



EMPLOYMENT TRIBUNALS

Claimant: Mr. J McBride
Respondent: Thames Water Utilities Limited
Heard at: London South, by video
On: 20 March 2024
Before: Employment Judge Cawthray

Representation

Claimant: Did not attend
Respondent: Mr. Taylor, Solicitor

RESERVED JUDGMENT

1. The claim is struck out under Employment Tribunal Rule 37(1)(d) because it has not been actively pursued.

REASONS

1. The hearing today was listed for a one-day public preliminary hearing to consider the Respondent's application for strike out, and case management as appropriate.
2. The Claimant did not attend the hearing today, the Tribunal staff attempted to contact the Claimant by telephone and email, with no success.
3. I joined the hearing and asked Mr. Taylor whether he had any contact with the Claimant recently, he had not.
4. Mr. Taylor submitted that the Respondent was seeking for the claim to be struck out on the basis that it had not been actively pursued. He provided a summary of key dates. I have reviewed the Bundle of documents and noted the key chronological events as below.

18 June 2023 – ET1 submitted.

Around 27 July 2023 - ET3 response.

21 August 2023 – Tribunal issued strike out warning in regard to the unfair dismissal complaint on the basis he did not appear to have sufficient length of service. The Claimant was ordered to provide medical information and further details about his complaints. Information about different forms of disability discrimination was included in the letter.

August 2023 – Claimant provided some medical documents.

2 September 2023 – Claimant provided an impact statement in the form of an email.

5 September 2023 – Respondent wrote and asked the Claimant to provide information on all the points required and the Claimant replied on the same day stating he would amend and send over.

9 October 2023 – Respondent wrote and asked the Claimant when he would send the revised Impact Statement. The Claimant did not reply.

2 November 2023 – Respondent emailed the Tribunal setting out that it was not able to comply with directions and detailed steps to date. The Claimant did not reply.

2 January 2024 – Respondent wrote to the Claimant asking him if he was pursuing his claim. The Claimant did not reply.

11 January 2024 – Tribunal send Notice of Case Management Preliminary Hearing to the parties.

22 January 2024 – Respondent wrote to Tribunal applying for the claim to be struck out on the basis it was not being actively pursued

26 February 2024 – Employment Judge Ramsden converted the Case Management Preliminary Hearing into a public preliminary hearing to consider the Respondent's strike out application and ordered the Claimant to respond to the Respondent's application for strike out within 7 days. The Claimant did not reply.

5. The last contact from the Claimant was 5 September 2023.

The Law

6. Rule 37 of the Employment Tribunals (Constitution & Rules of Procedure) Regulation 2013 are set out below.

Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b)that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c)for non-compliance with any of these Rules or with an order of the Tribunal;

(d)that it has not been actively pursued;

(e)that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) 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) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above

Conclusion

7. The Respondent relies on Rule 37(d) and submits that the Claimant has not actively pursued his claim and therefore should be struck out.
8. The Tribunal must give the Claimant a reasonable opportunity to make representations before a claim is struck out. In this case, Employment Judge Ramsden ordered the Claimant to comment on the Respondent's application for strike out. He did not do so. The Claimant had notice of the hearing today and he could have attended and made submissions at the hearing today. He did not do so. The Claimant has not complied with the directions of the Tribunal.
9. The Claimant has provided no explanation as to why he has not replied to the Tribunal or the Respondent and why he has not attended the hearing today.
10. A final hearing is listed for 27 – 30 May 2024, and I have kept in mind that should the claim continue, there is adequate time for case management preparation. However, a further preliminary hearing will be required, and the Respondent has incurred costs in relation to seeking to obtain clarification from the Claimant and in preparing for and attending the hearing today.
11. I have also kept in mind that the Claimant has not responded to the strike out warning issued by the Tribunal in relation to the unfair dismissal complaint.
12. On balance, taking all the above into account, I have decided to struck out the entire claim under Employment Tribunal Rule 37(1)(d) because it has not been actively pursued.

13. For completeness, this includes striking out the unfair dismissal complaint, which would have been struck out on the basis that Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years' service to make an unfair dismissal complaint and the Claimant was employed by the respondent for less than two years and therefore was not entitled to bring these proceedings.

Employment Judge Cawthray
Date: 20 March 2024

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