

Case number:3311423/2020



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Matthew Whelan

**Respondent:** Royal Mail Group Limited

## OPEN PRELIMINARY HEARING

**Heard at:** Watford by CVP **On:** 6 October 2022

**Before:** Employment Judge Britton

### Appearances

For the claimant: In person

For the respondent: Mr J McArdle, Chartered Legal Executive

## JUDGMENT

The Claimant's application that the Respondent be struck out from continuing to defend in this matter is refused and thus dismissed. The case will proceed to the main hearing already scheduled to commence on 12 October 2022.

## REASONS

1. There was a first case management hearing before Employment judge Gumbiti-Zimuto on 5 February 2021 as to which see pages 48-55 in the bundle before me. He

set out the issues which were then slightly amended at the claimant's request on 8 April 2021. I do not intend to rehearse them. He made directions for such as discovery; preparation of trial bundle by the respondent; and exchange of witness statements. He listed a main hearing before a tribunal on the four days commencing 6 September 2021. I learnt today that it was vacated due to lack of judicial resources.

2. In due course having been relisted, it came before a tribunal chaired by Employment Judge Eeley commencing 19 April 2022. It eventually had to be aborted because a panel member became unable to continue and, as is his right, the Claimant did not want to proceed before only a two person panel. Inter alia there was an issue as to whether the respondent had failed to make full disclosure. EJ Eeley re-listed the matter for a hearing over 4 days to start on 12 October 2022. The Judge made an order for discover as requested by the Claimant. This is first at paragraph 3 (a) and (b) and focuses on what was p146 and 142 in the then bundle. Second at paragraph 4 and relating to the appeal case history as therein set out. She made plain that if the Respondent was unable to disclose any of said documents, it should provide an explanation and an appropriate signed statement. The deadline for all of this was 11 May 2022. The Judge's record of that hearing and the orders made is at pages 415-419.

3. On 10 May 2022 the Respondent asked the Claimant for an extension of time to comply with the Orders to 25 May. The Claimant opposed the request. By the end of that day the respondent had sent further copies to him of the documents already in the bundle and related to incident records, so to speak, at pages 142 and 146 plus some new documents it had located. It pointed out that they seemed to be duplicates but would be placed in the bundle and which has occurred.

4. On 12 May the Claimant applied to the tribunal for strike out on the premise that first the respondent had failed to comply with EJ Eeley's orders and also because the respondent had "knowingly disclosed" false documents. The respondent opposed the first limb of the application stressing that it had complied insofar as it could and relying on the efforts of Lisa Turley whose supplementary statement is before me. As to the second limb having denied the accusation pointed out was the lack of any particularisation. On 14 June the Claimant also asked the tribunal to issue a "penal notice". The tribunal has now such power under its Rules of Procedure. It can make an "Unless Order" if appropriate. Usually this is the first stage to ensure discovery compliance if there has been a failure before resorting to considering strike out.

5. On 5 August at the direction of EJ Eeley the tribunal e-mailed the Claimant pointing out the lack of particularisation. But given the nearness to the main hearing, that it should be left to then unless the claimant disagreed in which case the particularisation was needed. On 8 August the Claimant replied making plain he wanted the application

dealt with now. He did not give any particulars as to why the respondent had falsified documents.

6. On the 14 September this hearing was accordingly ordered to determine the issues.

7. Thus I have the bundle as updated and prepared by the respondent; the supplemental statement of Ms Turley and the skeleton submissions of Mr McArdle.

### **Findings on the failure to provide discovery.**

8. In the bundle at p141 is a list of four entries relating to four conduct cases as to the claimant. In the third column each has a number. Between pages 142-5 are the corresponding short records of each incident and the outcome. The first relates to the summary dismissal of the claimant on 6 June 2020. The second and third relate to the issue of formal warnings. The last relates to an "informal discussion". As to these incidents and in particular as to the warnings and the dismissal, the documentation relating thereto ie the investigations; disciplinary hearings; appeals etc is contained in what is a comprehensive bundle.

9. Focused before me by the claimant and stemming from the orders of EJ Eeley, is the status of two other incident numbers namely 8002902619 and 8002981986. What are they and has the respondent withheld further documentation thereto? These have to be seen in terms of what is clearly an IT based document system in which all activity appears to be logged in relating to such as a disciplinary case from start to finish. Taking them in turn, the document relating to 8002902619 is at page 421. It is simply a record that somebody contacted HR for what is known as case support and relating to "sending home". It contains nothing else. In the context of the pleaded events and the bundle it is obvious that it relates to the decision to suspend the Claimant. Thus, as what happened in that context is part of the issues and to be covered by evidence and is documented, this record adds nothing other than to provide a time line. To turn it around another way it obviously does not relate to any further "conduct" of the Claimant. Hence why it is not part of the conduct entries at page 141 and does not therefore have a record such as at pages 142-145.

10. As to 8002981986, it is at page 420. It is the log of activity relating to the claimant's appeal against his dismissal. As to the conduct of that matter the documentation is in the bundle and otherwise will be part of the issues as per the evidence to be heard by the tribunal witness statements having already been exchanged. In other words in itself it adds really nothing and the claimant's argument that there is something sinister because there is no conduct entry on page 141 or any summary as per 142-145 goes nowhere.

11. It follows that I do not find that there has been a material failure in terms of discovery by the Respondent.

## **The second application**

12. The Claimant withdrew it conceding that he had not provided particularisation.

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Employment Judge Britton

Dated: 6 October 2022

Sent to the parties on

7 October 2022

For the Tribunal Office