



EMPLOYMENT TRIBUNALS

Claimant: Miss J Griffiths

Respondent: Buckinghamshire Council

RECORD OF A PRELIMINARY HEARING

Heard at: By CVP (open hearing)
On: 16 January 2025
Before: Employment Judge Bloch KC

Appearances

For the claimant: In person
For the respondent: Mr Kashif Ali, counsel

JUDGMENT AT A PRELIMINARY HEARING

The claimant's strike out application the ET3/ grounds of resistance made by email dated 27 September 2024 (and application in similar terms of 1 October 2024) are refused.

REASONS

1. The procedural background to this case is somewhat unusual and this may have led to the strike out application(s) being made. The claimant presented her claim form on 30 November 2023 and it was some considerable time before the claim form was served upon the respondent by the tribunal.
2. The grounds for the claimant's application to strike out were essentially the late submission of the respondent's ET3 (with grounds of resistance) and alleged unreasonable behaviour on the part of the respondent in the conduct of the case as well as a failure to comply with employment tribunal directions. However, at the heart of the claimant's submissions was the issue of the late submission of the ET3, the claimant being of the view that the tribunal was or should be very strict about allowing extensions of time in relation to tribunal documents including the ET3, as had (she assumed) occurred here
3. The respondent was required to serve its response by 18 April 2024. An

application for an extension of time was made by email dated 27 March 2024 to submit the response by 10 May 2024. However, the tribunal did not respond to the extension application despite numerous “chasing” messages by the respondent

4. The respondent was advised by an employee of the tribunal office to submit its response by 10 May 2024. However, notwithstanding that, in order to protect its position, the respondent submitted an ET3 on 18 April 2024 explaining the situation, and further explaining that the respondent would submit its detailed response by 10 May 2024. It was clear from the box ticked on the form ET3 that the respondent was intending to contest the claims made against it.
5. The respondent then submitted a detailed substantive response on 10 May 2024.
6. On 5 June 2024, the tribunal sent a letter confirming that the response was accepted but did not expressly confirm that any extension of time was needed or granted and further did not send a letter confirming the acceptance of the respondent’s further response submitted on 10 May 2024. An acceptance letter dated 5 June 2024 appeared to relate to the short form ET3 which the respondent had earlier submitted.
7. By email dated 19 June 2024 the respondent chased the tribunal to confirm that the response and ET3 submitted on 10 May 2024 had been accepted but no reply was received.
8. The claimant was sent a copy of the letter from the tribunal dated 5 June 2024 by post. That did not (it follows from what is said above) contain any (full) grounds of resistance. Up to a relatively short period before a CMC which had been directed to take place in September, the claimant was unaware of the existence of the second ET3 and therefore felt pressure when she became aware of it not very long before the CMC was to take place (as it turns out that CMC was vacated because it had been listed for only two hours, which was later accepted was insufficient).
9. Equally, the respondent appears to have been unaware that the claimant had not seen its (full) grounds of resistance until early September.
10. What may have happened is that, given that the claim had already been accepted, the tribunal did not think that any further correspondence was needed in relation to the more fully drafted ET3 when that was submitted to it.
11. Be that as it may, the position is that the claim was accepted and the parties have proceeded on that basis.
12. In its document entitled “Summary of claimant’s applications” the claimant relied on the usual 28 day deadline for the filing of an ET3 response and further relied upon Rules 12 and 13 (of the 2013 Employment Tribunal rules) to strike out the ET3 for “procedural breaches”. However, Rules 12 and 13 are plainly irrelevant given that they refer to instances where a claim form has been rejected. That had not occurred here. Further, the claimant relied on Rule 37 but that was not developed. The main complaint appeared to be unreasonable conduct by the respondent in requesting the claimant to take legal advice in regard to her claim. It was the regularity with which this request was made that she found

unacceptable and unreasonable. In my judgment, that provided no basis for striking out this response on any of the striking out grounds listed in Rule 37. I was quite satisfied that the respondent was acting properly in making this request – an indeed it became increasingly clear in the course of the hearing that it was important (in the interests of both parties – and especially the Claimant) for her to have the benefit of legal advice and/or representation, if at all possible.

13. I should mention that my reference to the Rules throughout this judgment is to the 2013 Regulations but I do not believe that there is any material difference under the 2024 Rules which have just come into force.
14. In my judgment, none of the submissions (and Rules) relied on by the claimant provided a proper basis for striking out the (second) ET3 and grounds of resistance.
15. However, even if there were a proper basis for the application to strike out, I would not have exercised any discretion in favour of the application being granted for the following two reasons:
 - a. The respondent appears to have behaved quite reasonably in the circumstances of the difficulties it was facing with the tribunal – and even if there was any validity in regard to any of the criticism levelled against it, it would not have been so serious as to bring the question of strike out into serious consideration;
 - b. In any event, in regard to competing prejudices, it is quite obvious that for the response (which has been quite fully pleaded) to be struck out would be enormously prejudicial to the respondent in that the respondent may thereby be found responsible for acts of discrimination and other serious matters without having the chance to test the claimant's assertions and claims before the tribunal; a fair trial is still possible – and the claimant suffers no prejudice (about which she can legitimately complain) if the case is allowed to proceed to trial.

14 In all the circumstances the applications were refused

Approved by

Employment Judge Bloch KC
Date:30 January 2025

Sent to the parties on:
18/2/2025

For the Tribunal Office:
N Gotecha