



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Sinclair

Respondent: Amyris Inc

RECORD OF A PRELIMINARY HEARING

Heard at: London Central (by Cloud Video Platform) **On:** 23 January 2024

Before: Employment Judge Joffe

Appearances

For the claimant: No appearance or representation

For the respondent: No appearance or representation

JUDGMENT

1. The claimant's claims are struck out.

REASONS

The hearing today

1. This hearing was listed by Employment Judge Stout after a case management preliminary hearing on 18 October 2023 which the claimant failed to attend. These Case Management Orders should be read with those. Judge Stout made a case management order requiring the claimant to explain her non attendance at the last hearing and gave directions to enable this hearing to be effective. The issues identified for consideration at this hearing were:
 - 1.1 Deciding whether to add Beauty Labs International Limited ('BLIL') as a respondent;
 - 1.2 Identifying the legal issues in the claim;
 - 1.3 If there were no legal issues in respect of which Amyris Inc was properly a respondent, considering whether the claim against Amyris Inc should be struck out under rule 37(1)(b);
 - 1.4 Deciding whether the claim should be joined with any other claims;
 - 1.5 Listing a final hearing and giving directions for that hearing.

2. It appears from correspondence since that date that Amyris Inc is insolvent. Those proceedings are in the United States. The respondent sent to the Tribunal what is said to be an order for a worldwide stay on proceedings issued in that jurisdiction. REJ Freer asked the respondent what the basis for such an order being binding on this Tribunal is. There was no clear answer provided and I am not persuaded that I am obliged to stay these proceedings. The UK liquidators do not object to BLIL being joined as a respondent but indicated they did not intend to be present at today's hearing. Amyris Inc is no longer represented.
3. The clerk was present in the Tribunal room from about 9:40 to welcome the parties. No one had appeared by 10 am and she emailed the parties. There were responses from the respondent's former solicitors but no response from the claimant or the respondent.
4. It seemed to me by 10:25, that it was clear that no one would be attending. The claimant did not attend on the last occasion and did not comply with a direction requiring her to explain her non attendance. Her claims are briefly expressed in the claim form and it is unclear what the issues are. Without her cooperation, no progress can be made. It appears likely she has abandoned her claims but has not had the courtesy to tell the Tribunal and prevent further waste of Tribunal resource.

Law

Rule 37(1)(b)

5. This subrule provides that a claim or response (or part) may be struck out if 'the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent... has been scandalous, unreasonable or vexatious'.
6. In order to strike out for unreasonable conduct, the tribunal must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or that it has made a fair trial impossible; in either case, striking out must be a proportionate response — Blockbuster Entertainment Ltd v James 2006 IRLR 630, CA:
The first object of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt, either, that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him – though I hope that for the future he will be able to show the moderation and respect for others which he displayed in his oral submissions to this court. But the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably. It will be for the new tribunal to decide whether that has happened here.
7. In Bolch v Chipman 2004 IRLR 140, the EAT set out the steps that a tribunal must ordinarily take when determining whether to make a strike-out order:
 - before making a striking-out order under what is now rule 37(1)(b), an employment judge must find that a party or his or her representative has

- behaved scandalously, unreasonably or vexatiously when conducting the proceedings;
- once such a finding has been made, he or she must consider, in accordance with *De Keyser Ltd v Wilson* whether a fair trial is still possible, as, save in exceptional circumstances, a striking-out order is not regarded simply as a punishment. If a fair trial is still possible, the case should be permitted to proceed;
 - even if a fair trial is unachievable, the tribunal will need to consider the appropriate remedy in the circumstances. It may be appropriate to impose a lesser penalty, for example, by making a costs or preparation order against the party concerned rather than striking out his or her claim or response.
7. Under rule 37(1)(d), a claim may be struck out on the basis it has not been actively pursued.

Conclusions

8. It appears from the file that the notices of hearing, joining instructions and case management orders have been sent to the claimant at the addresses provided. She did not provide a telephone number. Given the repetition of her non attendance and her failure to engage with case management orders, I concluded that she had deliberately and persistently disregarded procedural steps and that her conduct has been unreasonable.
9. A fair trial is not possible at all alternatively within a reasonable time because no progress can be made identifying issues and setting dates for a hearing. The evidence suggests that the claimant will not engage in future. I can see no lesser order which will address the mischief. In the circumstances, I consider it appropriate to strike out the claim pursuant to rule 37(1)(b) of the Employment Tribunals Rules of Procedure, alternatively rule 37(1)(d).

Employment Judge Joffe
23/01/2024

Sent to the parties on:

23/01/2024

For the Tribunal Office: