



EMPLOYMENT TRIBUNALS

Claimant: Martin Miranda Antelo
Respondent: Sutton Housing Partnership Limited
Heard at: Croydon
On: 15 July 2024
Before: Employment Judge Liz Ord
Tribunal Member Jane Forecast
Tribunal Member Grace Mitchell

Representation:

Claimant: In person
Respondent: Jake Davies (Counsel)

JUDGMENT having been given orally on 15 July 2024 and the written record having been sent to the parties, subsequent to a request for written reasons in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

The Application

1. The Claimant's application was to strike out the Respondent's response on the basis the proceedings had been conducted in a scandalous, unreasonable or vexatious manner, Tribunal orders had not been complied with, and a fair hearing was no longer possible

The Law

2. Rule 37 of the Employment Tribunals Rules of Procedure 2013 sets out the tests for a strike out. Relevantly it states:
 - (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) ...
 - (b) that the manner in which 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 or these Rules or with an order of the Tribunal;
 - (d) ...

(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).

3. The Tribunal is also required to have regard to the overriding objective, which is set out in Rule 2:

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable:

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

4. In **HM Prison Service v Dolby** [2003] IRLR, 694 and **Hassan v Tesco Stores Ltd** UKEAT/0098/16, the EAT held that the striking out process requires a two-stage test. The first stage involves a finding that one of the specified grounds for striking out has been established; and if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim. In **Hassan** Lady Wise stated that the second stage is important as it is “a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit.”

Background

5. The case was listed for a Full Merits Hearing starting today. However, both parties had failed to comply with case management orders and failed to properly engage with each other. Consequently, the case was not ready to proceed to trial and both parties applied to postpone. This is the subject of a separate case management order, granting the postponement.
6. The Claimant wrote an email to the Tribunal on 9 July 2024, which included an application to strike out the response. Much of the reasoning related to the Respondent failing to disclose documents, which the Claimant had been requesting for some considerable time via Subject Access Requests. The Tribunal had previously informed the Claimant that this was not a matter for the Tribunal. The Claimant clarified orally that it was those documents relevant to his claim, which he wanted disclosed.
7. Whilst the Respondent made some disclosure after 9 July, the Claimant believed that the Respondent had further relevant documents, such as Google messages, which he believed were crucial to his case. He submitted that he could not have a fair hearing without the documents. He had not made an application for specific disclosure.

8. The Claimant himself only today gave disclosure of documents to the Respondent. This was by submitting his own bundle of documents for the Full Merits Hearing, which ran to 248 pages.
9. With respect to witness statements, the parties had failed to comply with the Tribunal's timetable. The Respondent had tried to agree an extension of time with the Claimant to 5 July 2024, but the Claimant did not respond. The Respondent therefore sent its witness statements to the Claimant on 9 July 2024.
10. As of today's date, the Claimant had not sent any witness statements to the Respondent. His reason was that he had been waiting for disclosure of documents, which had only been sent to him a few days ago and which were long reports that he would need to go through. He claimed there were still other documents outstanding, which he wanted to see before completing his witness statement.

Discussion and Conclusions

11. Whilst the Respondent had not complied with case management orders, neither had the Claimant. The Respondent had tried to engage with the Claimant, but the Claimant had not always responded. The Respondent's conduct of proceedings was not scandalous, unreasonable or vexatious.
12. Although the Claimant argued that a fair trial was not possible without the requested documents, further case management orders now provide for a proper search of documents to be made. A fair trial is still possible.
13. Therefore, having regard to the two staged test and the overriding objective, the Tribunal refuses the Claimant's application to strike out the response.

Employment Judge Ord
Date: 11 September 2024

Sent to the parties on
Date: 18 September 2024

Notes

Public access to employment tribunal decisions

Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.