EMPLOYMENT TRIBUNALS

Claimant: Mr K Bouhanna

Respondent: Westminster Academy

RECORD OF A PRELIMINARY HEARING

Heard at: London Central (by Cloud Video Platform) **On:** 25 January 2024

Before: Employment Judge Joffe

Appearances
For the claimant: Appeared for part of the hearing
For the respondent: Ms T Allotey, chief operating officer

JUDGMENT

1. The claimant's claims are struck out.

REASONS

The hearing today

1. This hearing was listed by Employment Judge Webster as a public preliminary hearing in substitution for what should have been the first day of a two day full merits hearing.

2. There was a case management hearing on 31 October 2023 in front of Employment Judge Wisby at which the issues were clarified and directions given for the full merits hearing. The respondent had been granted extensions of time to submit its response and the response was accepted.

3. The claimant has been unhappy about that decision and has written to the Tribunal to say so. He wrote on 1 November 2023 complaining about the extension of time and the failure to enter a default judgment in his favour.

4. The claimant has declined to comply with any of the directions and the respondent wrote on 20 December 2023 to raise their concerns.

5. On 16 January 2024, a legal officer wrote to the claimant:

We write in response to the Respondent's email dated 20 December 2023 where they assert that the Claimant has failed to comply with EJ Wisby's orders from the preliminary hearing. The Claimant's complaints have been responded to by EJ Wisby and EJ Gidney. That matter has been decided and the Respondent's ET3 has been accepted. They are therefore entitled to defend the Claim and take part in the proceedings. The Claimant has not appealed against that decision.

If the Claimant wishes to continue their claim against the Respondent they must indicate whether they intend to comply with Tribunal Orders in the future so that the case can be properly decided. The Claimant must indicate whether they are willing to comply with any future Orders of the Tribunal on or before ***4pm on 19 January****. Failing to respond could lead to the Claimant's case being struck out.*

In the meantime, the full merits hearing currently listed for 25 and 26 January shall be converted into a 2 hour Open Preliminary Hearing so that, if the Claimant indicates that they are willing to comply with future Orders of the Tribunal, a Judge can list a full merits hearing and give orders for the preparation of the case. The Judge may also consider whether to strike out all or any part of the Claimant's claims if they indicate that they are not willing to comply with the Tribunal Orders.

6. The claimant wrote in response:

Who does not comply with the laws, Me or Defendant?

I'm Appealing Against Judge Wisby's Order, I Want a Default Judgment and an Apology for The Delay

Please note,

It is very clear that no one is above the law, which clearly means that no person, government official or government is above the law. The following principles are fundamental in preserving the rule of law: All people are ruled by the law. Law enforcers, the government and judges must adhere to the law without bias or prejudice.

I asked and I'm asking the employment tribunal judge to implement the law and nothing else.

It is very clear that the defendant (Westminster Academy) should have defended my claim within 28 days, if they could not do that, of course they can ask for more time according to everything stated in the letter they received which I received in May 2023.

It is very clear that they did not defend my claim before or during the deadline, did not ask for more time in case it was impossible for them to defend it in 28 days, and defended it in more than 04 months after the deadline.

It would have been very easy for them to call or email the Employment Tribunal for advice and ask for more time, which they did not do.

It is very clear that the defendant ignored the request of the Employment Tribunal to defend my claim within 28 days and not requested more time when it was impossible to do in that period of time (28 days)

Even as Judge Wisby had already confirmed at the preliminary hearing that the ET3 filed by the defendant on 3 October 2023 was accepted, I do not accept what she did, and my conclusion is that she certainly did not see the file and all my correspondence in which I requested entry of default judgment after 24 August 2023 in accordance with the rules of employment tribunal.

Therefore, I will continue to claim the default judgment, and insist on claiming it in accordance with the Employment Tribunal rules, and I'm asking for an apology for the delay.

7. On 17 January 2024, the Tribunal wrote to the parties:
Employment Judge Webster has asked me to write as follows:

"Any appeals against a Tribunal decision should be made to the Employment Appeals Tribunal. We recommend that the Claimant seeks legal advice in respect of any such appeal.

In the meantime, the Employment Tribunal hearing now listed as a case management preliminary hearing on 25 January shall proceed. Should either party fail to attend that hearing then they are at risk of being struck out."

8. That day the claimant re-sent his email of 16 January 2024.

9. The claimant attended the hearing today and once again complained to me about the acceptance of the response. I endeavoured to explain to him that that was a matter for an appeal and not something I could revisit. The claimant complained that there had been manipulation of the law and said that he was not going to stay in the hearing. I attempted to persuade him to stay as there was a risk his claim would be struck out if he left. He told me to strike it out and that he wanted nothing to do with the court. He then left the hearing.

Law

Rule 37(1)(b)

10. 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'.

11. 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 appeared to me from what the claimant had said that he had not actively pursued his claims and had no intention of actively pursuing them. He was fixated on the fact that time had been extended for the response. I concluded that it was appropriate to strike out the claims under rule 37(1)(d). Strike out was also appropriate under rule 37(1)(b). The claimant's conduct was unreasonable in that he was deliberately refusing to comply with Tribunal orders. He could not be reasoned with or persuaded to participate. No fair trial was possible given his refusal to engage with the proceedings and there was no lesser sanction which would have addressed the mischief.

Employment Judge Joffe
25/01/2024

Sent to the parties on:

25/01/2024

For the Tribunal Office: