



EMPLOYMENT TRIBUNALS

Claimant: Mr M H Aidara

Respondent: Delphi Technologies Ltd

Judgment

Mr Aidara has failed to provide evidence by way of a witness statement to support his claim in respect of race discrimination. The effect of the Unless Order dated 12 January 2022 is that the discrimination claim has been and is dismissed.

The claim in respect of unfair dismissal proceeds.

Where a claim is dismissed as a result of an Unless Order, the Claimant may apply to have that Order set aside so that the claim can proceed. That application must be in writing to the Tribunal, copied to the Respondent, and sent to the Tribunal Office within 14 days of this notice. The application must explain why Mr Aidara says it is in the interests of justice to allow the claim of race discrimination to proceed. That application is permitted by Rule 38(2) of the Employment Tribunals (constitution and Rules of Procedure) Regulations 2013, Schedule 1.

Reasons

1. Mr Aidara made two claims, for unfair dismissal and race discrimination. The race discrimination claim in the claim form relates to the circumstances of the dismissal in 2020.

2. An Order for witness statements to be exchanged was made by Employment Judge Gray on 8 July 2021.
3. Mr Aidara did not provide a witness statement. He did not do so by the deadline of 9 December and he did not do so by the date of listed final hearing.
4. The case had been listed for hearing over three days starting on 12 January 2022.
5. It could not proceed because the VHS technology did not work and Mr Aidara could not connect using CVP. That was not his fault. He joined by telephone for the short hearing.
6. There were difficulties for both parties because he had not provided a witness statement. That is explained in the Order of 12 January 2022.
7. The Respondent applied at that hearing to strike out the claims.
8. A full explanation given to Mr Aidara as to the importance and necessity of a witness statement.
9. The Tribunal dismissed the strike out application, instead making an Unless Order. It was explained that the witness statement was essential and that it must set out the facts relied on in relation to Mr Aidara's claims of race discrimination and unfair dismissal.
10. Mr Aidara agreed to send a witness statement by 26 January 2022.
11. He sent a witness statement by email on 23 January 2022.
12. The witness statement covers the unfair dismissal.
13. It raises two matters from 2013 and 2017 when Mr Aidara felt unfairly treated. He does not say that was because of his race, just that other people were differently treated. Those are not what his claim for discrimination is about.
14. He says nothing in that witness statement to explain why he says he was discriminated against on the grounds of race in 2020.
15. The respondent wrote to Mr Aidara on 31 January 2022 saying he had not provided the facts that he relied on. They gave him a further opportunity to provide a witness statement by 14 February 2022.
16. Mr Aidara did not respond to them.
17. The respondents now apply for a confirmatory judgment that both claims have been dismissed pursuant to the unless order. In the alternative the respondent applies for

- the claim or claims to be struck out on grounds including unreasonable conduct or breach of the Tribunal Order.
18. That application was copied to the claimant. The claimant has not sent any response to the Tribunal.
 19. In my judgment, the witness statement provided meets the essential requirements of the Order in respect of unfair dismissal.
 20. The witness statement contains no evidence to support or explain the claim of race discrimination.
 21. That was drawn to Mr Aidara's attention by the respondents in their letter to him and in this application. That was fair. He has not done anything about it.
 22. The effect of the Unless Order therefore is that the claim in respect of race discrimination is struck out.
 23. The case remains listed for a final in-person hearing on 19, 20 and 21 December 2022.
 24. The Respondent's further strike-out application is being addressed separately.

Employment Judge Street

Date: 22 March 2022

Judgment sent to parties: 7 April 2022

FOR THE TRIBUNAL OFFICE