



EMPLOYMENT TRIBUNALS

Claimant
Mr M Hypolite

v

Respondent
Cambridge City Council

(OPEN) PRELIMINARY HEARING

Heard at: Cambridge

On: 25 April 2018

Before: Employment Judge Ord

Appearances:

For the Claimant: Did not attend and was not represented.

For the Respondents: Mr P Bownes, Solicitor.

JUDGMENT ON PRELIMINARY HEARING

1. The claimant's application to set aside the Unless Order of 3 August 2017 is dismissed.

REASONS

1. On 3 August 2017 Employment Judge Laidler made an Unless Order requiring the claimant to provide further and better particulars of his claim to have been the victim of discrimination on the protected characteristic of his race by not later than 17 August 2017, which was subsequently extended by the tribunal to 1 September 2017.
2. On 7 September 2017 the claimant said that he had only that day gone through his emails finding the email from the tribunal sent on 18 August 2017 and asking for a further two weeks to reply from the extended date (ie up to 15 September 2017).
3. The claimant failed to comply with that deadline and sent particulars to the tribunal on 19 September 2017.

4. On 8 October 2017 Employment Judge Warren directed that the claimant's claims had been dismissed because of his failure to comply with the Unless Order made on 3 August 2017, and as amended on 18 August 2017.
5. The respondent made an application for costs and the claimant was given 14 days to make any written representations why costs should not be ordered.
6. On 20 October 2017 the claimant emailed the tribunal asking for the decision to dismiss his case to be overturned. That was treated as an application to set aside the Unless Order pursuant to rule 38 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, and on 3 December 2017 notice of hearing was sent to the parties for today advising that the hearing would determine:
 - 6.1 The claimant's application for the Unless Order to be set aside.
 - 6.2 The respondent's application for costs.
 - 6.3 If appropriate case management discussion and orders.
7. The claimant failed to attend today's hearing and neither the tribunal nor the respondent had any contact from the claimant in the interim. The claimant did not have a telephone number on the claim form which could be used for contact purposes.
8. I was satisfied that notice of the preliminary hearing was sent to the claimant and should have been received by him. It was sent to his last given address.
9. The claimant having failed to attend today's hearing his application to set aside the Unless Order was refused. The claim was dismissed for failure to comply with the Unless Order and that dismissal stands.

JUDGMENT ON COSTS

1. The claimant is ordered to pay the respondent's costs of this action, summarily assessed in the sum of £1,250. The claimant's conduct of these proceedings has been unreasonable and it is appropriate to make an order pursuant to rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. The history of this matter is set out above and does not require repetition.
2. Under rule 76 a tribunal may make a costs order and shall consider whether to do so where it considers that a party acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing of the proceedings or in the way that the proceedings have been conducted.

3. This is the second occasion when the claimant has failed to attend a preliminary hearing. The claimant issued proceedings claiming discrimination on the protected characteristic of race without giving any particulars whatsoever of that allegation in his claim form other than to say:

“I suffered racial abuse whilst employed and was call [sic] coco pops and told to go back to where I cam from”
4. The tribunal made an order on 3 August 2017, in the terms of an Unless Order for the delivery of the following further and better particulars in respect of the claim that the claimant suffered racial abuse, for each comment:
 - 4.1 The date on which it was made;
 - 4.2 Who made it;
 - 4.3 Whether there were any witnesses present and if so their names;
 - 4.4 Precisely what the comment was;
 - 4.5 How the respondent allegedly committed or was responsible for an act of discrimination and what type of discrimination it is alleged occurred.
5. Further the claimant was ordered, as part of the Unless Order, to give particulars of his unparticularised claim that he was owed arrears of pay by stating:
 - 5.1 What amount is claimed;
 - 5.2 When it should have been paid;
 - 5.3 How and why the respondent is responsible for the alleged arrears of pay (the respondent denies that it was the claimant’s employer as the claimant was employed by an employment agency and worked at the respondent’s premises).
6. As set out above the time for compliance with that Unless Order was extended, due to the delay in sending the order out, the claimant then asked for a further extension of time which he himself did not comply with and as a result of the claimant’s failure to comply with the Unless Order the case was struck out.
7. Such particulars were provided and went far beyond the description of the allegations of discrimination referred to in the originating claim and would have required formal amendment to be allowed. No application for amendment has been made at any stage.
8. The claimant thereafter has failed to engage with the tribunal. This is the second occasion when he has failed to attend a hearing.
9. I am satisfied that the claimant’s conduct of these proceedings has been unreasonable. In the event that he was unable to attend any hearing, he should have contacted the tribunal. In the event that he had not received notice of

today's hearing a reasonable person would have contacted the tribunal to find out what was happening to his application. He has made no such contact with the tribunal. It is in any event the responsibility of a party to ensure that the tribunal has a means of contacting them which is certain and secure. The claimant has identified that he does not regularly check his emails, documents have been also sent to him by post and he has not provided a telephone number on which he can be contacted. In those circumstances I am satisfied that the tribunal administrative staff have done all that can be reasonably expected of them to ensure that the claimant was aware of today's hearing.

10. The respondent has been put to costs attending the previous preliminary hearing which the claimant did not attend, and further attending today. It has been required to submit a response to a unparticularised claim and all of those costs have been unreasonably incurred.
11. The respondent has put forward a schedule of costs (which should not include the costs of today's hearing which involved Mr Bownes of the respondent's solicitors travelling from and to Birmingham to today's hearing, and attending a hearing which was not attended by the claimant.
12. That schedule of costs amounted to £1,712.50. The costs of attending today are estimated at £325 (the same as were incurred on 3 August 2017) making a total claim for costs of £2,037.50.
13. I am satisfied that it is appropriate under rule 76 to make an order for costs because the claimant has conducted these proceedings unreasonably.
14. The costs are, overall, higher than I would anticipate for a case which has not progressed beyond service of an ET3 and the provision of some limited further particulars. I summarily assess the respondent's costs in the sum of £1,250.00 and the respondent is entitled to a costs judgment in that sum.

Employment Judge Ord

25.5.2018

Sent to the parties on:

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For the Tribunal:

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