



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Cercel

v General and Medical Finance Limited

Heard at: Cambridge

On: 10 January 2018

Before: Employment Judge Ord

Appearances

For the Claimant: Non-attendance and not represented

For the Respondent: Mr Sonaike, Counsel

JUDGMENT ON RECONSIDERATION

1. The claimant's application for reconsideration of the judgment dated 9 October 2017 is dismissed.
2. The claimant is ordered to pay the respondent's costs of today's hearing summarily assessed in the sum of £2,006.70.

REASONS

1. This matter was listed for hearing today on the application of the claimant who sought reconsideration of the judgment made on 9 October 2017. On that day, the tribunal was due to hear an application by the respondent that the claimant's claim be struck out on the basis that the allegations contained therein and each of them had no reasonable prospect of success; alternatively, for a deposit order to be made in relation to each and any of the allegations on the basis that they had little reasonable prospect of success.
2. The claimant failed to attend that hearing and in his absence judgment was entered striking the claim out on the basis that it had not been actively pursued. A costs order was made in favour of the respondent.
3. Unknown to the tribunal that the time the judgment was made the claimant had submitted from an email address "Claims@Litigative.EU" an email sent

to the administration of the tribunal and copied, inter alia, to the respondent and to the respondent's solicitor, enclosing an application to strike out the response in the form of a witness statement which also purported to deal with the respondent's application.

4. In the body of the email it was said that the claimant was concerned to attend the hearing that day as he felt he would be "further harassed" by the respondent. For the same reason he said he did not wish to reveal his current address to the respondent as he said he feared that they would try to cause harm to him following publication of "his websites" which he said were "aimed at exposing the unlawful treatment of general and medical". He asked for all correspondence to be communicated via Legal@costingcercel.com."
5. That email was sent at 09:42 on the morning of the hearing and that it was not before the tribunal nor had it come to the attention of those attending the tribunal on behalf of the respondent when the matter was called on for its hearing at 10am that morning.
6. Upon receipt of the judgment of 9 October 2017 the claimant made an application for reconsideration dated 13 October at 10:51am. The claimant submitted, from the email address [Legal@costingcercel](mailto:Legal@costingcercel.com), a copy of the email sent at 9:42am on 9 October. The claimant says that was an email:

"which was not processed by your court and resulted in the judge deciding that my case is dismissed. Please consider this as a request to review the judgment, as with the current outcome, my right to a successful remedy was infringed by your court. Please print this email to highlight the request to review".

7. On 16 October 2017 at 9:37am, from the email address claims@litigative.EU, the tribunal received an email on behalf of the claimant asking for advice regarding Rule 37 of the Employment Tribunal Rules of Procedure and stating the opinion that the judgment of 9 October was made in breach of Rule 37(2) which states that "A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representation, wither in writing or, if requested by the party, at a hearing".
8. The application for reconsideration was listed for hearing today by notice sent on 19 November 2017.
9. On 20 November 2017, the respondent's solicitor sent to the tribunal and the claimant a tweet which the respondent said had been made by the claimant and which read:

"Apparently at [General_Medical#Bribed](#) the #judge for £2,000 (pre#judgment costs of £2,000 and post judgment legal costs of £4,000. [Twitter.com/tunemywebpromo](https://twitter.com/tunemywebpromo)"
10. On 27 November, the claimant replied from the email address legal@costingcercel.com. He did not deny being the author of the tweet but

said that the account “tunemywebpromo” was “being used by various individuals who are being hired by tunemywebsite to promote their work”. He categorised the statements made by the respondent’s solicitors as aggressive and intimidating and amounting to “further scandalous behaviour and perjury”. He said that although he had the social medial tools to make sure the entire UK was aware of the case, he had decided “respecting your court” to await final judgment before starting to make the respondent “famous for his infamy”.

11. When the matter was called before me today the claimant was not in attendance but he had sent at 06:56 the same morning an email from Legal@costingcerel stating that he had “made arrangements for security for me to attend the hearing today, but a last-minute disruption caused these to no longer be possible”.
12. The claimant went on to say that he genuinely feared that the respondent or his legal team would cause him bodily harm “as they did through my employment and for these reasons I cannot attend the hearing today”. He submitted six pages of attached script making applications:
 - 12.1 for a default judgment because the respondent had “battered and harassed the claimant in the time preceding this case and the respondent, through his legal team, harassed the claimant throughout this legal case”;
 - 12.2 for reconsideration of the judgment of 9 October because it was made without proper consideration of the Employment Tribunal Rules so that it was in error and ultra vires as was also required by the European Charter of Fundamental Rights through Article 47 (The right to an effective remedy);
 - 12.3 to strike out the respondent’s case under Rule 37(1) of the Employment Tribunal Rules because the respondent had harassed and defamed the claimant, attempted to pervert the course of justice by means of perjury towards the court by misleading the tribunal that the claimant posted pornographic content on the Respondent’s twitter account, failed to meet his employment goals and was disrespectful to his colleagues as well as defaming the claimant by falsely accusing him of defamation, and
 - 12.4 requesting an award of £40,000 as compensation for aggravated damages.
13. The claimant sent a further copy of the witness statement which he had already supplied adding a further four numbered paragraphs in submissions including a schedule of costs seeking an award of £10,000 for discrimination (expressed as “a minimum”), a further £10,000 for harassment and defamation and legal costs described as “self-preparation “amounting to the sum of £2,400 based on 12 hours work at £200 per hour. Although the

document was sent on 10 January it bears the date 9 October 2017 and contains a statement of truth.

14. As part of today's hearing I have read and taken note of each of the documents referred to above.
15. The first application to be considered by me today was the claimant's application to reconsider the judgment of 9 October 2017.
16. Dealing first with the question of whether or not the tribunal was entitled to make that judgment (having regard to the terms of Rule 37) I have reached the following conclusions:
 - 16.1 First, under Rule 37(1) a strike out may occur at any stage of the proceedings.
 - 16.2 Under Rule 37(2) a claim 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.
 - 16.3 The hearing on 9 October 2017 was to consider the respondent's application to strike out the claimant's case on the basis that it had no reasonable prospect of success. The original notice of that hearing was sent on 10 July 2017 (at which time the hearing was due to take place on 8 August 2017, subsequently being postponed to 9 October) and contained the following words "You may submit written representations for consideration at the hearing. If so they must be sent to the tribunal and all other parties not less than seven days before the hearing. You will have the chance to put forward oral arguments in any case".
 - 16.4 The claimant ignored this timescale and sent his written submissions less than 20 minutes before the hearing. It is not surprising, therefore, that those submissions were not before the tribunal when the decision was taken.
 - 16.5 The claimant had been given a reasonable opportunity to make representations either in writing or at the hearing to answer the application to strike out his case. He did not avail himself of those opportunities save and except to the extent that he sent written submissions to the tribunal just a few minutes before the hearing was called on. I am therefore satisfied that the claimant had reasonable opportunity to make representations, either in writing or at a hearing, before his case was struck out.
 - 16.6 In any event the email advising that the claimant would not attend the hearing alleged that he was concerned about further harassment from the respondent. He did not particularise in his document anything

which could legitimately be described as harassment nor did he explain why he considered that he would be further “harassed” at an open preliminary hearing before a judge in a court building with members of security present throughout, nor why he could not have arranged for a representative to attend on his behalf or submit his written submissions at least seven days before the hearing in accordance with the Tribunal’s directions and orders.

- 16.7 I have considered the content of emails and attachments from the claimant dated 9 and 13 October as well as those dated today, 10 January. I have also had regard to the submissions sent by email on 6 December 2017 although they largely touch and concern other matters. Notwithstanding the very late submission of the claimant’s email of 9 October 2017, the fact that it was submitted prior to the hearing but had not come to my attention at the hearing, was the sole basis upon which I determined the claimant’s application for reconsideration should proceed.
- 16.8 The claimant has not attended today’s hearing. The claims that he made arrangements for security to attend the hearing are noted but he has not made any such arrangements with the Court Manager or the Security Team at the Cambridge Employment Tribunal so far as I have been able to ascertain. He does not state what arrangements he had made or what “last minute disruption” rendered those arrangements no longer possible.
- 16.9 The claimant does not say why he has a genuine fear that the respondent or his legal team will cause him bodily harm. I do not find the claimant’s reasons for his failure to attend today’s hearing to be credible. There is no explanation or plausible reason why it should be thought that the claimant would be at risk of physical harm by attending today’s hearing. There are ample security personnel in place at the court building, the claimant has made no request for assistance from security and there are ample waiting rooms behind closed doors where he could have waited prior to the hearing coming on without having to have contact with, and without receiving any communication from the respondent.
- 16.10 The respondent had been represented by respected Counsel who is fully aware of his duties and responsibility to the court. I do not find it credible that either Mr Sonaike nor his instructing solicitor, Mr Walker, would do by act or omission anything to allow any person for an on behalf of the respondent to cause (let alone cause themselves) any harm to befall the claimant had he attended today.
- 16.11 The claimant’s submissions do not give any substantial ground which indicates why it is in the interest of Justice to revoke the original judgment. He merely states the obvious fact that by having his case struck out he can no longer pursue it.

- 16.12 I have as part of the consideration of today's application, considered the merits of the claimant's claims and do so as part of the consideration as to whether or not it is in the interests of justice to vary or revoke the judgment of 9 October.
- 16.13 The claimant's claim is in three parts;
- 16.13.1 The claimant brings a claim for unfair dismissal. He was employed by the respondent from 31 October 2016 until 13 February 2017. He does not have sufficient qualifying service (not less than two years, as required by s.155 of the Employment Rights Act 1996) to bring such a claim.
- 16.13.2 He states that he was discriminated against on the grounds of his race. He provided further and better particulars of his claim by way of answer to the respondent's response on 30 June 2017. He alleged that he was discriminated against by being dismissed because of "white British nationals" who made vindictive and vexatious complaints against him and when he provided evidence to support his innocence, such evidence was ignored "...In answer to an allegation that he had posted pornographic content on the respondent's Twitter account". The claimant then says that he made a complaint against his manager who was alleged to have "threatened, harassed and poked him" and that the respondent advised the claimant that his complaint would not be investigated because he was a "temporary EU worker". The claimant has provided no evidence of any sort in support of this allegation either in answer to the respondent's application to strike his case out or otherwise.
- 16.13.3 The claimant says that the respondent acted in breach of his contract in particular by reference to the allegation that the claimant had not met his employment goals. He says that this allegation was made because he refused to deceive his director when he was asked by his manager to edit reports away that would deceive the Chief Executive. The scope of the tribunal's jurisdiction in a claim for breach of contract is set out in the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994. Claims for breach of contract are limited to claims for monies owed at the time of termination of employment. Beyond that the tribunal has no jurisdiction in that field. The claims which the claimant identifies as claims for breach of contract are outside the jurisdiction of the tribunal.
- 16.13.4 There is an implication in the claimant's pleading that he suffered detriment because of having made protected disclosures. Such a claim is doomed to failure because he

relies upon his own refusal to do things at the behest of others and not any disclosure of information made by him.

- 16.13.5 On the basis of all the information which the claimant has provided, had it been necessary for me to determine the issue today, I would have found that the claimant's complaints had no reasonable prospect of success. Bearing that in mind I do not consider that it is in the interests of justice to vary or revoke the original judgment made on 9 October for all the reasons set out in this judgment.
- 16.13.7 Accordingly, the claimant's application for reconsideration of the judgment of 9 October is dismissed and his further applications fall away.
- 16.14 At the conclusion of today's hearing the respondent made an application for costs. I was satisfied that it was appropriate to make a costs order against the claimant because I could see no justifiable reason for his failure to attend today's hearing. The allegations of threat to his person safety lacked any credibility in my eyes. Further, his written submissions in support of his application for reconsideration lacked clarity and merit. Finally, I considered that the application for reconsideration had no reasonable prospect of success on consideration of all the relevant documents.
- 16.15 Bearing in mind the very late delivery of written submissions prior to the hearing on 9 October 2017 and again today, together with the contents of his email of today's date and the allegations made against the respondent and it's legal representatives, which lacked any evidential basis and which I considered to be utterly fanciful, I am satisfied that the claimant has acted vexatiously, abusively, disruptively and unreasonably in the conduct of these proceedings, including the conduct of this application. For those reasons, I considered it appropriate to make a costs order.
- 16.16 The respondent was represented today by counsel and solicitors on behalf of the respondent had been put to time costs in preparing for and responding to today's hearing. Although they were in attendance no claim was made for the solicitors attending today's hearing. The respondent claimed 3 hours and 6 minutes of time (1 hour and 36 minutes on the telephone and 1 hour and 30 minutes on documents) for preparation for today's hearing at the rate of £235 per hour. Counsel's fees for attendance to today's hearing were in the sum of £1,250 and counsel incurred travel costs of £36.70. The respondent is registered for VAT and is able to recover VAT on legal fees.
- 16.17 I was content to summarily assess the respondent's costs as claimed. I considered those sums to be reasonable and proportionate. I

therefore made a costs order in favour of the respondent in the sum of £2,006.70.

Summary

- 17. The claimant's application for reconsideration of the judgment of 9 October is dismissed.
- 18. The claim stands as struck out for the reasons set out on 9 October 2017.
- 19. The respondent has a costs order in its favour against the claimant for today's hearing in the sum of £2,006.70.

Employment Judge Ord

Date: ...2 February 2018.....

Sent to the parties on: ..7 February 2018

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For the Tribunal Office