



EMPLOYMENT TRIBUNALS

Claimant: Miss Z Sutton

Respondent: Slater & Gordon (UK) Limited

Heard at: Manchester

On: 29 January 2019

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: Mr M Cain, Solicitor

Respondent: Mrs J Ferrario of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The application to strike out the Response of the respondent is dismissed.
2. The respondent shall pay the claimant's costs of and associated with the application in the sum of £1,398 plus VAT to the claimant's solicitors by no later than 4.00pm on 5 February 2019.

REASONS

1. Witness statements were ordered to be exchanged in anticipation of the seven day hearing in March 2019. Witness statements had to be exchanged by no later than 14 December 2018. The respondent failed to comply with that Case Management Order and continued to fail to comply with it, leading the claimant's solicitors, quite properly and reasonably, to apply to the Tribunal to strike out the Response of the respondent. The solicitors for the respondent never at any time offered to guarantee a date by which witness statements would be exchanged, and indeed the witness statements of the respondent were only served on the claimant's solicitors late in the day on 28 January 2019, the afternoon before this hearing. No-one from the solicitors acting for the respondent attended the hearing to provide any explanation as to why the order had not been complied with, and why it had only

been complied with so close to the hearing at which the strike out application was to be considered. Furthermore, no explanation was offered by the solicitors for the respondent as to why the date set by the Tribunal for exchange of witness statements on 14 December 2018 had not been complied with, and why it had then taken exactly six weeks longer for witness statements to be exchanged, resulting in them being exchanged only in the late afternoon before the date of this hearing on 29 January 2019. The respondent's solicitors are experienced in matters relating to the Employment Tribunal, as indeed are the respondents who are themselves a firm of solicitors.

2. The Tribunal found that the application which was made by the claimant's solicitors to strike out the Response was a perfectly fair, reasonable and rational response to the conduct of the solicitors for the respondent. The respondent never applied at any time to vary the date for exchange of witness statements, either before the expiry of the original time limit or indeed at any time after that date. In effect, therefore, the solicitors for the respondent and the respondent itself continued to be in breach of the order for exchange of witness statements up to and including the late afternoon of Monday 28 January 2019.

3. Mrs Ferrario, quite properly and reasonably, indicated that she accepted the view expressed by the Tribunal that an order for costs in favour of the claimant was inevitable and appropriate. For the avoidance of any doubt, the solicitor for the claimant and counsel for the respondent were given the opportunity to make detailed representations, firstly about whether or not an order for costs should be made, and secondly about the potential value of any such order. Instead they both participated in a discussion with the Tribunal which led to agreement. A Schedule of Costs was produced by the solicitor for the claimant and formed the basis of the discussions with the Tribunal. Both parties indicate their agreement to the amount of the order for costs being in the sum of £1,398 plus VAT, such sum to be paid by no later than 4.00pm on 5 February 2019.

4. The order for costs was appropriate because of the continuing flagrant breach by the respondent and the respondent's solicitors of the Case Management Orders which had been made for the exchange of witness statements. In the absence of any promise of compliance by a particular date on the part of the respondent, it was entirely appropriate for the application to strike out the response to be made and listed for hearing before the Tribunal on Tuesday 29 January 2019.

NOTE OF DISCUSSION

1. The solicitor for the claimant indicated that he would like the Tribunal, on 29 January 2019, to consider an application under rule 43 of the Tribunals Rules of Procedures to order that certain witnesses of the respondent were not present in the Tribunal room when either the claimant gave evidence and was cross-examined or when other witnesses of the respondent were present and cross-examined.

2. The Tribunal however indicated to the claimant that it felt that that application would be more appropriate to be made to the Tribunal at the beginning of the full hearing. Mr Cain acknowledged that opinion and the Tribunal promised to make this note in this Judgment to put the Tribunal on notice that such an application will be

made by Mr Cain at the beginning of the final hearing of the claims of the claimant in March 2019.

Employment Judge Whittaker

Date __30th January 2019_____

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 February 2019

FOR THE TRIBUNAL OFFICE

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