



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr A T Sanderson

AND

D&M Cabling Solutions Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Teesside

On: 9 November 2017

Before: Employment Judge Johnson (sitting alone)

Appearances

For the Claimant: No attendance/no appearance

For the Respondent: Mr A Crammond of Counsel

JUDGMENT

- 1 All of the claimant's claims are struck out and dismissed.
- 2 In respect of the respondent's counter claim, the claimant is ordered to pay to the respondent compensation for breach of contract in the sum of £7,218.27.

REASONS

- 1 This matter came before me this morning by way of a public preliminary hearing to determine the following issue:-

"To consider a strike out of the claimant's claims and to consider a Rule 21 Judgment on the respondent's counter claim, on the basis of:-

- (1) the claimant's failure to comply with orders of the Tribunal and/or

- (2) the claimant has not actively pursued the case and/or
- (3) unreasonable conduct of the proceedings by the claimant under Rule 37(1) of Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.”

- 2 The claimant did not attend and there was no appearance on his behalf. Mr Crammond appeared on behalf of the respondent. Witness evidence was given under oath by the respondent's director, Mr Graham Moore. Mr Crammond produced a bundle of documents marked R1. Mr Moore's witness statement was marked R2.
- 3 Mr Crammond informed me that the respondent had received no contact whatsoever from the claimant since the last hearing which took place before Employment Judge Shepherd on 3 August 2017. I was able to confirm to Mr Crammond from my examination of the Employment Tribunal file, that the Employment Tribunal had also heard nothing further from the claimant since 3 August 2017.
- 4 In particular, the claimant has failed to provide any medical evidence to support his application for a postponement of the hearing which had been listed for 13 October and in respect of which the claimant had made an application to postpone in the early hours of that morning. The claimant then indicated that there was a medical reason for his inability to attend. The claimant was ordered to produce medical evidence to support the application to postpone. Whilst the application was granted, no such medical evidence has since been provided by the claimant. Mr Crammond informed me that the claimant has still failed to provide any witness evidence in support of his claims, despite having been ordered to do so by the Tribunal. Mr Crammond indicated that the claimant had failed or refused to reply to any correspondence from the respondent. I again indicated to Mr Crammond that there was nothing on the Employment Tribunal file from the claimant since his application to postpone the hearing on 13 October.
- 5 In his skeleton argument marked R3, Mr Crammond submitted that the claimant had not only failed to comply with orders issued by the Employment Tribunal, but had effectively failed to actively pursue his claim. Mr Crammond suggests that the claimant may have misled the Tribunal into granting a postponement on 13 October, as evidenced by the fact that he had failed to produce any medical evidence to support his application for a postponement. Mr Crammond submitted that the claimant's conduct generally amounted to “unreasonable conduct” of such magnitude that it would easily justify the striking out of all of his claims pursuant to Rule 37(1) of the 2013 Rules.
- 6 I am satisfied that the requirements of Rules 37(1)(b), (c) and (d) of the 2013 Rules are all made out. The claimant has failed to comply with orders made by the Tribunal. The claimant has failed to reply to correspondence from the Tribunal and the respondent. The claimant has failed to actively pursue his claim. That amounts to unreasonable conduct and I am satisfied in this case that

it is entirely appropriate for all of the claimant's claims to be struck out. All of those claims are dismissed.

- 7 Mr Crammond then presented the respondent's evidence on its counter claim. The claimant has failed to present a Response to the counterclaim. Mr Graham Moore gave evidence under oath and confirmed that the claimant had, without the respondent's permission, taken the respondent's van in what can only be described as a "frolic of his own". Whilst in possession of the van, the claimant and the van were attacked. The claimant was injured and the van was seriously damaged. The claimant knew that he was forbidden from taking the van without the respondent's permission. The claimant acknowledged that he had been in possession of the van without the respondent's permission. The claimant was immediately dismissed. Whilst the damage to the vehicle was reported to the respondent's insurers, the claimant's father begged Mr Moore to allow the claimant and himself to effect the repairs to the vehicle, so that costs would be kept to a minimum. The cost of repairing the vehicle was substantial. The vehicle had to be recovered from the scene of the attack, deep cleaned and had to have lights replaced, side window replaced, windscreen replaced and bumper fittings replaced. This took some time, during which the respondent had to hire another vehicle.
- 8 I am satisfied that all of these costs were incurred because of the claimant's breach of contract, namely breach of the implied term of trust and confidence which must exist between all employers and employees. The claimant was fully aware that he did not have permission to take the respondent's vehicle. Having done so, the vehicle was then damaged whilst it was in the claimant's possession. I am satisfied that the cause of the damage to the vehicle and the cost of repair were entirely due to the claimant's breach of contract.
- 9 I am satisfied that the schedule of loss submitted by the respondent, as amended by Mr Crammond this morning, was reasonable in all the circumstances. I am satisfied that the claimant should compensate the respondent for its losses in the sum of £7,218.27.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON**

16 November 2017

JUDGMENT SENT TO THE PARTIES ON

20 November 2017

AND ENTERED IN THE REGISTER

G Palmer

FOR THE TRIBUNAL