



EMPLOYMENT TRIBUNALS

Claimant: Mr A Haddad
Respondent: UK Power Networks (Operations) Limited
Heard at: Reading **On: 15 July 2024**
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Not attending and not represented
For the Respondent: Mr J P Waite, counsel

STRIKE OUT

The claim is struck out.

REASONS

1. The correct name of the respondent is UK Power Networks (Operations) Limited.
2. In a claim form presented on the 16 January 2023 the claimant made complaints of discrimination on the grounds of religion or belief and for notice pay. Attached to claim form the claimant included three pages setting out grounds of complaint. The respondent defended the claims and denies the claimant's complaints.
3. At a preliminary hearing on 12 July 2023 the Tribunal set out in a record of preliminary hearing case management orders for preparation of final hearing that was listed to take place 15 to 19 July 2024 and made orders for the disclosure of documents, the preparation of the file of documents for the final hearing, and the exchange of written statements to be used at the final hearing. The parties were to exchange witness statements by 1 February 2024. By 8 July 2024 the parties were to write to the employment tribunal to confirm that they are ready for hearing or if not to explain why.
4. On 4 December 2023 the respondent wrote to the claimant proposing a revision of the case management orders made on 12 July 2023. The

respondent explained that it did not receive the claimant's schedule of loss which was required by 30 August 2023 and suggested that the claimant instead send a schedule of loss by 22 December 2023. It was also proposed that the respondent sends documents to the claimant by 22 January 2024 and that the claimant send the respondent copies of any other documents relevant to the issues by 9 February 2024; that the respondent and the claimant agree the documents to be used at the hearing by 26 April 2024; that the parties exchange witness statements by 7 June 2024. The respondent also proposed dates for agreeing and preparing the trial bundle.

5. There was no contact with the respondent from the claimant. On 17 December 2023 the respondent wrote to the claimant asking if he agreed the amended timetable "*as a matter of urgency*", there was no response from the claimant to that inquiry.
6. On 16 January 2024 the respondent again wrote to the claimant stating that they had been trying to contact the claimant with regards to this matter and referred to their emails of 4 and 17 December 2023, the claimant was asked to confirm whether he was still pursuing the claim, and whether he was agreeing to the new timetable which had been proposed. There was no response from the claimant.
7. On 29 April 2024 the respondent once more wrote to the claimant in similar terms as it had done in the 16 January 2024 letter additionally asking the claimant to acknowledge receipt of the letter and to provide a response before 13 May 2024. There was again no response from the claimant and on 31 May 2024 the respondent wrote to the claimant in the following terms:

"I have been trying to contact with regards to this matter. I previously wrote to you on 16 January 2024 and enclosed by two emails to you of 4 December 2023 and 17 December 2023. I then wrote to you again on 29 April 2024, by post and e-mail (previous correspondence and closed).

Please find enclosed the bundle of documents that the respondent has prepared for the hearing. Please can you confirm whether there are any documents that you wish to add to this bundle and provide those documents for me to add to the bundle for the hearing.

As stated above I have attempted to contact you many times to agree a timetable for exchange of evidence before the trial. In light of your lack of response, the Respondent feels as though it has no alternative but to give you notice that if I do not hear from you by 13 June 2024, I will consider making an application to strike your claim out on the basis that it is not being actively pursued."

8. On 10 June 2024 the employment tribunal writes the parties sending them a pre hearing checklist in anticipation of the final hearing listed to start on 15 July 2024. The parties were asked to complete the checklist by 17 June 2024 the parties were informed: "If you fail to do so, then an Employment Judge may consider striking out the claim or response on the grounds that it is not actively pursued".
9. On 14 June 2024 the respondent made an application to strike out the claim on the basis that it has not been actively pursued and for non-compliance with directions unless the claimant exchanges his witness statement by 28 June 2024. On 28 June 2024 the employment tribunal sent the claimant a strike out warning. There were four points mentioned as possible grounds for strikeout; the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious; the claimant has not complied with the order of the employment tribunal dated the 8 August 2023; the claim has not been actively pursued; and that it is no longer possible to have a fair hearing of the claim starting 15 July 2024 because of the claimant's failure to prepare witness statement. The claimant was informed that if we wished to object to the proposal he should give reasons in writing or request a hearing at which to make them by 5 July 2024.
10. The claimant wrote an e-mail to the tribunal 13 minutes after receiving the tribunal's e-mail containing the strike out warning. The claimant wrote:

"No thank you no one is striking out of anything see you on Monday the 15th of July, you can't be adding and abitting religouse (*sic*) fascist driving people out of the workplace on the grounds of hatred like that. Its my claim its my way... Furthermore I'm not good at paperwork and don't understand the paper work complication that your asking me to fill this will be discussed on the 15th of July in person."
11. I understand that e-mail to be an indication that the claimant at that stage was saying that he would attend the tribunal on 15 July 2024.
12. The claimant sent a further e-mail on 28 June 2024, that e-mail stated:

"I don't have any witness statement to make."
13. The claimant sent a third e-mail on 28 June 2024 that e-mail stated:

"How fucking dare you say my claim is scandalous son of a fucking bitch."
14. The claimant's correspondence was brought to the attention of an Employment Judge and the employment tribunal writes to the claimant on 2 July 2024 was clarified by the Employment Judge after referring to the claimant's e-mail correspondence. The employment judge stated:

“For the avoidance of doubt, the warning was that the manner in which the litigation had been conducted might lead to strike out and was not a suggestion that the claim itself was “scandalous”.

15. The warning is not withdrawn, and the contents of these emails will also be taken into account before a strike out decision is made.
16. The 5-day hearing will not commence on Monday 15 July. Instead at 10:00 AM on Monday 15 July there will be a 3 hour hearing to decide whether the claim should be struck out. If not struck out, new orders for a final hearing will be made, including discussion of whether the claimant has any health condition, or other good reason, that means that he is unable to prepare a written witness statement.”
17. An amended notice of preliminary hearings was also sent to the claimant indicating that a preliminary hearing in public was to take place at the Reading Tribunal Hearing Centre on the 15 July 2024 and that the hearing will start at 10:10 AM with the claimant required to attend 15 minutes before the start.
18. The claimant did not attend the hearing. The respondent was represented by Mr JP Waite, counsel. The respondent made an application to strike out the claim.
19. I am asked to strike out the claim pursuant to rule 37 (1) of the Employment Tribunals Rules of Procedures. I was referred to the case of Evans v Metropolitan Police Commissioner [1993] ICR 151 at page 156 where it states: “The legislature gave statutory force to the primary requirements laid down in *Birkett v James* [1978] AC 297... summarises those requirements as follows: (a) that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim; and (b) that the delay (i) will give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; Or (ii) has caused, or is likely to cause or to have caused, serious prejudice to the respondent.”
20. The respondent contends that there has been inordinate delay; that the claimant has not cooperated with any of the steps in relation to preparation of the case; the claimant has failed to exchange witness statements; the claimant has not indicated when he will exchange with the statements. The respondent says that a fair resolution of the hearing is not possible because the witness statement is critical to the resolution of the case and that the failure to provide the witness statement prejudices the respondent. Further, that there is nothing to suggest that the claimant is going to cooperate the respondent contends that the claimant has been given an opportunity to be heard in relation to the strike out application by the notice which is provided for this hearing and the claimant has failed to attend.
21. Alternatively, the respondent says that the claimant’s claim should be struck out because it is not being actively pursued and that the claimant

has not cooperated in compliance with the employment tribunal's orders. In those circumstances a fair hearing is not possible indeed the hearing of the case is not possible: it said that there has in fact been no engagement at all by the claimant in preparation for but for hearing. The respondent indicates that it was ready for the hearing to commence and that on the 11 June 2024 a copy of the trial bundle was served on the claimant by a process server. The claimant then contacted the respondent's process server and confirmed that he had received the tribunal hearing bundle.

22. I have considered whether this is an appropriate case to strike out the claim. I am satisfied that it is. The claimant has failed engage with the respondent in the preparation of this case for hearing. The claimant is well aware of the hearing today as he has made reference to it in his correspondence by e-mail. The claimant is also aware that he is required to produce a witness statement and that has been indicated by the fact he has stated that he is not good at paperwork and doesn't understand the paperwork complication. He has also said that he does not have any witness statement to make.
23. Despite the clarity of the employment tribunal's order of the 12 July 2023 it may be the case that the claimant is in some confusion as to what is required of him. The claimant's failure to attend today means that it has not been possible for me to explore with the claimant why an order which is clear and was made in the claimant's presence could not be understood by the claimant.
24. I note that the claimant made an inappropriate response to the strike out warning in his e-mail centre 16:59 on 28 June 2024. I also note that's on the 2 July 2024 the claimant sent an e-mail to the employment tribunal at 17:57 that contained the following:

“Unfortunately for you that will be done in my absent, you know my stunce (*sic*) on that you will not be wasting my time you can waste your own times and play your owns games (*sic*) between each other not in my time!”
25. This last e-mail can be read as an indication that the claimant will not be attending the hearing today. As stated above the claimant has not attended the hearing today notwithstanding that the claimant is aware of the time and place of the hearing.
26. I am satisfied that this is a case where there has been inordinate and inexcusable delay on the part of the claimant in complying with the employment tribunal's orders. The claimant has not engaged in relation to the preparation for the hearing, he has not cooperated with the respondent for disclosure process, the preparation of a trial bundle or the exchange of witness statements. I am satisfied that the effect of that is that it has created a substantial risk that it is not possible to have a fair resolution of the issues in the case and alternatively that it has caused or is likely to cause or to have caused prejudice to the respondent who has prepared for

the hearing and was ready to proceed today but that hasn't been possible because of the conduct of the claimant.

27. The way that the claimant has conducted this litigation has resulted in the respondent having incurred wasted costs in preparing for the hearing when the claimant is not cooperating. There are individuals who are likely to be required to give evidence on behalf of the respondent, they will be, in my view, caused inconvenience perhaps anxiety in respect of the prospect of giving evidence in this case. The claimant's conduct means that the hearing did not take place when it should have done and thus those individuals will have to continue to be subject to the anxiety that the fact of the case being outstanding is likely to cause.
28. Taking account of all the circumstances in this case I am satisfied that the manner in which the proceedings have been conducted by the claimant is unreasonable. I am also satisfied that the claimant has failed to comply with the employment tribunal's orders for preparation of the hearing and as a result I am satisfied that it is not possible to have a fair hearing of the case. In the circumstances therefore I accede to the respondent's application to strike out the claim.

Employment Judge Gumbiti-Zimuto
Date: 15 July 2024.

Sent to the parties on: 28/8/2024

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For the Tribunals Office

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