



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr Peter Barrett

**Respondent:** R and L Armishaw

**Heard at:** Bristol (via CVP video hearing) On: 15<sup>th</sup> July 2022

**Before:** Employment Judge Cadney

**Representation:**

Claimant: In Person

Respondent: Ms R Chinnadurai

## PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim for damages of £278 for the destruction of a number of calendars does not fall within the jurisdiction of the tribunal and is dismissed.
- ii) The respondent's application to strike out the claimants other claims is dismissed.
- iii) The case will be relisted for final hearing as set out below.
- iv) Case Management Orders are set out below.

### Reasons

1. This case was listed for final hearing today. However the respondent made a preliminary application to strike out the claims, which I heard first. It was agreed that if I did not accede to the strike out application I would give directions for a 1 day final hearing as the two hour listing was insufficient to determine all the claims in any event.

2. By a claim form lodged on 8<sup>th</sup> February 2022 the claimant brought claims of the unlawful deduction from wages in the failure to pay overtime; unpaid holiday pay, unpaid expenses; and the value of the loss of a number of calendars.
3. Unlawful Deduction from Wages / Unpaid Overtime – The claimant was employed as Farm Manager from 12<sup>th</sup> April 2021 until his resignation on 7<sup>th</sup> December 2021. He was employed on a contract which provided for a forty five hour week but it is not in dispute that it was anticipated that he would need, at least at certain times, to carry out overtime and that he would be paid for doing so. The claimant's claim is that he carried out 241.5 hours overtime. He was paid for 110 hours in October 2021 and the balance of 141.5 hours is owing. The exact amount is not at all clear; arithmetically the figures above give 131.5 hours owing, and in the ET1 the figure of 144.5 hours is given.
4. The respondent does not dispute in principle that he is entitled to paid overtime but contends that the claimant has simply never provided any, or any sufficient proof that he actually carried out the work. They contend that he did not at any point prior to making the original request put in a timesheet or make any claim for overtime. They contend that the 110 hours was a goodwill payment and that he had only in fact provided proof of fifty one hours. For the reasons set out below they are intensely suspicious of the accuracy of the claimant's records and contend that the 110 hours already paid represents more than the claimant can prove that he carried out.
5. Holiday Pay – In his claim form the claimant contends that in his eight months employment had had only two days holiday and is owed the balance. The respondent contends that the claimant had taken 6.5 days and had agreed to take two weeks during his notice period.
6. Expenses – As with the overtime claim the respondent contends that it has paid all expenses claims for which there are receipts or evidence. In his claim form the claimant suggests that in total he paid out some £900 in respect of farm expenses. Those that are currently in dispute are those without evidence.
7. Calendars- The claimant alleges that the respondent destroyed a box of fifty calendars and claims the cost of £278.00. The respondent submits that the tribunal has no jurisdiction over the calendar dispute irrespective of the rights and wrongs of the dispute.
8. Employers Contract Claim – The respondent claims that it has overpaid the claimant for fifty nine hours overtime and claims £605.34. In addition it claims for £2,400 as the cost of a replacement during the balance of the claimant's notice period.

Strike Out Application

9. By a written application dated 8th July 2021 supplemented by oral submissions today the respondent seeks an order striking out the claim for:
  - i) Failure to comply with case management orders (rule 37(1) ( c )
  - ii) The manner of the claimant's conduct of proceedings has been vexatious and/or unreasonable in that the claimant has consistently until very shortly before the hearing refuse to disclose relevant documents, raised issues and insisted that documentary evidence is introduced into the bundle which have no relevance to any issue before the tribunal, and that he has introduced fabricated evidence in respect of his overtime claim. (rule 37 (1) (b)
10. Failure to comply with case management orders – In particular the respondent relies on the failure of the claimant to disclose copies of his calendar until one week before the trial, and only then following a specific order from the tribunal. The significance of this document is that it is the record the claimant relies on to prove the hours he worked in support of his overtime claim. The respondent is intensely suspicious of the validity of the document but this part of the application is based on the proposition that the failure voluntarily to disclose a document that is central the claim is necessarily a breach of the tribunal's disclosure order.
11. Vexatious/ Unreasonable Behaviour - In addition the respondent relies on this failure as vexatious/unreasonable behaviour. They contend that the claimant has given four different versions of the hours he has worked; that the calendar was only supplied after the claimant had supplied its own farm diary and that it has been fabricated.
12. The other allegations of vexatious behaviour fall into a number of categories. Firstly the claimant sought to have his claim joined with that of another claimant Mrs Robertson. The initial application was made by Mrs Robertson and supported by an email from the claimant dated 28<sup>th</sup> April 2022. He stated that he intended to call Mrs Robertson as a witness, that her claim had parallels to his and that they should be heard together. He also suggested that he was considering bringing claims for harassment, bullying in the workplace and mental health injury for himself and his wife.
13. EJ Roper rejected the application; and the claimant was asked whether he wished to amend his claim. In his reply of 7<sup>th</sup> June 2022 the claimant appeared to suggest that the process of litigation had led him to seek to bring claims of unfair constructive dismissal, damage to his and his wife's mental health, and defamation of character. The respondent replied suggesting that as the claimant

was employed for less one less than a year he could not bring a claim for constructive unfair dismissal, and that the claims of defamation of character and bullying in the workplace were not ones that the tribunal had any free standing jurisdiction to determine. They submitted that the application that was vexatious and that the application to amend should be dismissed. In his reply on the 13th off June 2022 the claimant indicated that he already knew that he could not bring a claim of constructive dismissal due to his length of service.

14. The respondent submits that is clear that the matters that the claimant was seeking to place before the tribunal were ones that he knew he could not bring as claims and they demonstrate a pattern of behaviour that he is seeking to use a straightforward tribunal claim consisting of contractual claims, to conduct a campaign of character assassination against in particular Mrs Ruth Armishaw. They contend that if this is correct it is vexatious and the unreasonable use of the tribunal process and that as a result the claims should be struck out.
15. Finally in its oral submissions the respondent submits that at very least the claim in respect of the calendars should be dismissed as it relates to a dispute as to a private venture of the claimant and is not related to his employment. Whatever the merits the tribunal does not the jurisdiction to hear it.
16. The claimant's position is that it he has not deliberately attempted to do anything unreasonable. At each stage he has done what he was directed to by the tribunal. He is equally as suspicious of the respondents as they are of him and believes their own evidence has been manufactured. He is a litigant in person and believed that everything he was seeking to put forward was relevant.

### Conclusions

17. The central questions in determining an application for a strike out order, assuming that the factual basis is made out is whether the draconian sanction of strike out is proportionate and whether a fair trial is still possible.
18. In my judgement the allegation of vexatious and unreasonable conduct of the litigation can only be judged after all the findings of fact have been made. It does not appear to me in principle appropriate to strike out the claims at this stage.
19. In relation to the failure to comply with case management orders it is not uncommon for litigants in person to fail to appreciate that they are not entitle to ambush the other party by either late or non-disclosure of critical documents. Whilst there has been a breach in my judgement it would not be proportionate to strike out the overtime claim for the late disclosure when a fair trial is still clearly possible.

20. However it is appropriate to strike out the claim in respect of the calendars as it does not appear to me to fall within the jurisdiction of the tribunal as it is a private dispute not arising from the claimant's employment.

### **CASE MANAGEMENT ORDERS**

The Employment Judge made the following case management orders:

#### **Listing of the final hearing**

1. The claim will be re-listed for a final hearing for **one day** before an Employment Judge via CVP/VHS video hearing at **10.00 a.m. 6th December 2022**.
2. If the date is inconvenient for either party it should contact the tribunal within 7 days of the date of promulgation of this order.
3. Sometimes hearings start late, are moved to a different address or are cancelled at short notice. You will be told if this happens.

#### **Bundle/Witness Statements**

4. Unless either party applies within 14 days to rely additional documents and/or witness statements the bundle and witness statements already supplied shall stand as those to be used at the final hearing.
- 5.

#### **About these orders; variation and enforcement**

6. Any application to extend the length of the hearing bundle and/or witness statements must;
  - 6.1 Be made in good time, so as not to jeopardise the hearing;
  - 6.2 Contain an indication as to whether, and if so, in what respect, the hearing time and/or timetable is likely to be affected by the additional time needed for the extra material to be read by the tribunal, challenged in evidence and considered before a judgment can be given. Parties should note that, unless a satisfactory and/or agreed variation to the timetable is contained within an application for any significant extension, it may not be granted.
7. The parties may agree to vary a date in any order, but;
  - 7.1 Any variation agreed may not be more than 14 days after the date set above unless the Tribunal's permission has been obtained;
  - 7.2 Any variation will not otherwise affect any hearing date.
8. If any of these orders is not complied with, the Tribunal may:
  - (a) Postpone a hearing;
  - (b) Waive or vary the requirement;

- (c) Strike out the claim or the response;
- (d) Bar or restrict participation in the proceedings;
- (e) Award costs in accordance with the Employment Tribunal Rules.

9. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

## Writing to the Tribunal

10. The parties are reminded of their obligations under rule 2 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Regulations”) to assist the tribunal to further the overriding objective and, in particular, to cooperate generally with each other and with the tribunal.
11. Unless they are specifically required to by an Order, or it is requested by the tribunal or they are applying for an order, the parties should not copy the Employment Tribunal into correspondence passing between them.
12. Whenever they write to the Tribunal, the parties must, however, copy their correspondence to each other.

## Useful information

13. The Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>.  
The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness. A Judgment will not be entered on the Register if it serves to dismiss a claim once it has been withdrawn.
14. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here: <https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
15. The Employment Tribunals Rules of Procedure are here: <https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
16. *Presidential Guidance - General Case Management:*

<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20180122.pdf>

17. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

**Note;** For further assistance in relation to the requirements of these directions and in order to prepare themselves for the final hearing, the parties are referred to the *Presidential Guidance - General Case Management* which can be found at;

<http://www.justice.gov.uk/downloads/tribunals/employment/rules-legislation/presidential-guidance-general-case-management.pdf>

**Note; online publication of judgments and reasons**

The ET is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at:

<https://www.gov.uk/employment-tribunal-decisions>.

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.

### CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

---

Employment Judge P Cadney  
Dated: 29<sup>th</sup> July 2022

ORDER SENT TO THE PARTIES ON  
09 August 2022 By Mr J McCormick

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS