



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100475/17 Held at Aberdeen on 1 June 2017

Employment Judge: Mr J M Hendry (sitting alone)

Mr Craig Ross

Claimant
In Person:

KPD UK Delivery

Respondent
Represented by:
Ms J Redpath –
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Respondent's application for strike-out is refused.

REASONS

1. The Claimant in his ET1 makes a "Wages Act" claim for £865.80. The Respondents oppose the claim arguing that the sums due to the Claimant amount to £300. They also indicate that the Claimant was an unsatisfactory employee and caused damage to the van he was driving. They also make allegations in relation to failure by him to deliver parcels.
2. A Hearing was fixed for the 1 June.
3. On 31 May it became clear that the Claimant had not paid the Hearing Fee. Various difficulties had arisen and the respondents had lodged an application for strike-out. In these circumstances the Hearing was changed to a Preliminary

E.T.Z4(WR)

Hearing on the Respondent's strike-out application.

4. As part of the Hearing the Claimant had lodged some documents in support of his position (C1 to 4) and the Respondents eight documents (R1 to 8).
5. The Respondent's in their application sought strike-out on the basis that the Claimant had failed to comply with the Order of the Tribunal issued on the 9 May. Firstly in respect of his failure to copy documents he intends to rely on to the Respondents and secondly a failure to lodge a calculation of the basis of his claim.
6. The Claimant who is unrepresented explained that he was unfamiliar with Employment Tribunal procedure. He accepted that he had received the Order of the Tribunal but had understood that ACAS were involved and as he had given the documents he intended to rely on to them he assumed that they would pass them to the Tribunal. He pointed to the letter he had received from ACAS on 10 February advising that even after the application to the Employment Tribunal is accepted they would still be involved and would "again offer impartial and independent conciliation".
7. The Claimant was asked whether or not he had received the letter of 10 May from the Respondents. Making reference to the Tribunal Order and attaching the documents that they intended relying on they had made reference to having seen text messages which the Claimant had passed to ACAS expressing the opinion that they validated their position and note the Claimants. They asked for the Claimant's documents no later than the 11 May. The Claimant denied having received this letter. Ms Redpath indicated that it had also been e-mailed. The Claimant denied having seen the letter. He explained that he had been confused about the position of documents. He was aware that the Respondents had seen the text messages which were the only documents he intended producing. These were with ACAS. I questioned the Claimant about his understanding of the position. I suggested to him that the Order from the Tribunal and indeed the earlier letter from the Tribunal fixing a Hearing made clear that certain responsibilities devolved on him. The Claimant advised that he had been confused in relation to ACAS' involvement but there would be no difficulty in

relation to the texts. He had also not received a letter from the Tribunal telling him his application to waive the Fees had been refused and only discovered that he was required to pay the Fee on 31 May. The Hearing would not have proceeded in any event because of this difficulty.

8. Ms Redpath's position was that the Claimant's actions were such that he was clearly in breach of the Order and the application should be struck out.
9. I considered the circumstances surrounding these events. They are particularly unfortunate having caused both the Respondents and the Tribunal a considerable amount of wasted time and effort. However in relation to the Claimant's failure to comply with the Orders I accepted, with some considerable hesitation that as a party litigant he was perhaps not fully aware of the importance of the Tribunal Order as he should have been. I can understand that he didn't put much emphasis on the need for him to produce copies of the texts to the Tribunal directly because firstly he understood that the Respondents had seen the texts and secondly that ACAS would in some way pass them on. In relation to the failure to lodge a calculation of the sums he was suing for it had to be conceded that the ET3 was relatively clear in the calculations that he relied on.
10. In the circumstances of this matter I concluded that I would not grant the remedy of strike-out. It has been observed that it is a draconian remedy. The Claimant would not be able to raise proceedings for unlawful deduction of wages in the Sheriff Court although he could raise the matter as a breach of contract claim. What concerned me particularly was the Respondents in their ET3 accepted that £300 was due to the Claimant in wages and this sum remains unpaid. When I queried this with Ms Redpath it appears that the Respondents, although a formal counterclaim had been lodged, had not paid the sum because of damage they say the Claimant was responsible for to the van he was using. I observed that the contract of employment they produced was a draft and not signed. There appeared to be no basis withholding the wages in these circumstances.

11. I advised the Claimant that while the claim would now proceed to a further Hearing, that issues regarding his credibility might very well be raised at that Hearing given the position he has taken and the circumstances in which the Hearing had to be discharged.
12. I will order that the case is listed for a Final Hearing and I will re-issue the Order of 9 May in so far as it relates to an obligation on the Claimant to produce whatever documents he wishes for the next Hearing.
13. I expressed the view that given the sums involved both parties would strenuously turn their minds to trying to resolve the dispute between them.

Employment Judge: James Hendry
Date of Judgment: 14 June 2017
Entered in Register: 14 June 2017
and Copied to Parties