



EMPLOYMENT TRIBUNALS

Claimant: Mr I Gabbidon
Respondent: Regency Homes Limited
Heard at: East London Hearing Centre (Cloud Video Platform)
On: 27 August 2020
Before: Employment Judge Moor
Members: Mr T Burrows
Mrs B Saund

Representation:

Claimant: Did not attend
Respondent: Mr N Henry, litigation consultant

JUDGMENT

The claims are struck out on the grounds that they have not been actively pursued and/or that the Claimant failed to comply with three Orders of the Tribunal.

REASONS

1. On 16 January 2020 the Claimant brought claims for unfair dismissal; race discrimination; age discrimination and holiday pay. The effective date of termination of his employment was 30 August 2020.

Procedural History

- 2. On 19 March 2020 REJ Taylor made case management orders including that:
 - 2.1 the Claimant provide Further Information about his discrimination claims and a statement of remedy by 17 April 2020;
 - 2.2 that the parties send each other lists of documents by 18 May 2020.

3. Regional Employment Judge Taylor listed a Preliminary Hearing on 15 June and this full hearing for two days starting today. The Claimant did not provide the information or the remedy statement nor did he prepare a list of documents. The Respondent sent him their documents within the required time.

4. At the long Preliminary Hearing by telephone, on 15 June 2020 at which both parties attended, EJ Jones explained carefully what the Claimant was obliged to do to prepare his case for the full hearing. She ordered that the Further information be provided by 19 June. She varied REJ Taylor's orders. The Claimant was ordered to:

4.1 by 19 June 2020, provide the Respondent with his documents;

4.2 by 1 July 2020 provide a schedule of loss. EJ Jones gave the Claimant very detailed written guidance as to what should be included and referring to the Presidential Guidance;

4.3 by 24 July 2020 exchange witness statements with the Respondent. Employment Judge Jones, again, explained carefully in her written order what that required.

5. Employment Judge Jones gave a clear warning to the parties in her written minutes that non-compliance with Tribunal orders may result, amongst other outcomes, in a strike out of the claim.

6. On 20 August it was confirmed in writing that the hearing today would be remote by video. This has been raised as a possibility at the hearing with EJ Jones.

7. The only step that the Claimant has taken to prepare his case since attending the hearing with EJ Jones on 15 June is to send Further Particulars of his claim on 19 June. Since then the Respondent has heard nothing from him. He has not responded to their requests to provide a Schedule of Loss or his witness statement. Indeed Mr Henry helpfully supplied the Claimant with a sample Schedule of Loss to assist. And, despite the order for exchange, Mr Henry sent to the Claimant Mr Ashford's witness statement. Mr Henry double-checked the correspondence email he was using and knew it to be a good one because the Claimant had provided his Further Information using that email address.

8. This is not a case where a Claimant has tried to comply with orders and tried to pursue his case to a full hearing but has made mistakes or not done it terribly well or has sent information late. He has done nothing since finalising his 'pleadings'. He has taken no steps to prepare his case for the full hearing. Nor is this a case where the Claimant has explained to the Tribunal or the Respondent why he has been unable to do so: he has not communicated with the Respondent or answered its questions at all since 19 June.

9. On 6 August 2020 the Respondent applied in writing to the Tribunal to strike out the claim on the grounds that the case was not actively pursued; there was a breach of orders; and/or it had no reasonable prospect of success. Detailed written submissions were provided to the Claimant by Mr Henry. On 20 August the Tribunal notified the parties that application would be heard today.

10. At 9.25 this morning the Claimant emailed the Tribunal as follows: *'I have been trying to call the court all morning to inform them I will not be able to attend this hearing as I have a medical emergency please can someone get back to me about this so I know what the next steps are'*

11. I asked the clerk to the Tribunal to reply. She did so at 9.54 as follows: *'I assume you are asking for an adjournment? Employment Judge Moor, who is hearing your case, will consider that application when the hearing begins this morning. Please describe your medical emergency and when possible, provide the Tribunal evidence about this.'*

12. The Claimant replied at 10.03 confirming he was asking for an adjournment. He did not describe what the medical emergency was. Instead, he sent a screen shot of a communication from North Street Medical Care 'webgp' dated 9.57 stating that *'you have chosen to end your consultation. Your practice hasn't been notified and will not contact you about your request. You should still seek medical advice soon.'* Although the Claimant indicated he was sending further documents he did not do so by the time we made our decision at 11.30am.

13. Today we have heard the submissions of the Respondent on adjournment and strike out. We thank Mr Henry for his assistance in describing the procedural chronology.

Law

14. The Overriding Objective of the Tribunal is to hear cases justly and that includes ensuring the parties are on an equal footing; dealing with cases proportionate to the complexity and importance of the issues; avoiding unnecessary formality; avoiding delay, so far as compatible with proper consideration of the issues and saving expense.

15. Rule 37 provides the grounds upon which a Tribunal may strike out a claim. They include: 37(d) where it has not been actively pursued; and 37(c) for non-compliance with an order of the Tribunal.

16. Before striking out a claim the Claimant must have had a reasonable opportunity to make representations in writing or at a hearing.

17. When considering striking out a case we bear in mind it is obviously a draconian measure. We consider whether a fair trial is possible and balance the relative hardships to the parties of our decision.

Adjournment

18. We first considered whether we should adjourn the hearing of the Respondent's strike out application. We decided it would not be fair to do so because:

18.1 The Claimant was notified of the Respondent's application and the detailed written grounds of it from 6 August 2020;

18.2 The Claimant was notified in writing on 20 August that it would be heard

today;

- 18.3 We consider the Claimant has good capacity to understand written documents: we take into account that his role at the Respondent was apprentice Principal Designer; that his written Further and Better Particulars were well set out and understandable;
- 18.4 The Claimant did not object to a CVP hearing;
- 18.5 Crucially the Claimant has not described to us the medical emergency he is said to be experiencing today. The Tribunal asked him to do so and although he replied to that request he chose not to inform the Tribunal of, even if briefly, what it was that was stopping him coming to Tribunal today.
- 18.6 The evidence the Claimant has provided today does not support his statement that he is having a medical emergency – it merely records that he chose to end a web consultation and his GP will not be notified: that does not suggest to us that the webGP considered the matter an emergency.
- 18.7 We have considered the overriding objective: here the Claimant has given us insufficient information us to weigh in the balance against the inevitable delay and expense that such a postponement would create.
- 18.8 We take into account the Claimant's failure to do anything to pursue his case since 17 June. Not attending today is consistent with that failure.

Strike Out Application

19. We do not agree that there are no reasonable prospects of success here. That is a very high hurdle that the Respondent has not met. On the claim form and Further Information arguable claims are made that would require evidence to be heard before they could be determined.

20. We do agree with the Respondent's submission that the claims should be struck out because they have not been actively pursued. The Claimant has done nothing to pursue his claim since completing his 'pleadings' i.e. the claim form and the further information. He has not even responded to the Respondent to explain why. He has done nothing at all to prepare his case.

21. This is not a case of a failure to understand: EJ Jones made sure during her hearing that the Claimant understood what he needed to do and her written Case Management Minutes and Orders are written in plain English and give really useful guidance about her orders.

22. Nor is it a case where the Claimant has attempted but failed in some way to do what was required. Here the Claimant has not provided documents; he has not prepared a Schedule of Loss and he has not prepared a witness statement. These are the basic elements of preparation required before a fair hearing of the claim would be possible. The

Respondent needs to know in advance what detailed facts the Claimant is going to rely on in his witness statement to ensure they have the evidence they need to deal with them; the Respondent needs to know what losses the Claimant has suffered in order to know whether to prepare evidence that he has failed to mitigate his loss. If the Claimant had attended today it would not have been possible to have a full hearing because the Respondent would not have seen, in advance, his statement. While we seek to avoid formality in Tribunals, there is a bare minimum required of the parties in preparing their case to ensure fairness, and the Claimant has failed to do this bare minimum.

23. We have considered whether a fair trial would be possible. Bearing in mind the severity of the Claimant's failures and his failure to attend today without giving the Tribunal any sense of what his emergency is, we consider that giving the Claimant a third chance to prepare his claims would not be fair to the Respondent and not in accordance with the overriding objective.

24. The balance of hardship in this case now lies in the Respondent's favour. It has done all the work to get this claim prepared: it has prepared a bundle; a list of issues; a witness statement. Its professional representative and lay witness have attended today. They have expended time, energy and cost in order to be prepared. It would not be fair to require them to wait any longer for the resolution of the claim.

25. Nor does the Tribunal have unlimited time for each claim. We must bear in mind that each claim ought only to take a certain amount of the Tribunal time: to give it more effectively disadvantages other Tribunal users by delaying their claims and reducing the judicial resources available to them.

26. In essence the Claimant has been given every opportunity and helpful guidance to pursue his claim, yet he has not done so. This is a classic case of failure actively to pursue and we strike it out on that ground.

27. For the same reasons, we conclude that it would be fair to strike out the claims because the Claimant has failed to comply with those three Tribunal orders for no good reason.

**Employment Judge Moor
Date: 27 August 2020**