



EMPLOYMENT TRIBUNALS

Claimant: Leon Kemplay

Respondent: TFAS Wealth Limited

Heard: in public via CVP **On:** 20 November 2024

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: did not attend the hearing and was not represented

Respondent: Richard Port, solicitor

JUDGMENT AT PRELIMINARY HEARING

The claim is struck out.

REASONS

Background

1. The claimant was employed by the respondent from 11 July 2022 until 16 November 2023. Early conciliation started on 14 December 2023 and ended on 18 December. The claim form was presented on 25 February 2024 and included complaints of disability discrimination and unfair dismissal. The respondent defends the claim.
2. This case was listed for a Preliminary Hearing on 12 July 2024. The claimant did not attend that hearing. He did not inform the Tribunal that he would not be attending and did not seek a postponement.
3. The hearing went ahead in his absence and Employment Judge James ordered

that the claimant explain why he had not attended. In an Order sent to the parties on 19 July 2024 the claimant was warned that if he did not explain, by 9 August 2024, why he did not attend the hearing on 12 July, and confirm that he wanted to proceed with his claim, his claim would be struck out. The claimant therefore had the opportunity to make representations or to request a hearing, as to why the claim should not be struck out because it is not being actively pursued.

4. The claimant has failed to explain his non-attendance at the hearing on 12 July. He did not respond to the strike out warning.
5. Employment Judge James also made a number of Case Management Orders at the hearing on 12 July. One of those Orders was that by 9 August 2024 the claimant must write to the Tribunal to withdraw the unfair dismissal claim or explain why, despite having less than two years' service with the respondent, he is able to pursue an unfair dismissal claim in the Tribunal.
6. The claimant has not complied with any of the Orders made by Employment Judge James at the previous Preliminary Hearing.
7. By letter dated 3 September 2024 the respondent applied for strike out of the claim and, in the alternative, a deposit order. The letter was sent to the claimant by email using the email address provided by the claimant in the claim form.
8. The claimant replied to the respondent's letter in an email that he sent to the Tribunal and the respondent on 9 October 2024. That email was sent from the email address provided in the claim form and is the only communication that the Tribunal has received from the claimant since he issued his claim. In his email he wrote that:

"I have no obligation to engage directly with the respondent or their solicitor. Furthermore, I am not concerned with the fees being incurred by the respondent's solicitor...."

....I am still waiting for a call from the tribunal. It is abhorrent that the respondent submitted their response late, after a rejected extension, with many points being fabricated and then documented by HR teams after the said event....

....as of tomorrow, the Employment Rights Bill comes into place, which removes the two-year qualifying period for dismissal. Therefore, I am more than satisfied with the delays and completely expected the respondent's solicitor to finalise this before tomorrow...."
9. The respondent wrote to the Tribunal and the claimant on 10 October, in response to the claimant's email. It asked that today's hearing consider the application for strike out of the claim. On 22 October the Tribunal wrote to the claimant asking him for his comments on the respondent's letter by 28 October. The claimant has not replied to that letter.
10. On 18 November 2024 the Tribunal wrote to the parties informing them that the

application for strike out would be considered at today's hearing.

Today's hearing

11. Notice of today's hearing was sent to the parties by email on 19 July 2024. The email was sent to the email address provided by the claimant on the Claim Form, and from which he sent his email of 9 October 2024.
12. The respondent referred to today's hearing in its letters of 3 September and 10 October. Finally, the Tribunal's letter of 18 November referred to today's hearing. All of those letters were sent to the same email address for the claimant.
13. The claimant did not attend the hearing. He was not represented. The hearing was due to start at 10 am. Shortly before 10.20 am a member of Tribunal staff called the claimant. The claimant replied that he had not been informed or given notice of the hearing and that his partner was giving birth. He then ended the call by putting the telephone down on the member of staff.
14. I am satisfied, on the evidence before me, that the claimant has been sent notice of today's hearing on multiple occasions. No application for postponement has been made. I therefore decided to proceed with the hearing in the absence of the claimant in accordance with Rule 47 of the Employment Tribunals Rules of Procedure.

The law

15. Rule 37 of the Employment Tribunals Rules of Procedure provides that:

“(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 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;*
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response...”*

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing....”

Conclusions

16. The claimant has, since issuing his claim, shown a total lack of respect for this Tribunal and for these proceedings. He has not attended either of the hearings that have been listed and has not complied with any of the Orders that have been made. The claimant has put the public purse to expense and, no doubt, the respondent to cost by initiating proceedings and then not pursuing them. He could have withdrawn his claim if he did not want to pursue it but has chosen not to.
17. This is the second time that the claimant has not attended a hearing without providing any explanation in advance or seeking a postponement.
18. The claimant has failed to comply with any of the Orders that have been made, including in particular the Order made at the last Preliminary Hearing that he should show cause why the claim should not be struck out.
19. As Employment Judge James commented in the Record of the last Preliminary Hearing, failing to attend a hearing is a serious matter. The Tribunal and the respondent have been put to the expense of attending and participating in the hearing.
20. I am satisfied, on the evidence before me, that the claimant has been sent notice of this hearing on several occasions. On letters referring to this hearing (including the Notice of Hearing) were sent to the email address provided in the Claim Form and from which the claimant wrote his email of 9 October.
21. The claimant's conduct of these proceedings has been unreasonable. He has failed to comply with the Tribunal Orders and is not actively pursuing his claim.
22. The entire claim is therefore struck out under Rules 37(1)(b), (c) and (d) of the Employment Tribunal Rules of Procedure.
23. The complaint of unfair dismissal is also struck out under Rule 37(1)(a). It has no reasonable prospect of success because the claimant had less than two years' service.

Employment Judge Ayre

20 November 2024

JUDGMENT SENT TO THE PARTIES ON

21 November 2024

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FOR THE TRIBUNAL OFFICE