



## EMPLOYMENT TRIBUNALS

**Claimant:** (1) Mrs Y Pritchard  
(2) Mr P Pritchard

**Respondent:** (1) Monthind Clean LLP  
(2) Redwood Cleaning Limited  
(3) The Governing Body of the All Angels Federation

**HEARD AT:** NORWICH Employment Tribunals **ON:** 4<sup>th</sup> August 2017

**BEFORE:** Employment Judge Postle

### REPRESENTATION

**For the Claimant:** Mr Ashley, Counsel.

**For the Respondent:** (1) Claim settled  
(2) Mr Howson, Consultant Peninsula.  
(3) Claim settled

## PRELIMINARY HEARING JUDGMENT

1. The response is struck out under Rule 38 as a result of the Respondent's blatant disregard for the compliance with the Unless Order made on the 13<sup>th</sup> April 2017 by Employment Judge Warren.
2. By consent the second Respondents agree to pay the claimant's Costs agreed at £5,110 plus VAT.

## REASONS

1. This is a preliminary hearing to determine whether Redwood Cleaning Limited have failed to comply with the Unless Order made by Employment Judge Warren and dated the 13<sup>th</sup> April 2017. The Unless Order required "by no later than 4pm on 25<sup>th</sup> April 2017 the second respondent being Redwood Cleaning Limited shall have provided to the Claimant's Solicitors legible and un-redacted

photocopies of all documents in its possession relevant to these proceedings". And it warned; "The second respondent's response shall be struck out and the respondent shall not be permitted to take any further part in these proceedings save as to be heard on remedy in due course if appropriate". The Unless Order set out and it is there to be seen 11 specific areas of disclosure. The second respondents it is true were originally unrepresented and instructed Peninsula on or about late May. The claim by the claimant involved a claim for unfair dismissal, wrongful dismissal, failure to consult under the Transfer of Undertaking Protection of Employment Regulations 2006 and a claim for the protected characteristics of age and sex discrimination.

2. It is to be noted the second respondents were able to file a detailed response in time, although acting in person at that time. I repeat that response was detailed and well pleaded.
3. There was a preliminary hearing case management which took place on the 26<sup>th</sup> January before Employment Judge Warren where the issues were clearly identified and set out, and at the same time a number of orders were made for the further progress of the proceedings. In particular it dealt with disclosure on or before 9<sup>th</sup> February, the parties shall send to the others a list of the documents in their possession or control relevant to the issues in this case. It went onto order that if any party requested a copy of any document on another party's list the party shall provide a clear photocopy within 7 days of that request. No doubt Employment Judge Warren would have explained to the parties what that obligation was and how it worked.
4. It is true that all parties were late providing their list of documents, but it seems all of them had complied with providing a list by the 23<sup>rd</sup> February. The second respondent's list shows 20 documents they were to disclose and were in their possession given the order that had been made. The claimant's Solicitors requested copies from the second Respondent's list on the 1<sup>st</sup> March that prompted no response. Again on the 16<sup>th</sup> March a request was made and no response was received at that stage. Eventually documents were disclosed but the claimant's Solicitors noted in April, particularly the 4<sup>th</sup> April that there were still documents missing from the respondent's disclosure list. They emailed the respondents pointing out the fact that documents were missing. The response from the second respondent was, the gist of which "we'll get back to you soon" at that stage there was no suggestion that the documents were missing or not in their possession.
5. On the 12<sup>th</sup> April there is an attendance note which I have seen, between the claimant's Solicitors and the second respondent particularly Mr Price, and the suggestion is that there shouldn't have been any documents missing. The suggestion was that the only missing document was a letter from T Kingston and the fact that other documents contained in the list had been unilaterally withdrawn by Mr Price who was the person on the telephone without explanation.
6. The claimant's Solicitors therefore applied for an Unless Order, it was clear in its terms and clear what would happen if a party failed to comply. No objection was lodged by the second respondent's to the application for the Unless Order and there was no suggestion at that stage that the documents were missing or an

explanation as to why the documents were not going to be disclosed. The second respondent for reasons best known to themselves effectively ignored the Unless Order. The claimant's Solicitors requested at the expiration of the time limit the Tribunal's confirmation that the strike out would now be confirmed. Employment Judge Warren at that stage suggested that the matter should be dealt with at a hearing. The second respondents were now saying that they provided everything in their list and, had complied with the Unless Order. There were four documents missing and the advice by the respondents was that one document had now been provided, two were not available at the time of the bundles being prepared and one had been withdrawn due to personal reasons or withdrawn due to the sensitivity of the injury which this document photo revealed.

7. When Peninsula Business Services were instructed they advanced no explanation as to the reasons for the non-disclosure. Eventually one document was subsequently disclosed and the remaining three not disclosed consisted of a letter written by the second respondents dated the 25<sup>th</sup> July 2016 to a firm of Solicitors, Fisher Jones and Green with which the second respondents oddly say they don't have in their possession, the other is a statement by Anna Gooch, the third is photographs of Mr Price's injuries relevant to an altercation between the second claimant Mr Pritchard in July 2016 which involved the Police and Mr Price of which interestingly enough Mr Price is a named respondent in these proceedings.
8. It appears only today have the second respondent's advanced reasons for their non-disclosure, in particular they say they have lost the letter they wrote to the firms of Solicitors referred to above, the statement by Anna Gooch they now say did not exist nor did she make one, and the photographs are withdrawn due to personal reasons. It does beg the question why these explanations could not be advanced much earlier and that is in direct contrast to the second respondents originally when providing their list of documents saying they would provide them and they were documents in existence and in their possession. I don't accept that the second respondents at the time acting in person were in some way naïve, the order makes it perfectly clear you have to disclose documents in your possession or control. Why put them on a list if they do not exist or you do not intend to disclose them.
9. Rule 38 of the Employment Tribunals Rules and Procedures 2013 makes it clear an order may specify that if it is not complied with by the date specified the claim or response or part of it shall be dismissed without further order. If a claim or response or part of it is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred. Part of that rule goes on to say where a response is dismissed under this Rule the affect shall be as if no response has been presented as set out in Rule 21.
10. It is correct following an Unless Order the claimant or respondent as the case may be are not required to make any further applications for a strike out as the claim or response is struck out automatically there is no discretion. It is clear to me in this case that the second respondents have failed to comply with their obligations and also to co-operate having regard to the overriding objectives with their duty of disclosure. I note they did not oppose the application for an

Unless Order and when the second respondent instructed advisors they made no further application to have the Unless Order set aside.

11. As a result of the non compliance a full merits hearing that had originally been listed has been postponed. The parties should realise that when orders are made they are there to be complied with, you cannot pick and choose when and what you wish to comply with, the Unless Order should have been complied with and a proper explanation given at the time as to why one couldn't comply with it if that were the case. It seems to me that the respondents have tried to obstruct the process and have had a contumelious disregard for the process in explaining properly why they were or should have been exempt from the disclosure process. They willfully failed to do so.
12. In those circumstances I am satisfied that it is appropriate that the Unless Order should bite and the respondents' response is struck out and that the matter should proceed to a remedy hearing.
13. In response to the Tribunal's Judgment Mr Howson for the Respondents made an application for release of sanctions citing the interests of justice and guidance from the EAT in his view being clear that there should be a reluctance to strike out claims for discrimination.
14. I repeat I am satisfied in this case that the respondents having embarked in what could best be described as giving the claimant the run around in respect of there duties of disclosure, having on the one hand provided a list giving details of documents that they had in their possession and would disclose, and then failed to disclose them, and then giving varying contradictory reasons as to why those documents were no longer available. I am satisfied in those circumstances that there has been a contumelious disregard for the rules and the Tribunal's orders. The old maxim he who seeks equity should come to court with clean hands clearly on the facts and explanations provided by the second respondents they have not. Therefore, I do not believe this is a case where the respondent's application for the release from the sanctions should be granted.
15. At the conclusion of the proceedings there was an application by the claimant's Counsel that the respondents pay the costs involved in today's hearing and the matters leading up to and including the application for an Unless Order.
16. Mr Ashley Counsel produced a costs schedule, and after Employment Judge Postle assessed those costs in the event was considering making an order the respondents pay them. However, Mr Howson indicated that given the Tribunal's findings it was difficult to oppose the application for costs and therefore agreed by consent that the second respondents would pay the claimant's costs in the sum of £5,110 plus VAT, which sum includes Counsel's fees.

### **Listing for Full Merits Hearing Remedy**

17. Given the fact that the second respondent's response is struck out against the Mrs Pritchard's claim and given the fact that the Unless Order was only made in favour of the Mrs Pritchard, there will have to be a remedy hearing at which under the rules the Judge alone will assess whether or not in fact the claimant

has been treated less favourably and then consider remedy. Particularly Rule 21(2) of the Employment Tribunals Rules of Procedure 2013.

18. In the case of Mr Pritchard's claim the Unless Order was not made in his favour and therefore there still remains a full merits hearing.
19. The case has therefore been listed with the parties' agreement at Norwich Employment Tribunals sitting at Norwich Magistrates Court, Bishopgate, NORWICH, Norfolk, NR3 1UP commencing on Monday 9<sup>th</sup> October through to Friday 13<sup>th</sup> October 2017.
20. As Mr Pritchard's case involves protected characteristic under the Equality Act 2010 his tribunal requires a full tribunal.

## ORDERS

### Full Merits Hearing

1. The claimant's Solicitor shall prepare the joint bundle duly indexed and paginated and provide one copy to the second respondent by no later than **11<sup>th</sup> August 2017**.
2. It is ordered that evidence in chief in this case will be through typed witness statements. Such witness statements shall be in chronological order with numbered paragraphs. If a document is to be referred to from the bundle the page number inserted in the relevant paragraph. Such witness statements shall confine themselves to issues to be determined each case and shall not consist of hypothesis, supposition or theory. Such witness statements to be exchanged on **1<sup>st</sup> September 2017**.

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Employment Judge Postle, Norwich.

Dated: 4 October 2017.....  
SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

## **FAILURE TO COMPLY**

**NOTES: (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

**(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.**