



EMPLOYMENT TRIBUNALS

Claimant: Mr H Amin

Respondent: Wurth UK Ltd

Heard at: Croydon/London South **On:** 26/1/2024

Before: Employment Judge Wright

Representation

Claimant: In person

Respondent: Ms G Rezaie - counsel

JUDGMENT having been given to the parties on 26/1/2024 and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The respondent's application to strike out the claim in its entirety was successful.

1. The claimant was dismissed January 2023 with a termination date of 31/1/2023. The claimant engaged in Acas early conciliation between 17/2/2023 and 17/3/2023 and the claim was presented on 22/3/2023. The claimant was therefore contemplating taking legal action against the respondent from at least February 2023, if not before.
2. Once the respondent presented its response on 25/4/2023 the case was referred to an Employment Judge and not only was a Preliminary Hearing and Final Hearing listed, Employment Judge Leith indicated that he was considering strike out of the unfair dismissal claim; as the claimant did not have two years' service. That was communicated to the parties on 19/5/2023.
3. Furthermore, Employment Judge Khalil repeated the strike out warning on 24/7/2023 and gave 7 days for the claimant to provide his response to the strike out warning in respect of the unfair dismissal and wrongful dismissal. He also gave 14 days for the claimant to respond to further information in respect of the discrimination claim. The instruction was

quite straight-forward and the claimant was to provide: a brief description of each allegation of discrimination; the date; who was responsible; and whether there were any witnesses.

4. The claimant had therefore had time to raise funds and to instruct a solicitor if he wished to do so. He subsequently did instruct a solicitor.
5. At the preliminary hearing on 24/10/2023 Employment Judge Feeney indicated that the claim should be actively pursued and that she was not prepared to allow any delay, including to allow the claimant further time to take legal advice. The reason for that is that often an unrepresented party will say they would like more time to take legal advice, however, either that advice does not materialise or probably more realistically, the advice is not in fact sought. An initial discussion with a solicitor will include discussions about fees and projections of legal costs if the solicitor continues to be instructed in the matter. Taking legal advice is expensive.
6. At the preliminary hearing on 24/10/2023 the claimant indicated that he wished to make an application to amend and this hearing was listed to consider that application. That was notwithstanding that the claimant had not provided the outstanding information in respect of his extant claim.
7. Not only has the claimant not make any application in accordance with the Order of Employment Judge Feeney, including at a time when he was represented by solicitors (between 15/11/2023 and January 2024); he has not withdrawn the application. If he were abandoning the application, it would be in accordance with the overriding objective to co-operate with the respondent and to inform the Tribunal of the same.
8. The claimant has done nothing to advance his claim. He has not complied with any Order. Orders are not aspirational dates; they are deadlines. The Tribunal was satisfied that Employment Judge Feeney whilst not going as far as issuing an Unless Order, in effect gave the claimant a last chance to get his claim on track; before more draconian sanctions were issued. The claimant did not take that opportunity.
9. There is therefore no guarantee that if the claimant were given a further opportunity to pursue his claim, he would take it. His conduct to date, both when he was represented and when not, does not give any confidence that he will actively pursue his case and that goes against him being given a further opportunity. The only step the claimant has taken, is to write on the 10/1/2024 for this hearing to be postponed as he was no longer represented.
10. The claimant must have been aware that his solicitor had not complied with the Order and had not taken any proactive steps upon his behalf.

11. In respect of the claimant selling his car to raise funds to pay for a solicitor, the respondent's point accepted that he could have done so much earlier (this hearing was listed on the 24/10/2023). The point is also taken that when the claimant was legally represented, his then representatives did nothing to advance his case. Again, there is no certainty that if the claimant were given time to raise funds and to engage with legal advice, that the same lack of advancement would not be repeated. Based upon claimant's conduct to date, there is every likelihood that if he were given a further opportunity, at the next hearing, the respondent would be making the same application. In fact, the claimant was given that opportunity at the last preliminary hearing.
12. The claimant has had his chances to pursue his case, he had not taken them and he is in breach of the Tribunal's Orders. Employment Judge Freaney's Order of the 24/10/2023 does contain a warning that under Rule 6, if the Order is not complied with, the Tribunal may take such action as it considers just, which includes strike out the whole of the claim. There comes a point where there has to be consequences for the claimant's lack of compliance with the Orders.
13. The Tribunal is obliged to take into account the overriding objective when considering any application under the Rules and in dealing with the case in a manner which is fair and just. The Tribunal needs to consider the prejudice to the respondent. In the 12-months since his dismissal, the claimant has done nothing to advance his claim. The claimant brought the claim and the respondent is then in a position whereby it has to defend the claim. The claimant has not then taken any steps to actively pursue his claim. With the result that the respondent is then left in a vacuum in defending a claim, which is unclear and which claimant is not actively pursuing.
14. For those reasons the Tribunal granted the respondent's application to strike out the claim in full. The respondent made a costs application and that was reserved.

Employment Judge V Wright
Date: 26 January 2024