



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100548/2020 (P)

Held at Aberdeen on 9 November 2022

Employment Judge J M Hendry

Mr D Tanase

**Claimant
In Person
& Mrs C M Tanase**

Barchester Healthcare Limited

**Respondent
Represented by
Mr D Gorry,
Law At Work Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Further to the Unless Order dated 3 October 2022 which was not complied with by 19 October 2022 the claimant's claims for unfair dismissal and race discrimination are dismissed.

REASONS

Background

1. This claim was submitted on 20 January 2020. It is for "constructive" unfair dismissal. The claim has been extensively case managed principally by the

E.T. Z4 (WR)

same Employment Judge. The claimant has resisted case management of the case. He has appealed, unsuccessfully on a number of occasions to the Employment Appeal Tribunal over case management instructions. The later difficulties which promoted the issue of Unless Orders related to the claimant's applications for the respondents to disclose to him personal information (home addresses and so forth) in relation to potential witnesses.

2. The claimant was advised before ordering the respondents to release such personal information held by them it needed to be satisfied that this course of action was justified and that the individuals concerned could give the Tribunal relevant evidence about the claim. The position was summarised in an e-mail to the claimant on 11 October 2022 in which it was stated:

*"The Tribunal asked you to tell it what these witnesses are to speak to in their evidence. What did they see or hear or experience or do that might throw light on what appears to be a straightforward claim of constructive dismissal? The Tribunal does not need to know every word the witness will say but broadly what incidents or issues they will be asked about. The Judge observes that it is disappointing to note that these matters were fully discussed and recorded in the Note dated 15 July 2021 and yet we are no further forward. **You should be well aware by now of the Tribunal's requirement to be convinced why a particular witness needs to be called. This should help you focus on what the issues on the case are.**"*

3. In addition, various difficulties arose in relation to a witness, Mrs Horne an employee of the respondent. The respondent's agents had indicated that they were probably in a position to agree her evidence if a statement could be obtained from her by the claimant. The claimant was repeatedly asked to contact the respondent and through them Mrs Horne to obtain such a witness statement with a view to agreeing her evidence. He would not do so but insisted on her attendance as a witness.

4. The Tribunal issued an Order on 19 August 2022. The claimant complied with paragraph 1 of the Order but not with paragraph 2 which was in the following terms:

“2. The claimant shall within the next 7 days write to the Tribunal as follows:-

- 5
- a) *Setting out briefly what issues/incidents the claimant wants the witness to address in their evidence and asking them to respond to him setting out evidence they would give at any hearing;*
- b) *Whether the witness was prepared to voluntarily give the claimant contact details including a mobile number, landline number and home address;*
- 10 c) *Whether the witness is still employed by the respondents, prepared to accept any Witness Order sent c/o The Nursing Home at MoDhachaidh, Ullapool;*
- d) *Giving details of his availability to attend a hearing and which dates should be avoided in October/November or December.”*

15

5. Because of the claimant’s failure to comply with the second part of the Order the Tribunal wrote to the claimant setting out the reasons why it was making a further Order. An Unless Order was sent to the claimant on 11 October 2022 advising that the Tribunal was considering striking out the claims for unfair dismissal on the following grounds:
- 20

“

- *of non-compliance with paragraph 2 of the Order dated 19 August 2022 (despite reminders and warnings to do so) in terms of rule 37(1)(c) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.*
- 25
- *that the claims have not been actively pursued in terms of rule 37(1)(d) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013”*

- 30 6. The Tribunal had also issued an Order on 3 October 2022 in the following terms:

“1. The claimant shall within 7 days of the date of this Order do the following:

- a) *Set out in writing the questions he wants Mrs Sue Horne to answer in any Witness Statement to be provided by her.*
- 35
- b) *Send the list of questions to the Tribunal and also to the respondent’s solicitors.*
- c) *The respondent’s solicitors shall contact Mrs Horne and ask her to respond in writing within the next 7 days. Her response shall either be in her own handwriting or in a typed written document signed and dated by her.*
- 40

- d) *Once the respondent's solicitors have had an opportunity of considering Mrs Horne's Witness Statement they shall indicate formally if her evidence can be agreed or if there are any aspects of her evidence that are still in dispute."*

5

7. The claimant had until the 19 October to respond why the unless order should not be granted. There was no response from the claimant to either Unless Order within the time periods stated in them or at any later date up until issue of this Judgment.

10 **Decision**

8. Where there has been material non-compliance with an Order the Tribunal has no discretion as to whether or not the claim should automatically be struck out. The Tribunal considered before issuing the Orders if any other
15 course of action was appropriate to move the case forward. It was conscious that the claimant was a party litigant and reviewed the long history of these difficulties. It noted that the claimant has trenchantly resisted case management in this case. The issue of the Orders in August and October were the culmination of many months of unfruitful correspondence. It
20 appears to the Tribunal that the Orders are clear in their terms and that the claimant will have no doubt as to what is being required of him. An explanatory letter was sent to him dated 11 October which in turn referred to previous correspondence and Notes.

- 25 9. The Tribunal fully took into account when coming to the view that the claimant is well aware of the obligations on him to comply with the Orders that although Romanian both from the correspondence he has submitted to the Tribunal and the terms of his ET1 disclosing that he held the post of Unit Nurse Manager with the respondents in Scotland for more than 10 years that he
30 would be able to fully understand the terms of the correspondence and the requirements on him. In this case the Tribunal concludes that there has been clear material breaches in complying with both Orders. Indeed there has

been a complete failure to engage with the Orders and that accordingly the claims shall be dismissed.

5

10

Employment Judge: J M Hendry

Date of Judgment: 10 November 2022

Date Sent to Parties: 10 November 2022

15