



EMPLOYMENT TRIBUNALS

Claimant: Mr G Adams

Respondent: Wickes Building Supplies Limited

Heard at: London South (by CVP)

On: 27 March 2024

Before: Employment Judge Emery

REPRESENTATION:

Claimant: No appearance

Respondent: Mr Z Malik (Solicitor)

PRELIMINARY HEARING IN PUBLIC

JUDGMENT

The judgment of the Tribunal is as follows:

The claim is **struck-out** because:

- a. the manner in which the proceedings have been conducted has been unreasonable
- b. the claimant has not complied with a Tribunal order.

and

- c. because it has not been actively pursued.

REASONS

1. As the claimant did not attend this hearing, I set out the reasons for making the above Judgment.

Case management - history

2. Two sets of case management Orders were sent to the parties. Initially the claimant progressed the claim: he emailed Mr Malik on 2 October 2023 about his schedule of loss, which was received by Mr Malik's firm by post on 5 October 2023.
3. The next step was disclosure: the respondent sent its documents to the claimant by email on 15 December 2023, it heard nothing in response and it has heard nothing from the claimant despite several emails since 5 October 2023.
4. The respondent sent its documents to the claimant on 15 December 2023, it received nothing in response.
5. On 25 January 2024 Mr Malik emailed the claimant, pointing out that the claimant was to provide documents by 22 December 2023, and he asked for these by return, no response received.
6. On 29 February 2024 the respondent emailed the tribunal cc'ing the claimant seeking an "Unless Order" – that unless the tribunal provide his documents and a witness statement by 8 March 2024, his claim shall be struck out. I am satisfied that this application was sent to the claimant at his email address.
7. The Tribunal wrote to the parties by post on 13 March 2024, to the claimant's address listed on the claim form. The letter states that Employment Judge Ramsden was considering striking out the claim on the basis that it has been conducted in a scandalous and/or unreasonable way, and the claimant had not complied with the Tribunal's orders, and it had not been pursued.
8. The claimant was required to provide objections to the strike-out consideration in writing or request a hearing no later than 15 March 2024. The claimant did not do so.
9. The respondent wrote on 25 March 2024 seeking this hearing to be converted to a 2 hour public Preliminary Hearing to consider whether a fair hearing is possible.
10. On 23 March 2024, a Tribunal Clerk called the claimant; I am advised that the Clerk spoke to the claimant and asked him if he was going to attend the hearing;

the claimant said he was on the school run and would call back. He did not do so. Earlier this week the same Clerk called the claimant's number, with no reply.

11. I conclude from these facts that the claimant has received notice of today's hearing from the Tribunal and from the respondent, is aware of the hearing, chose not to respond to the Tribunal Clerk's calls, and has chosen not to attend.

The law

12. Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

13. Relevant case law

(a) *Birkett v James [1978] AC 297*: Claims should not be struck out unless there has been intentional and contumelious default (ie the default is disrespectful or abusive to the tribunal), inordinate and inexcusable delay leading to a substantial risk that a fair trial is not possible, or serious prejudice is caused to the respondent.

(b) *Rolls Royce plc v Riddle [2008] IRLR 873, EAT*: A claim may be struck out if a claimant fails "to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the tribunal and/or its procedures"

Conclusions on the evidence and the law

14. I conclude that the claimant is fully aware of this hearing and of what the respondent is seeking. He has failed to progress his claim and he has ignored the Orders of the tribunal and the respondent's correspondence. This is unreasonable conduct, it is evidence that the claim is not being actively pursued,

and the claimant has ignored the orders of the Tribunal. The claim is therefore struck-out.

ORDERS

15. The respondent may renew its costs application no later than 14 days from the date this judgment is sent to the parties. If it does so it must send to the claimant and to the Tribunal its reasons for making the application together with a schedule of the costs claimed.
16. The claimant may respond to this application, and may seek a hearing if he contests this application.

Employment Judge Emery
26 April 2024

.....

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.