



EMPLOYMENT TRIBUNALS

Claimant

Mr Sujith Manuel

v

Respondent

Netduma Limited

Heard at: Cambridge (in person)

On: 27 February 2024

Before: Employment Judge M Ord

Appearances

For the Claimant: In person

For the Respondent: Mr F Mortin, Counsel

JUDGMENT on APPLICATIONS for RECONSIDERATION

1. The Claimant's Applications for Reconsideration:-
 - 1.1. The Claimant's Application dated 5 February 2024 for reconsideration of the Case Record of Preliminary Hearing / Case Management Summary following the Hearing on 14 December 2023 (written Record sent to the parties on 3 January 2024) is refused. There is no reasonable prospect of the original Order being amended, varied or revoked
 - 1.2. The Claimant's Application for Reconsideration of the Costs Order made 14 December 2023 (written Record sent to the parties on 22 January 2024) is rejected. There is no reasonable prospect of the original Order being amended, varied or revoked.

REASONS

1. At the Hearing on 14 December 2023, listed to consider the seven matters originally identified by Employment Judge M Warren in the first Preliminary

Hearing in this case on 5 May 2023 and which should have been dealt with at the Hearing before Employment Judge Forde on 25 August 2023 which were not, because – in the words of the Employment Judge –

“The reason for this complete failure to progress matters lies, I find, with the Claimant. He has failed to prepare adequately for the Hearing, the purpose of which had been made clear to him by Employment Judge Warren on 5 May 2023...”

2. At the Hearing on 14 December 2023, having conducted a Case Management Hearing, I was prevailed upon to deal with the Respondent’s Application for Costs relating to the Hearing before Employment Judge Forde on 25 August 2023 and did so.
3. The Claimant’s Application to modify what he described as the “*written decisions*” document (i.e. the Record of the Preliminary Hearing and in particular the Case Management Summary following the Hearing on 14 December 2023) was made on the basis that there were six matters which were not included in the document.
4. Those matters related to whether or not there had been an Order for disclosure of Slack messages and emails, the presence or otherwise of Costs Warnings made by Judge M Warren and Judge Forde, what the Costs Warning Letter sent by the Respondent on 23 August 2023 related to, the fact that the Costs Warning Letter was not in the Bundle, the statement by the Respondent that the Claimant was dismissed in circumstances where there was a genuine redundancy situation and finally, that there was an absence of a termination Letter or dismissal Letter.
5. In relation to those matters,
 - 5.1. The Respondent advised that they had agreed voluntarily to an Order for disclosure of Slack messages and emails. This, however, had no bearing whatsoever on the matters which were before me on 14 December 2023 and it was unnecessary to deal with any earlier Order and / or its compliance (the Claimant accepts that the Respondent has sent the relevant documents, albeit three days later than envisaged by the Order). I explained to Mr Manuel that the Case Management Summary is not a verbatim record of everything that was discussed at the Hearing on 14 December 2023, but deals with the salient points therein.

The Claimant’s Application referred to Counsel for the Respondent (who also appeared before me today) claiming that there was “*no Order for disclosure of Slack messages and emails*” whereas Mr Mortin said that his comment was that the Respondent had voluntarily agreed to the making of such an Order. In any event, an Order was made and has been complied with. There is no need to alter or add to the Case Management Summary from December last year.

- 5.2. The Claimant says that at the Hearing in December 2023 Mr Mortin referred to Costs Warnings issued by Employment Judges M Warren and Forde which he says was incorrect. In fact, in paragraph 11 of Judge M Warren's Case Management Summary he referred to putting the Claimant,

“on warning that by continuing to oppose the Respondent's Application [for an extension of time to file a Response] he placed himself at risk of facing an Order for Costs for [a] further Hearing, should the Respondents succeed in their Application”.

Judge Forde, on 25 August 2023 referred to the reason for the failure to progress matters on that day as lying,

“...with the Claimant. He has failed to prepare adequately for the Hearing, the purpose of which had been made clear to him by Employment Judge M Warren on 5 May 2023... Given the history of the matter and the Claimant's conduct I expressed the view, publicly, that the Claimant's conduct was unacceptable.”

Further, he identified that the Respondent intended to make an Application for Costs against the Claimant in respect of its preparation and attendance at the Preliminary Hearing which was before him so that the Claimant was fully aware of the Respondent's intention to apply for Costs and the Judge's view of the cause of further delay in the case and that the Claimant's conduct had been “unacceptable”.

In any event, my Record of the Case Management (at paragraphs 30, 31 and 32) set out the matters that lay behind the Costs Order made. There was no reference to previous Costs Warnings and there is no need for the Record of the Preliminary Hearing to be altered in any way.

- 5.3. The Claimant suggested that Mr Mortin on behalf of the Respondent had referred to a Costs Warning sent on 23 August 2023 being about the Appeal which he had made in respect of the Rule 20 Application being allowed without a Hearing, whereas Mr Mortin said that the Costs Warning Letter was in relation to both the Appeal and failure to comply with Case Management Orders. This is the third occasion on which Mr Manuel has indicated that Mr Mortin was making statements to the Tribunal which were incorrect. I deal with that later. However, the Costs Warning Letter was not before me and the relevant matters were the contents of Judge Forde's Case Management Hearing, the Application which the Respondent made after that Hearing (not a Costs Warning sent two days before) and the other matter set out in my Case Management Summary. The specific paragraphs of the previous Orders (recited above) were referred to.

There is no reason whatsoever to amend the contents of the Case Management Summary. The matters which were taken into account when making an Order for Costs were fully set out in the Case Management Summary.

- 5.4. Mr Manuel suggested that I should include in the Case Management Summary the fact that the Costs Warning Letter was not in the Bundle. There is absolutely no reason to do so. The Costs Warning Letter was not before me and was not a factor in determining the Respondent's Application.
- 5.5. The Claimant wished me to refer to the fact that the Respondent, at the Hearing before me, referred to the dismissal as being a genuine redundancy, whereas in their Response they claim he was dismissed on capability (incompetence).

Mr Manuel is mistaken, because in paragraph 42 of the Grounds of Resistance attached to the Respondent's Response they state the reason for dismissal as redundancy. In any event, I reminded Mr Manuel that he does not have sufficient service to bring a claim of "ordinary" unfair dismissal and there is no such claim before the Tribunal. He says that his dismissal was because he had made protected disclosures (and is seeking to add allegations relating to Health and Safety). It is for him to show that the real reason for dismissal was a reason which rendered his dismissal automatically unfair. However, contrary to the Claimant's Application, the Response states that the Claimant was dismissed in circumstances of redundancy.

- 5.6. Mr Manuel wished me to add to the Case Management Summary the statement that no termination letter or dismissal letter was given. That was not a matter before me. It was wholly irrelevant to the matters which I was considering (which became limited to consideration of the then proposed amendments to the List of Issues and the Respondent's Application for Costs).
6. For those reasons the Application to "modify the written decisions document" (i.e. to amend the Case Management Summary) is without merit and is refused.
7. In relation to the Application for Reconsideration of the Costs Award made in favour of the Respondent, this relates to the Award of Costs in relation to the Hearing before Employment Judge Forde.
8. Although he sought to add some extraneous and irrelevant points to his answer to my simple question as to what steps in furtherance of the claim he believed had been taken or made at that Hearing, Mr Manuel was forced ultimately to admit and accept that the answer was, nothing.

9. The reason why no progress had been made was clearly spelt out by Employment Judge Forde. It was because the Claimant had failed to prepare for the Hearing.
10. Mr Manuel says that I did not mention in relation to the Costs Application the *“ten page response to the Costs Application”* where he *“pleaded the reasons why I believe the Costs Application shouldn’t be allowed”*. Whilst the document itself was not specifically referred to by me, all information provided by the Claimant including that document and the additional submissions which he read out, were considered by me.
11. The Claimant says that the Respondent said their fee to Counsel was £1,250 but he believes that the appropriate fee for Counsel for the day would be £750 given Mr Mortin’s call. The sum of £1,250 was awarded by way of Costs which was determined by me to be the appropriate figure reflecting on both Counsel’s fees and Solicitor preparation time.
12. The Claimant says that I had failed to take account of the nature, gravity and affect of the relevant conduct (McPherson v BNP Paribas [2004] ICR 1398). The fact is the Hearing before Employment Judge Forde, listed for one full day on 25 October 2023 was an entirely wasted day due to the Claimant’s failure to prepare for the Hearing.
13. The Claimant complains that the Respondent had not complied with the disclosure Order on time (by three days) but that did not excuse his complete lack of preparation for the Hearing before Employment Judge Forde.
14. Further, the Claimant says – for the first time – that the information provided by the Respondent is lacking, but that was not a matter put before me on 14 December 2023.

The Law

15. I am conscious of the relevant Law in relation to reconsideration. Under Rule 72 the first step I must take is to consider whether the Application has any reasonable prospects of success – i.e. whether the original Order is likely to be varied, revoked or amended.
16. In this case there is no reasonable prospect of any amendment, variation or revocation of the original Order. The matters which the Claimant has raised in his Application for Reconsideration do not touch and concern the reasons why the Order was made.
17. In any event, I have listened to Mr Manuel’s oral submissions (in addition to his written Application) on this matter. The oral submissions were repetition and expansion on the points advanced in writing. The interests of justice is the overriding point (Phipps v Priory Education Services Limited [2023] EWCA Civ.652), the overriding objective and the importance of finality in litigation.

18. Even if I had been minded to consider the Application formally on the basis that there was not “no reasonable prospect” of amendment, revocation or variation, nothing which the Claimant has advanced before me (and I gave him the opportunity to make submissions and he took that opportunity) would have resulted in any amendment to the Order made, or its revocation.
19. The Claimant’s Applications are without merit and are dismissed.
20. It is important for me to note that the Claimant – obliquely rather than directly – implied in his Application that Counsel for the Respondent had attempted to mislead the Tribunal by making false submissions. Any implication that that was the case is without foundation insofar as I have understood what the Respondent’s position has been throughout. A paradigm example is the Claimant’s allegation that Mr Mortin referred to a dismissal on the ground of redundancy when the Respondent had claimed to have dismissed the Claimant for incompetence, whereas in the Respondent’s Grounds of Resistance the stated reason for dismissal was redundancy. The Respondent’s Counsel is aware of his duties to the Tribunal, but is entitled at all times to put his Client’s case and arguments forward. He did no more nor less than that before me on 14 December 2023 and again in submissions (written and oral) made today. An allegation of misleading the Tribunal is a very serious one. It should not be made lightly and should not be made obliquely. It must be made with due consideration and be evidentially based. That is not the case here.

7 March 2024

Employment Judge M Ord

Sent to the parties on: 8 March 2024

For the Tribunal Office:

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