



EMPLOYMENT TRIBUNALS

Claimant

Mr S Goldpresi

Respondent

(1) Network Rail;
(2) Mrs S Smith;
(3) Mr A Bilous.

v

Heard at: Cambridge

On: 26 September 2019

Before: Employment Judge Johnson

Appearances

For the Claimant: Did not attend and was not represented

For the Respondent: Miss R Thomas, Counsel

JUDGMENT ON PRELIMINARY HEARING

1. The Claimant's claims against the second and third Respondents are rejected in that the ET1 claim form presented under case number: 3303631/2018 on 29 January 2018 failed to contain correct Early Conciliation Certificate numbers contrary to Rule 12(1)(c) and Rule 12(2) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.
2. The Claimant's complaint of Race Discrimination and Unfair Dismissal contrary to Section 103A of the Employment Rights Act 1996, are struck out.

REASONS

1. This Preliminary Hearing was listed pursuant to the Order of Employment Judge Ord on 21 April 2019. It was made following an application by the Respondent to strike out the Claimant's claims in relation to Race Discrimination and Unfair Dismissal. This was because of an alleged failure of the Claimant to comply with Orders 1 – 3 of the Order of Employment Judge Bloom at the Case Management Hearing which took place on 21 September 2018. The Respondents argued that paragraphs 1, 2 and 3 of the Order were effectively Unless Orders which would result

in the strike out of the Claimant's claim if he failed to provide the necessary information by 19 October 2018. In addition, they argued that even if the Claimant was allowed to provide this information outside of this time limit, the substance of the information provided was insufficient and contrary to what was asked of him by Employment Judge Bloom at the Case Management Hearing.

2. The Respondent also sought to argue that the claims against the second and third Respondents should be rejected due to the failure of the Claimant to provide a valid Early Conciliation Certificate number when presenting the claim in relation to these two Respondents, contrary to Rule 12 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.
3. The Claimant had not communicated with the Tribunal concerning these proceedings since February 2019. He had been contacted by the Watford Employment Tribunal administration on 25 September 2019 and had been asked whether he intended to attend the hearing day. The Claimant confirmed that he would be attending. The Claimant was not present when the hearing was due to commence at 10:00am on 26 September 2019 and the Clerk at the Cambridge Employment Tribunal attempted to contact the Claimant and left a message for him to call at 10:20am once it became clear that he was not in the Court building. At no stage during the hearing did the Claimant return a call to the Tribunal or attempt to attend the hearing. The Claimant had not provided any explanation as to his non-attendance, I therefore felt it was reasonable to continue with the hearing as the Respondent's Counsel was present and was able to make submissions in support of her instructing Solicitor's application.
4. I considered submissions by Miss Thomas of Counsel in relation to the applications that were being made.
5. I noted that in the Case Management Order of Employment Judge Bloom dated 21 September 2018, at paragraph 8, the Claimant was ordered to produce copies of the Acas Early Conciliation Certificate naming Mrs Smith and Mr Bilous, on or before 19 October 2018. In this Order Employment Judge Bloom added "*failure to do so will result in the claims against Mrs Smith and Mr Bilous being struck out*". Miss Thomas submitted that this did not form part of the formal orders section of the Case Management Order. However, taking into account the Case Management Summary concerning this issue, it indicated a full discussion had taken place and also the provisions of the overriding objective, I am satisfied that the Claimant who was in attendance at that hearing would have understood what was required of him.
6. Ms Thomas provided me with copies of Early Conciliation Certificates for the second and third Respondents which were sent to the Respondent's representatives between 8 and 18 October 2018. Both these certificates were dated 8 October 2018 and were clearly obtained after the ET1 form was presented at the Tribunal on 29 January 2018.

7. Having taken into account the provisions of Rule 12(1)(c) and Rule 12(2) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, and also the recent Employment Appeal Tribunal decision of *E.ON Control Solutions Ltd. v Mr Simon Caspall* UAEAT0003/19/1907, I find that the Tribunal must reject the claims brought against the second and third Respondents. This is because a valid Early Conciliation Certificate number was not provided for these Respondents at the time the form ET1 was presented and the Tribunal does not have any discretion to allow the claim to continue by relying upon a correction being made in the way that the Claimant did by obtaining Early Conciliation Certificates at a later date.
8. Accordingly, the claims against the second and third Respondents will be rejected and the claim form, in so far as it relates to these new parties, must be returned to the Claimant together with a notice of rejection.
9. The Case Management Summary of Employment Judge Bloom dated 21 September 2018 also considered the failure of the Claimant to provide sufficient information in support of his discrimination claim. As a consequence, the Claimant was ordered to provide further information which fully responded to the earlier Order of Employment Judge Warren on or before 19 October 2018. It made clear, within this paragraph that should the Claimant fail to do so, his claims will be struck out in relation to this matter.
10. Paragraph 9 of the Case Management Summary also discussed the need on the part of the Claimant to provide details of the protected act which he relies upon in support of his claim of Unfair Dismissal contrary to Section 103A of the Employment Rights Act 1996 stating the detriment or detriments he complains of having made any protected act. He was Ordered to provide this information by 19 October 2018.
11. In the Case Management Orders section of the Order of Employment Judge Bloom, paragraph 1 and 2 identified the additional information that needed to be provided by 19 October 2018 in relation to the discrimination complaints and the complaint of unfair dismissal. Paragraph 3 (page 5 of the Order) made the following additional statement,

“Important note:

3.1 in the event of the Claimant failing to comply with paragraphs 1 and 2 above, this claim shall be struck out.”
12. Although Order 3 does not expressly state that it is an ‘Unless Order’ within the meaning of Rule 38 of the Rules of Procedure, I am satisfied that at the Case Management Hearing before Employment Judge Bloom, the Claimant was made aware of what further information was required from him and the consequences of his failure to comply with the Orders made. In addition, Employment Judge Bloom makes clear within

paragraph 7 of the Case Management Order Discussion, that the Claimant *'must address his mind properly and fully to the issues in this case and provide the information'*. Taking this into account, together with the Order at paragraph 3, I find that the Claimant knew that if he failed to comply with the Orders which were made, his claim of Race Discrimination, Whistle Blowing and Victimisation would be struck out.

13. Following that Order having been made, the Claimant sent an email to the Employment Tribunal on 18 October 2019 explaining that he was seeking legal advice. However, he did not ask for an extension of time for compliance with the Orders requiring further information in compliance with Case Management Orders 1 and 2.
14. On 23 October 2018 at 21.01 hours, the Claimant did provide to the Employment Tribunal and the Respondent's representative a document entitled 'Different Forms, Allegations: Discrimination, Harassment, Bullying and Network Rail'. This was provided later than the date given for compliance and I am satisfied that the Order of Employment Judge Bloom under Rule 3 took effect with the claims of discrimination and unfair dismissal being struck out.
15. Even if the Claimant had attended the hearing today and had made an application to me for a retrospective extension of time for the provision of the further information required by the Case Management Order, I would still have to consider whether the Respondent had failed to comply with the substance of the Order in providing the relevant information.
16. Having read the 'Different Forms, Allegations...' document supplied on 23 October 2018, taking into account discussions which took place at the Preliminary Hearing Case Management before Employment Judge Bloom with the Claimant, I am not satisfied that the Claimant provided sufficient information to comply with Orders 1 and 2 of that Case Management Order and explained to him in paragraph 7 and 9. Information provided by the Claimant was not sufficient, precise or detailed and did not assist the Respondent in being able to identify the issues that it was required to respond to in these claims.
17. Miss Thomas did address me concerning paragraph 5 of the Case Management Order of Employment Judge Bloom which referred to the termination of his employment being connected with a conversation with Mrs Smith about joining the Trade Union. The Claimant had not included a specific complaint of Unfair Dismissal relating to this issue. However, in the additional information that he provided on 23 October 2018, the Claimant did refer to bullying which he alleges took place on 26 October 2017 and that Shana Smith *"bullied"* him. He said that,

"I was bullied to believe that the Trade Union registration is a waste of time and as such there was no need of registering into it. I asked the line manager if the Trade Union are located in the building like I have seen most employers and instead she painted a bad picture

about Trade Union and as I expressed need to join and I felt that she had created a certain image of myself and it turned negative and I stopped it based on her reaction.”

18. I am not satisfied that these particulars are sufficient to show that the Claimant had an arguable case with regard to this issue and that this incident was connected with the protected act referred to in paragraph 9 of the Case Management Order and where further information was required of him.
19. In relation to the claims of Breach of Contract, Wages Act and Working Time Regulations annual leave, it is noted that no specific consideration of these claims took place at the Preliminary Hearing Case Management before Employment Judge Bloom. However, directions were made for him to provide a Schedule of Loss by 14 December 2018. The Claimant did provide a Schedule of Loss, but this was after this date on 25 December 2018.
20. However, taking into account the Claimant's non-attendance at this Preliminary Hearing and not having provided any explanation as to why he had not attended, I have decided to Order that a 'Strike Out' warning letter in relation to these claims be sent to him on the basis that he does not appear to be actively pursuing them.

Employment Judge Johnson

Date: 9 October 2019

Sent to the parties on:17.10.19.....

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For the Tribunal Office