



EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Mr S Parekh
Respondents: The Governing Body of Chelsea Hospital School
The Royal Borough of Kensington and Chelsea
Before: Tribunal Judge Mr J S Burns

JUDGMENT

1. The claims are struck out
2. The trial on 21-24/9/2021 is cancelled.

REASONS

1. This litigation has been characterised throughout by the Claimant repeatedly breaching orders and conducting the procedural aspects of the litigation in an unreasonable manner.
2. The Claimant failed to comply with the original directions dated 17/12/20. I made a previous unless order on 1/4/21, and gave him an oral warning (repeated in writing in the order of 1/4/21) that if he did not comply in future he would be at risk of striking out.
3. He then failed to liaise with the Respondents, as I had ordered, to agree a list of issues so I had to make a further unless order on 2/7/21.
4. I assume he complied with both the unless orders, which I have referred to in paragraphs 2 and 3 above, as I heard nothing further at the time from the Respondents.
5. The Claimant then failed to exchange his witness statement on or before 1/9/2021 as previously ordered (and failed to comply with a reasonable extension for this granted by the Respondents). On the Respondents' application on 7/9/21 I made a third unless order providing that unless the Claimant served his witness statement on the Respondent by 12noon on 10/9/21, his claims would be struck out. I emailed this order directly to the parties on 7/9/21.
6. After the 12 noon deadline on 10/9/21 I read for the first time an email sent at 2.01 that morning from the Claimant asking for an extension, and an email from the Respondents solicitors sent at 6.58 opposing and a further email from the Claimant timed at 11.57 to me filing with me a copy of the Claimant's (unprotected) witness statement. However I had not ordered the witness statement to be filed with the Tribunal or me, and this did not comply with the unless order dated 7/9/21.
7. The Claimant failed to comply with the unless order in that he purported to serve his witness statement on the Respondents solicitors at 12.04 on 10/9/21. Not only was this late but the document was unilaterally password protected by the Claimant, with him only providing the

password to the Respondents at 15.25pm. As no order had been made for the witness statement to be served under a password, and it was illegible until the password was provided, in my view the statement properly so called was not served until 15.25pm.

8. The Claimant has referred to his status as a litigant in person, which I had already noted and taken into account in deciding to make the unless orders.
9. The Claimant has therefore not complied with the unless order dated 7/9/21 and the claims are struck out under Rule 37(1)(c).
10. The Respondent's solicitor's email of 13/9/2021 timed at 10.17, which was copied to the Claimant, states further that the Claimant's witness statement, when it could be opened by them, was found to refer to documents that were not included in the trial bundle and that at 16:01 on 10/9/21, they received an email from the Claimant enclosing new evidence comprising 159 pages in total. The Claimant also suggested that he seeks to rely on further documentation but had been unable to send these documents due to the file sizes. The Claimant had placed these on a USB memory stick, which had not been received by the Respondents solicitors at the time of writing their email of 13/9/21.
11. That being the case, quite apart from the lateness of the Claimant's service of his witness statement on the Respondents, it fails to stand as a reasonable witness statement for purposes of the trial listed for three days to start on 21/9/21, in that it goes well beyond making references to the agreed trial bundle (as directed in paragraph 12 of my order dated 1/4/21) but it also contains references which can be understood only by reference to documents which have not been disclosed at the proper time or in any reasonable fashion, and thus fails to present the Claimant's evidence in a manner which the Respondents or Tribunal can be expected to deal with reasonably given the imminence of the trial.
12. It is not possible to have a fair trial without an adjournment. However, given the needs to use resources efficiently and to avoid unnecessary further delays for other Tribunal users, it would not be proportionate or in accordance with the overriding objective to adjourn the trial. Therefore, as a result of the Claimant's unreasonable conduct of the proceedings, it is no longer possible to have a fair trial on the listed dates.
13. Hence, if I had not struck out the claims under Rule 37(1)(c) I would and do strike them out anyway under Rule 37(1)(b) (unreasonable conduct) and under Rule 37(1)(e) (fair trial impossible).

J S Burns Employment Judge
London Central
14/9/2021
For Secretary of the Tribunals:
Date sent to parties: 14/09/2021
