there being a fair hearing, and I could not direct a listing of the final hearing now with any confidence that there would be a fair hearing. As it currently stands it would not be fair to proceed to try the issues as we currently know them. I cannot assume that the Claimant will rectify his Omissions to date in time to make a hearing later this year a fair one. If the fundamental situation of disengagement was different it may be possible to have a fair hearing. It is not currently so possible, and this may justify striking out the Claimant's claim. That is not the principal basis for my doing so.

5.4. The claim has not however been actively pursued. It has not been actively pursued since June 2023. As I have said, I do not know whether the Claimant even wants to proceed but he has certainly made no effort to do so since June or at latest August 2023. There is no reason for me to believe that the Claimant is actively engaged in this litigation, or considers that it is ongoing. He has not done what he knows is required. He did not achieve a formal stay but received an extension of time for compliance with Orders. It is reasonable for me to assume that he has now given up on this claim. The Claimant's non-compliance with Orders and his unreasonable conduct, which I have found above as being sufficient grounds for strike out, are summarised in the phrase "not actively pursued". He has not actively pursued his claim and therefore the claim should be struck out.

5.5. I am unable to say that none of his claims have a reasonable prospect of success if they were litigated properly. Tribunals are reluctant to strike out

claims of discrimination or detriment in public interest disclosure cases. These are significant and important matters that ought to be at tried where raised. The claims as currently put are deficient or inadequate, but it was appropriate to ask the Claimant for further and better particulars of them. Had he provided a proper response then he may have had a reasonable prospect of succeeding with his claims. I am not striking out the claim in relation to prospects or merit.

5.6. I considered alternative ways of getting this claim “on track”. I considered Orders with strike out warnings attached or the imposition of an Unless Order. On reflection I consider this is likely only to add to delay and in the Respondents’ case to add to their cost. It would further lead to uncertainty in this litigation, and I do not consider that it would be in accordance with the overriding objective of the Tribunal. My suspicion is that it is more than likely the Claimant would breach any further Order whether it was accompanied by a strike out warning or whether it was termed as an Unless Order. If there was partial compliance there would then be satellite litigation as to whether or not the Claimant ought to be allowed proceed further. This is an unsatisfactory situation. The Claimant has been given ample opportunity to pursue this litigation.

5.7. In the interest of justice to both parties I strike out the claim in its entirety.

Employment Judge T.V. Ryan

Date: 12 January 2024

JUDGMENT SENT TO THE PARTIES ON 15 January 2024

FOR THE TRIBUNAL OFFICE Mr N Roche