



EMPLOYMENT TRIBUNALS

Claimant: Mr G Uren

Respondent: Good Food Studio Ltd

Heard at: London South Employment Tribunal, Croydon (by video)

On: 21 May 2024

Before: Employment Judge Abbott

Representation

Claimant: not in attendance

Respondent: not in attendance

JUDGMENT

The claim is struck-out pursuant to Rule 37(1)(d) of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. The claim came before me for a public preliminary hearing today, to address certain matters as set out in the Case Management Orders of Employment Judge Evans made following a preliminary hearing on 14 July 2023, and further case management. The first of those matters was:

“If the claimant does not attend, whether his claim should be struck out pursuant to Rule 37(1)(d) of the Tribunal’s Rules on the grounds that it has not been actively pursued.”

The other matters were concerned with obtaining clarification of the claimant’s case.

2. By way of background, the claim was presented on 29 September 2022. In its response filed on 9 December 2022, the respondent raised a number of issues concerning a lack of particulars in the claim form. On initial consideration under Rule 26, EJ Tsamados instructed that the following directions be sent to the claimant – this was done on 25 January 2023, according to the Tribunal file, by email to the email address identified on the claim form:

“Your claim form includes complaints of automatic unfair dismissal and

unlawful detriment which appear to arise from making a protected disclosure (i.e. whistleblowing) and disability discrimination. However, the information you have provided at box 8.2 do not provide any details of the grounds on which made these claims.

I therefore directed you to provide the following information about each of these claims:

- 1. What is the impairment(s) that you rely upon for the purposes of the disability discrimination complaint, in each case when was it diagnosed, whether it is still continuing and what effect does it have on your ability to carry out day-to-day activities?*
- 2. What allegations do you rely upon as giving rise to disability discrimination stating in each case, the date, details of the allegation, who was involved and ideally what sort of disability discrimination you rely upon?*
- 3. The protected disclosures that you rely upon, in each case stating what you said, whether it was in writing or verbally, on what date and who to.*
- 4. What detriments you were subjected to as a result of making protected disclosures, in each case stating which of the above protected disclosures gave rise to the detriment, the nature of the detrimental treatment, on what date and who by?*
- 5. If you are not bringing an automatic unfair dismissal and detriment claim and grounds of making a protected disclosure, then please state the basis of your claim.*

You are directed to the following sources of possible free legal advice which may be of assistance: a local Citizens Advice Bureau or Law Centre; the Citizens Advice website, which contains comprehensive information about Tribunal claims and procedure; a Trade Union, if you remember of one; any insurance policies that you have because these may contain protection cover allowing access to free legal advice.

Please reply within 21 days of the date of this letter.”

3. Notices of hearing were sent to the parties on 27 January 2023 – firstly a preliminary hearing for case management scheduled for 14 July 2023, and secondly the final hearing listed for 4 days on 21-24 May 2024. Both were, according to the Tribunal file, sent to the email address provided by the claimant on his claim form.
4. The claimant did not respond to EJ Tsamados’ directions. Nor did he fill in and return a case management agenda prior to the 14 July 2023 hearing. According to the case summary in EJ Evans’ order, the claimant attempted to join the preliminary hearing but told the Tribunal clerk that he could not turn his camera on because he was at work. The clerk reported this to the Judge who told her he had no objection to the claimant joining without his camera on, but by the time the clerk returned to the video hearing waiting room, the claimant had disconnected and was uncontactable by phone or email. EJ Evans proceeded in the claimant’s absence.
5. Unfortunately, apparently due to administrative error, EJ Evans’ order was not sent out to the parties after the hearing and a further public preliminary hearing that the judge directed to take place on 25 August 2023 was not

listed and not notified to the parties. Neither of the parties queried this and, therefore, nothing at all happened on the claim until the Tribunal sent a pre-hearing check letter on 17 April 2024 in preparation for the final hearing. The respondent's representative immediately responded noting that no directions had been made, no further preliminary hearing listed, that they had had no communication from the claimant regarding the claim which remains substantially unparticularised, and requesting that the first day of the final hearing be converted to a preliminary hearing.

6. By a letter dated 30 April 2024, the Tribunal belatedly sent EJ Evans' orders to the parties, and confirmed that the first day of the final hearing (21 May 2024) would be converted to a public preliminary hearing to address the matters that EJ Evans had directed would be considered on 25 August 2023, and further case management as appropriate.
7. At 10:00am on 21 May 2024, neither party was in attendance. In respect of the respondent's representative this was surprising, as Mr Henry of Croner had sent a hearing bundle to the Tribunal and the claimant by email yesterday. I was informed by the administration that the video hearing joining details had been sent to the parties' email addresses on file. I instructed the Tribunal clerk to contact the parties. He was unable to reach Mr Henry by telephone and instead sent an email. No response had been received by 11:20am. The clerk called the claimant on the telephone number provided on the ET1 claim form – the call was answered by a man who did not give his name, but told the clerk that he had the wrong number.
8. In circumstances where the hearing details had been sent to the claimant by email (using the email address provided on the claim form) and reasonable steps had been taken to contact the claimant by telephone (using the number provided on the claim form), and taking account of the past history, I considered it appropriate to proceed in the claimant's absence. Since the respondent did not attend either, I have considered whether to strike-out the claim under Rule 37(1)(d) based on the materials in the Tribunal file alone.

The law

9. Rule 37(1) provides that:

“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—

[...]

(d) that it has not been actively pursued;

[...].”

10. Rule 37(2) provides that:

“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.”

11. In *Evans and anor v Commissioner of Police of the Metropolis* [1993] ICR

151, CA, the Court of Appeal held that an employment tribunal's power to strike out a claim for 'want of prosecution' (which was the equivalent wording to 'not been actively pursued' in the Tribunal Rules 2001) must be exercised in accordance with the principles that (prior to the introduction of the Civil Procedure Rules 1998) governed the equivalent power in the High Court, as set out by the House of Lords in *Birkett v James* [1978] AC 297, HL. Accordingly, a tribunal can strike out a claim where:

- a. there has been delay that is intentional or contumelious (disrespectful or abusive to the court), or
- b. there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondent.

Application

12. I find that the claimant has had a reasonable opportunity to make representations. He was made aware by the respondent's representative's email of 17 April 2024 that the respondent was seeking to have the claim struck-out for not being actively pursued. The Tribunal's email of 30 April 2024 makes clear that this was on the agenda for the hearing today. The claimant had the opportunity to attend to make representations, but has not done so. Rule 37(2) is satisfied.
13. I find that there has been delay that is contumelious. As set out above, the claim was presented on 29 September 2022. On 25 January 2023 the claimant was directed to provide further information as to his case, but he has ignored that direction. It is plain that he was aware that the case was proceeding since he tried to join the hearing on 14 July 2023, but apparently did so whilst at work and then disconnected before the hearing proper began, which demonstrates a lack of respect. He did not thereafter enquire as to the outcome of the hearing, meaning no progress was made prior to today. He did not attend today, again showing a lack of respect for the Tribunal process. It appears now that the claimant may have changed his phone number without informing the Tribunal, but there is no explanation for him not engaging with and (as appropriate) responding to emails.
14. In any event, there has certainly been inordinate delay in this case which is likely to cause serious prejudice to the respondent. The events raised in the ET1 claim form happened in July 2022. Because of the lack of particulars in his claim form, the respondent was not in December 2022 (and is still not now) able to fully understand, investigate and respond to those allegations. Were the case to proceed, there will now be a very considerable delay before the complaints are able to be determined at a final hearing (likely in excess of 2.5 years from the events in question). Plainly the passage of time has and continues to prejudice the respondent by impairing its ability to properly investigate.
15. I am therefore satisfied that the claim falls into both of the *Birkett* categories and the sanction of strike-out is available. I consider it is fair and just to exercise my discretion to do so. The claimant has not engaged with the Tribunal process to date, and there is nothing before me to suggest that

things will now change. Strike-out is, in my judgement, plainly the most appropriate course here.

Employment Judge Abbott
Date: 21 May 2024

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