



EMPLOYMENT TRIBUNALS

Claimant
Ms E Clarke

and

Respondent
Compass Group UK & Ireland Limited

JUDGMENT

The Claimant's claim is struck out pursuant to Rule 38(1) (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013).

REASONS

Background

1. The Claimant lodged a claim on 9 December 2020, ticking that she was bringing complaints of unfair dismissal, age, race and disability discrimination, a redundancy payment, notice pay, holiday pay, unlawful deductions from wages and "other payments" and "injury claim". She did not, however, give any details at all and instead stated "The Claimant will submit statement of claim within twenty-eight days due to illness". She did not do so.
2. A Preliminary Hearing Case Management (PHCM) was listed for 2 August 2021. On 30 July, the Claimant sent an email headed "Claimant' Statement of Claim". It did not provide details of all the complaints ticked and there was no reason for the very lengthy delay in providing it. At around the same time, the Claimant sent under separate cover an application for the PHCM to be postponed, saying "I am abroad presently for a court case hearing the same day 2nd August 2021 and all day".
3. Shortly thereafter the Claimant sent to the Tribunal (but not to the Respondent) an application for an order for disclosure of documentation, including her own payslips and paperwork relating to her redundancy (which the Respondent says she has already had).
4. The Respondent objected to the application and the PHCM went ahead in the Claimant's absence. Orders were made for the Claimant to provide evidence by 4pm on 16 August confirming the overseas Court case and of the hearing that the Claimant says she was attending on 2 August 2021, including the date on which that hearing was listed; and for her to confirm which, if any, of the above complaints she was pursuing and an application to amend the claim. The Claimant had mentioned that she has "solicitors" but she was also referred by hyperlink to the Presidential Guidance and in

particular to the sections dealing with amendments.

5. The Claimant was warned that the Tribunal was considering striking out her claim if she did not comply with the Orders made.

Unless Order

6. At 15.44 on 16 August, the Claimant applied for an extension of time to comply with the Orders. Time was extended to 4 pm on 30 August and an Unless Order made that the Claimant was to produce a claim or defence in her name in the Nigerian proceedings in which she claims to be involved, with a notice of hearing requiring her to attend those proceedings for a hearing on 2 August 2021, failing which her claim would be struck out.

Purported compliance by the Claimant

7. At 14.29 and 14.45 on 30 August, the Claimant emailed the Tribunal and the Respondent with an attachment comprising eleven pages:
 - a. A covering email;
 - b. A Letter of Administration from the High Court in Oyo State, Nigeria, for Mr John Olorunfemi Fayose-Oluwayose (said to be the Claimant's father);
 - c. Marriage certificate between Carl Gladstone Clarke and Elizabeth Kofoworosa (or Kofoworola) Fayose dated 22 August 1997;
 - d. Hearing notice dated 1 July 2021 purporting to be from a Magistrate's Court in the "Ibadan Magistrerial [sic] District" (date of hearing – 3 August 2021) in proceedings between Mr Olu Fayose and another (unnamed) against Mrs Adedeyi;
 - e. Record of proceedings dated 2 August 2021 in the Ibadan Magistrate's Court at Iyaganku, between "Plaintiffs" (also referred to as "Claimants") Mr Olufayose and Lady Evang. Modupe Oluwayose and Defendant Mr Sunday Fadahunsi (adjourned to 9 August 2021);
 - f. Record of proceedings dated 2 August 2021 in the Ibadan Magistrate's Court at Iyaganku, with the same Plaintiffs/Claimants but against Defendant Mrs Bukola Sekoni (also adjourned to 9 August);
 - g. Particulars of claim and affidavit in support of the claim against Mrs Sekoni; and
 - h. Notice to Mrs Sekoni of landlord's intention to apply to recover possession.

Respondent's reply to purported compliance

8. The Respondent emailed the Tribunal on 31 August 2021 contending that the Claimant has failed to comply with the Orders made (including the Unless Order) and that accordingly the claim should be struck out.

Claimant's explanation

9. The Claimant contends that the letters of administration were issued in her maiden name (which she says was "Fayose-Oluwayose") and that she is an administrator to her father's estate. She says she was in Nigeria on or before 22 July 2021 to attend the hearing on 3 August and "became aware" of a court hearing in Nigeria on 2 August. She says that "immediately" on becoming aware of the full day court attendance, she contacted the Tribunal and the Respondent's representative.

Conclusions

10. That explanation is not accepted. The Claimant has not shown that she is the same person who is involved in proceedings in Nigeria. The Claimant's name in these proceedings is Elizabeth Clarke. Even accepting that her maiden name was Elizabeth Fayose (the middle name is not entirely legible and may be Kofoworosa or Kofoworola) and that proceedings could have been lodged in Nigeria in 2019 in her maiden name even though she has been married since 1997, that does not explain why she would be taking legal action in Nigeria in the name of Lady Evang. Modupe Oluwayose. The marriage certificate does not contain Oluwayose as part of her maiden name and nor does any other document produced to the Tribunal in accordance with the Orders made or otherwise. The Claimant has failed to comply with the first express provision of the Unless Order.
11. Further, the Claimant's covering email of 30 August 2021 implies that she only became aware on 30 July 2021 of the Nigerian hearing on 2 August and that rather than apply for an adjournment of the same (which it appears was successfully done in any case) she instead applied for an adjournment of the proceedings in the UK.
12. The Claimant has still not supplied the notice of hearing for the Nigerian proceedings nor even said how it came to her attention. This was the second express provision of the Unless Order. Little weight can be placed on what purports to be an official court document that misspells Magisterial, but in any event, that is a notice for the following day, 3 August 2021 and is not in the Claimant's name. There was nothing, on the face of it, to have prevented this Claimant from attending the PHCM on 2 August by virtual means.
13. Accordingly, since the Claimant has failed to comply with the terms of the Tribunal's Unless Order, the claim is struck out under Rule 38(1).

Employment Judge Norris
Date: 1 September 2021

JUDGMENT SENT TO THE PARTIES ON

01/09/2021.

FOR THE TRIBUNAL OFFICE