



EMPLOYMENT TRIBUNALS

Claimant Mr T Bhamra
Respondent Mitie Aviation Security Limited

PRELIMINARY HEARING

Heard at: Reading **On: 17 December 2018**
Before: Employment Judge Gumbiti-Zimuto
Appearances
For the Claimant: Not attending and not represented
For the Respondent: Mr B Frew (Counsel)

JUDGMENT ON PRELIMINARY HEARING

1. The claimant's complaints are struck out.
2. The preliminary hearing on 28 January 2019 is to be converted to a costs hearing.

REASONS

1. The claimant brought three complaints against the respondent. The case have the following case numbers 3327786/2017, 3328408/2017 and 3328431/2017. On 18 January 2018 Employment Judge Vowles made an order that the claims are to be heard together at a preliminary hearing on the 29 March 2018.
2. The claimant did not attend the preliminary hearing.
3. The claimant applied for a postponement of the preliminary hearing in an email sent to the employment tribunal at 22:56 on 27 March 2018.
4. The application for a postponement of the hearing was not able to be considered by an employment judge before the time listed for the hearing. At

the preliminary hearing the respondent was represented by counsel and the claimant was not represented.

5. At the preliminary hearing an order was made that the cases ought to be considered together and an order was made to that effect.
6. The preliminary hearing was postponed.
7. A order was made requiring the claimant to provide information relating to the reasons for his failure to attend the hearing.
8. An order was made in the following terms: "Unless the claimant provides to the employment tribunal, and also copies to the respondent, the information set out below by 4.00 pm on **30 April 2018**, the claimants claims are to be struck out. (a) The claimant's travel documents for travelling to Australia on the 28 March 2018. (b) Evidence supporting the claimant's stated reasons for travelling to Australia on 28 March 2018."
9. The case was listed for an open preliminary hearing to consider a number of preliminary issues: whether the complaints were presented time, whether the claimant was an employee of the respondent and the employment tribunal had jurisdiction to consider a complaint of constructive dismissal, an issue of abuse of process or res judicata, and whether in view of the fact that the claimant has previously fabricated documentation to advance his employment tribunal claims it is not possible to have a fair hearing and the claims should be struck out.
10. Due to the delay in employment tribunal sending out the order the dates for compliance with the requirement to provide travel documents and evidence supporting the stated reasons for travel were revised to 31 May 2018.
11. On 5 June 2018 the respondent made an application for the claimant's case to be struck out. On 14 July 2018 the claimant was sent a strike out warning informing him that I was considering striking out his claim because he has not complied with the employment tribunal's orders.
12. On the 30 July 2018 the claimant sent an email to the employment tribunal the email contained documents as three attachments(i) a fax header, (ii) an email dated 31 May 2018, and (iii) a document which begins, "sent by fax 28 July 2018".
13. The fax header document reads as follows:

MEADOW VIEW SURGERY
141 MANDEVILLE ROAD, NORTHOLT MIDDLESEX UB5 4LZ
TEL:0208 422 3181 FAX: 0208621 3437
URGENT
28 July 2018

FAX HEADER

TO: Watford Employment Tribunal

FAX NO:01264 887 302

FROM: Dr G Sivarajah

NUMBER OF PAGES INCLUDING COVER SHEET: 3

Re: Mr Tejdeep Bhamra D.O.B. : 25 Jul 1978
NHS: 436 659 3076
Address: 11 Lancaster Road, Northolt Middx UB5 4TB

MESSAGE:

Please note there was an error on the previous letter we have faxed to you today, regarding the above named patient. Please accept new letter attached with amendments.

Thank you

G Sivarajah

Dr. G. Sivarajah
Meadow View Surgery

DR G. Sivarajah MBBS
141 Mandeville Road
Northolt, Middlesex
UB5 4LZ
TEL: 020 8422 3181
FAX: 020 8621 3437

14. The following points should be noted about this document. (1) There is no record of a "previous letter" as referred to in the message box. (2) There was no "new letter attached". (3) Other than as an attachment to the email of 30 July 2018 there is no record on the employment tribunal file of this fax having been sent to the employment tribunal.

15. The email dated 31 May 2018 reads that it was sent at 23:46 from email address bhamratejdeep@aol.com to watfordet@hmcts.gsi.gov.uk. In the subject heading it reads "3328431/2017". It reads "Importance: High" and "Sensitivity: Confidential". The body of the email reads as follows:

"Further to your email dated 05 May 2018 for compliance with Order 2 in the Case Management Summary and Orders sent on 05 May 2018;
Fax was sent to the tribunal on 29 March 2018 at 9am informing and advising the tribunal that I will not be travelling to Australia, the fax was sent to Watford ET on the fax number 01264 887302 on 29 March 2018 and I do not have travel documents due to not travelled to Australia I had informed the tribunal by phone and by fax and requested the Admin Officer to pass the message to the Employment Judge and update the records and I was told the Employment judge will update and the fax had been received at the Watford Tribunal office which was sent at 9am on the day of the hearing on 29 March 2018. Father's illness was communicated to by phone call I had received from Australia and text message.
I have sent copy of the fax today 31 May 2018 in the post the Watford Employment Tribunal due to not have access to printer or scanner.
Kind Regards
Tejdeep Bhamra"

16. The following points should be noted. (1) There was no email dated 05 May 2018 this appears to be a reference to the employment tribunal letter to the parties sent by email on 15 May 2015. (2) There is no record on the employment tribunal file of an email sent by the claimant at 9am on the 29

March informing and advising the tribunal that the claimant was not travelling to Australia. The first reference to the claimant not travelling to Australia is in the 31 May 2018 email above. (3) There is no record of a telephone conversation between the claimant and “the Admin Officer” taking place. (4) The claimant could not have been told that a “fax was received at Watford Tribunal office which was sent at 9am” because there was no such fax received. (5) The communication between the claimant and the Employment Tribunal on the 29 March 2018 is summarised in the following paragraphs.

17. The claimant’s email seeking a postponement was made at 22:56 by email on 27 March 2018. In the email the claimant said “my father has been involved in accident sustained injury ... severe heart attack is now unconscious in serious condition ... I have to travel to his location Australia tomorrow.”
18. On 29 March at 10:32 the employment tribunal sent an email to the claimant which included the following: “Thank you for postponement application in your email dated 27 March 2018. Employment Judge Gumbiti-Zimuto is hearing your case management preliminary hearing today at 2:00pm but is currently hearing another case. He said he will consider your request at 2:00pm.”
19. The employment tribunal did not know that the claimant was not travelling to Australia when the email was sent at 10:32. The claimant did not communicate with the tribunal to give correct the position, i.e. he was not travelling to Australia as previously indicated.
20. On 20 August 2018 a notice was sent to the parties informing them that a preliminary hearing had been listed to consider whether to strike out the claimant’s claim.
21. There has been no further communication from the claimant to the employment tribunal or I am told with the respondent.
22. Rule 37 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 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.

23. The claimant's conduct of the proceedings is in my view unreasonable for the following reasons. (1) The claimant made an application to the tribunal for a postponement on the basis that he has travelling to Australia because his father was unwell. (2) The claimant in fact did not travel to Australia and did not inform the tribunal that he was not travelling to Australia or that there were any other reasons why he could not attend the hearing listed on the 29 March 2018. (3) The claimant has not provided to the employment tribunal the documents that he claims were sent to the employment tribunal on the 29 March 2018. (4) I am of the view that the documents were not sent to the tribunal by the claimant as he says in the email of the 31 May 2018 (i.e. the attachment to the email of the 30 July 2018). (5) The email of 31 May 2018 was only ever sent as an attachment to the email of the 30 July 2018. (6) The position stated by the claimant in the email of 31 May 2018 is untrue.
24. On 14 July 2018 the claimant was given notice that consideration was being given to striking out his claim because he has not complied with the employment tribunal's orders. On 20 August 2018 a notice was sent to the claimant informing him that a preliminary hearing had been listed to consider whether to strike out his claim.
25. The claimant has not replied to the warnings and did not attend the hearing.
26. I am satisfied that the claimant's conduct of the proceedings has been unreasonable, and that the claimant has been given a reasonable opportunity to make representations, either in writing or at this hearing but has chosen not to engage with the process. I therefore strike out the claimant's claims.
27. The respondent has made an application for costs. I am satisfied that the claimant's conduct has been unreasonable. I attach a copy of the costs schedule which has been presented by the respondent. The respondent's application for costs is the sum of £20,000. I note that the costs incurred by the respondent exceeds that amount.
28. A Tribunal may make a costs order, and shall consider whether to do so, where it considers that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way that the proceedings have been conducted; or any claim or response had no reasonable prospect of success. A party may apply for a costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application. A costs order may order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party.
29. The claimant is to notify the employment tribunal whether the claimant wishes for this application to be considered at a hearing or whether he is content for the

**Case Number: 3327786/2017
3328408/2017
3328431/2017**

application to be considered in writing. If the claimant wishes the application to be considered at a hearing the application will be considered at the hearing listed for the 28 January 2019.

Employment Judge Gumbiti-Zimuto

Dated: 18 December 2018

Sent to the parties on:

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For the Tribunal:

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