



EMPLOYMENT TRIBUNALS

Claimant: Mr J Mbwete
Respondent: Asda Stores Limited
HEARD AT: Bedford Employment Tribunal **ON:** 5th June 2017
BEFORE: **Employment Judge King**
Members: Mr C Davie
Ms Edwards

REPRESENTATION

For the Claimant: In person
For the Respondent: Mr N Pawghazi (Counsel)

JUDGMENT

1. The claimant's application for postponement on the morning of the hearing under Rule 30(1) of the Employment Tribunal Rules and Procedure Regulations 2013 is granted.
2. The respondent's application for a strike out of the claimant's claim under Rule 37B and C of the Employment Tribunal Rules and Procedure Regulations 2013 is dismissed.

The respondent reserves its position as to costs in respect of 1 above.

REASONS

The Facts

3. The claimant is now as of Saturday 3rd June 2017 representing himself, he is no longer represented by his solicitors who remain on the record as far as this Tribunal is concerned this morning.
4. The claimant initially represented himself and attended the preliminary hearing on the 2nd February 2017 to set orders and list the matter for today's hearing.

5. He has provided a written application to postpone, he informs us that he handed his original documents to his solicitor who did not retain a copy but instead his solicitor sent the originals to the respondent's representatives,
6. The respondent sent the bundle to the claimant's solicitors but the first time the claimant was able to see this (despite repeated requests to his solicitor) was Saturday 3rd June 2017 when he met his solicitor just before this hearing. The bundle was a lever arch file.
7. The respondent has provided its witness statements passworded to the claimant's representatives but as the claimant has failed to provide a statement he has not seen these as the respondent.
8. The claimant explained that his solicitor had not started his witness statement so he spent Saturday reading the bundle and then the claimant started his witness statement on Sunday but told us that he has had insufficient time to prepare his own witness statement from the bundle and indeed prepare his case for today's hearing.
9. The witness statements were originally ordered for exchanged on the 28th April 2017 and the respondent had attempted to extend this by agreement and had granted the claimant repeated extensions. On the 30th May 2017 the respondent's wrote to the claimant's representative to put him on notice of the application to strike out, the application for postponement and it would seek a costs order. Again the Claimant had not seen this letter until this morning so was given the opportunity to read the same. The claimant told us he was unaware that the respondent had tried repeated times without success to get hold of his representative.
10. The claimant told the Tribunal this morning he had made repeated attempts to contact his solicitor and was told he was out of the country until 1st June 2017 and was also told extensions had been granted to exchange witness statements and that the case would be ready for hearing.
11. The claimant's representative is a solicitor from a firm of Solicitors, the claimant told the Tribunal that on Saturday his representative went through the bundle of documents with him for the first time and advised him he was no longer prepared to act on a no win no fee basis so that he would require payment for representation today. He had instead focused his attention on trying to settle the case.

The law

12. The Overriding objective under Rule 2 of the Employment Tribunal Rules and Procedure Regulations 2013 states:

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues;*
- and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

13. A party can make an application for a case management under Rule 30 of the Employment Tribunal Rules and Procedure Regulations 2013 which states:

(1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the Tribunal.

(2) Where a party applies in writing, they shall notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible.

(3) The Tribunal may deal with such an application in writing or order that it be dealt with at a preliminary or final hearing.

14. The rules as to strike out are contained at Rule 37 of the Employment Tribunal Rules and Procedure Regulations 2013 which states:

(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;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(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.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

Decision

15. In light of the above we reluctantly grant the postponement, it would not be in the interests of justice or in accordance with the overriding objective for the hearing to commence today. It is clear to us that a postponement of one day would be insufficient as the case is not prepared for today's hearing and tomorrow would not give the claimant sufficient time to represent himself. A

delay of longer than this would mean the case would go part-heard as it has been given five days to be heard.

16. We note from the file that the claimant or his representative have repeatedly failed to comply with the orders of the Tribunal, this is wholly unsatisfactory and as a consequence it is the claimant or his representative that has resulted in the need to postpone the hearing today. The respondent wishes to reserve its position on costs in respect of this postponement under Rule 76(1)(c), we are obliged to consider whether the grounds are made out and whether the costs should be awarded. This is a decision we defer to the conclusion of the final hearing. We defer the decision of whether to make an order at all and if so whether this is a costs order or wasted costs order against the claimant's former representative.
17. In respect of the application for a strike out under Rule 37(b)(c) we do not feel it would be in accordance with the overriding objective to strike out the claim. The claimant has given us information today concerning who is at fault for the failures to comply and the postponement and we are concerned that if the information is correct it would be at the greatest prejudice to the claimant to strike out his claim. It is this application which has caused us the most deliberation and this Tribunal wishes to make it clear to the claimant that he's been given a final chance to prepare his case and that further non-compliance will be viewed dimly. We therefore decide not to strike out his claim on this occasion, but to direction so that the matter can be listed for a final hearing as quickly as possible.
18. The matter was converted to a preliminary hearing to determine the issues and give case management orders.

Employment Judge King
Date: 14 June 2017
JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS