



EMPLOYMENT TRIBUNALS

Claimant: Mr CF Gomes Vieira

Respondent: Bouygues Energy & Services

JUDGMENT

1. The claim is automatically struck out in its entirety as a result of the failure by the claimant to comply with the tribunal's unless order of 2 May 2024.
2. The hearing listed for 10-16 July 2024 is therefore vacated and will not take place.

REASONS

Background

1. The claimant's claim was presented to the tribunal on 9 August 2023.
2. A preliminary hearing for case management purposes before Employment Judge Joyce took place on 1 December 2023. The complaints were clarified as being complaints of detriment and dismissal because of making protected disclosure(s). The case was listed for a five day final hearing on 10-16 July 2024.
3. EJ Joyce made various case management orders, which were set out in his summary of that preliminary hearing sent to the parties on 12 December 2023. These included the following:

"(6) The claimant will provide the following further information to the respondent and the tribunal by **22 December 2023**: details of (i) the basis on which the claimant was told his employment would end during the probation meeting on 27 or 28 March 2023; (ii) how that reason was different to any reason provided in any letter following the Appeal hearing on 10 May 2022 (iii) Mr Vieira shall also provide further information on any alleged procedural irregularity in the (internal) Appeals process including his allegation that Mr Allan Hall was part of both the probation hearing and the Appeals hearing despite his objection. **His submission must be limited to a total of 5 pages single spaced font size 12. ...**

...

(8) The claimant must provide to the respondent by **25 January 2024** a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.”

4. The claimant did not comply with orders 6 and 8 as set out above.

5. On 31 January 2024, the respondent duly applied to the tribunal for an order that the claim be struck out or that, in the alternative, the tribunal should make an unless order in relation to compliance with these orders. The respondent copied the claimant into this application.

6. On 1 February 2024, the claimant replied but did not comply with the orders.

7. By email of 8 February 2023, Employment Judge Woodhead ordered (and I paraphrase his order) that the claimant either confirm that he had complied with the orders from the preliminary hearing or, if he had not, explain why and explain why the tribunal should not make unless order. The tribunal did not receive a response.

8. On 20 February 2024, the respondent made a further application for strike out/an unless order (copying in the claimant).

9. On 22 February 2024, Employment Judge Khan wrote to the parties stating that he was considering striking out the claim in its entirety because it had not been actively pursued and gave the claimant the opportunity to object to that proposal no later than 7 March 2024, failing which the claim would be struck out without further order.

10. On 27 February 2024, the claimant wrote to the tribunal (copying in the respondent) but did not comply with the orders.

11. On 12 March 2024, the respondent wrote to the tribunal (copying in the claimant) referencing the previous correspondence from the tribunal, noting that the claimant had still not provided the information in compliance with EJ Joyce’s orders, and maintaining its application of 20 February 2024 for strike out.

12. Having not received any reply from the tribunal, the respondent wrote again to the tribunal on 15 April 2024 (copying in the claimant), reiterating its application to strike out of the claim.

13. On 2 May 2024, Employment Judge Baty wrote to the parties as follows:

“Employment Judge Baty has asked me to write as follows:

It appears that the claimant has still not complied with the orders made by Employment Judge Joyce at the preliminary hearing on 1 December 2023, specifically the orders at paragraphs 6 and 8 of the case management orders from that hearing.

This is his final chance; the following order is an unless order. **If the claimant does not by 15 May 2024 comply with the orders at paragraphs 6 and 8 of the case management orders from the 1 December 2023 preliminary hearing, his claim will be automatically struck out in its entirety.**”

14. On 15 May 2024, the claimant emailed the respondent with an “EML” link entitled “*Schedule of lost, and probation review contradictions*”. Despite several attempts by the respondent and its IT team, the respondent was unable to access this link to view any documents contained within it. The respondent explained the issue to the claimant and sent an upload link to allow him to upload his documents to the respondent by Mimecast. In the alternative, they asked him to attach the documents to an email (which should have been possible given the limited size of the documents which he was due to provide). However, the claimant simply resent the respondent the same EML link.

15. Therefore, by email to the tribunal of 30 May 2024, the respondent renewed its strike out application of 31 January 2024 in the following terms:

“APPLICATION FOR STRIKE OUT

In light of the above, we maintain our application dated 31 January 2024 for strike out of the Claimant’s claim (re-attached for reference). This application is made for the following reasons:

- Although the Claimant has sent us a link, it is not in a format that we can access and we are therefore unable to verify whether the Claimant has complied with the strike out warning.
- The Claimant has had several opportunities to comply with the case management orders which were originally due to be completed by no later than 22 December 2023 and 25 January 2024 respectively. The Claimant has been issued with two strike out warnings by the Tribunal dated 22 February 2024 and 2 May 2024. The warning dated 2 May 2024 stated that it was the Claimant’s ‘final chance’.
- The final hearing is now less than 6 weeks away and the Respondent still does not have full particulars relating to the Claimant’s claims. The Claimant’s non-compliance is therefore causing severe prejudice to the Respondent’s ability to prepare for the hearing.”

The respondent copied the claimant in on this application.

16. No reply from the claimant to this application has been received by the tribunal and it is now more than seven days since the respondent made this application. The final hearing is only just over a month away.

The law

17. The Employment Tribunal Rules 2013 contain the following:

“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...

Unless orders

38.—(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred...”

Conclusions

Failure to comply with the unless order of 2 May 2024

18. EJ Baty’s order of 2 May 2024 provided that, if the claimant did not by 15 May 2024 comply with EJ Joyce’s orders at paragraphs 6 and 8, the claimant’s claim would be automatically struck out in its entirety. Those orders make provision that the claimant must “provide” to the respondent the information set out in those orders.

19. I do not know what information the claimant purported to send to the respondent on 15 May 2024 as it was not in a format which could be accessed. However, as that information (whatever it was) was not provided in a format which the respondent could access, it cannot be said that the claimant has “provided” that information to the respondent. The claimant has not, therefore, provided the requisite information to the respondent. He has, therefore, failed to comply with the unless order. Accordingly, his claim is automatically struck out in its entirety.

Remaining strike out application

20. That disposes of the matter. However, even if the claimant could now show that what he purported to have sent to the respondent on 15 May 2024 was the full information required by orders 6 and 8, I would in the alternative still strike out his claim on the basis both that he has failed to comply with those tribunal orders (which he has done repeatedly and over several months); on the basis that the claim has not been actively pursued; and on the basis of the claimant’s unreasonable conduct.

21. The claimant has had numerous opportunities to comply with the orders over recent months and has had several communications from various employment judges giving him many opportunities to do so. He has nonetheless failed to do so over a lengthy period of time. Furthermore, his behaviour in not providing information to the respondent on 15 May 2024 in a format which was accessible by the respondent was unreasonable; this was all the more so given that the respondent notified the claimant that it could not access the information and made every effort it could to enable him to send the information to the respondent in a format which it could access and yet the claimant did not do so.

22. The final hearing, which was listed six months ago, is now just over a month away and the respondent still does not have full particulars relating to the claimant’s complaints. The non-compliance of the claimant is therefore causing severe prejudice to the respondent’s ability to prepare for the hearing. For all these reasons, I would, even if the claimant had technically complied with the unless order on 15 May 2024, exercise my discretion to strike out the claim on the basis of the claimant’s failure to comply with the tribunal orders, his not actively pursuing the claim and his unreasonable conduct.

23. For the purposes of rule 37(2), the claimant has had more than a reasonable opportunity to make representations on the matter of strike out, but has not done so. The respondent has made the strike out application on numerous occasions. Furthermore, in relation to the final version of the strike out application, made on 30 May 2024, there has been over seven days between that application and my decision, during which no representations have been received by the tribunal from the claimant.

Employment Judge Baty

Date: 7 June 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 June 2024

.....
FOR THE TRIBUNAL OFFICE