



EMPLOYMENT TRIBUNALS

Claimant: Mr W Marsham

Respondent: Royal Mail Group Ltd

JUDGMENT

The Respondent's application to strike out the claim is refused.

REASONS

1. At this hearing, Ms Hall, on behalf of the Respondent applied to strike out the claim. This was firstly on the basis that the Claimant lacked the requisite two years service to bring a claim for unfair dismissal (and therefore that the claim had no reasonable prospect of success pursuant to Rule 37(1)(a)). And secondly on the basis that the claim had not been actively pursued or there had been non-compliance with an order of the Tribunal or the manner in which it had been pursued had been unreasonable (these points falling within Rule 37(1)(b), (c) and (d)).
2. So far the unfair dismissal point is concerned, this issue fell away once Ms Becconsall had clarified that the Claimant had not intended to bring a claim of unfair dismissal and did not wish to pursue such a claim. There was therefore no live unfair dismissal claim to strike out.
3. The remaining points can be taken together. They are essentially different ways of making the same basic point: that Claimant had not properly particularised his claim and then acted unreasonably by failing to respond to communication from both the Respondent and the Tribunal that attempted to clarify the claims and to progress the case.
4. The Respondent had sought further and better particulars as early as 27th April 2021, as well as raising the issue that the Claimant lacked the requisite service to bring an unfair dismissal claim. This had been followed up, by email, on 5th July 2021, 10th September 2021 and 28th January 2022. On the 16th February 2022 the Tribunal had issued a strike out warning in relation to the unfair dismissal claim, requesting a response by the 23rd February 2022. All of this correspondence had been sent to Ms Becconsall as the Claimant's listed representative. No response was made. She accepted that she had received all of the correspondence (although she said that there had been a period between December 2021 and March 2022 when she had not had access to her work email, since she was off sick). She said that she had not understood the Tribunal process and had not believed she needed to reply.

5. I have concluded that Ms Becconsall's conduct of the litigation, on behalf of the Claimant, has been unreasonable and therefore falls within Rule 37(1)(b). Even allowing for ignorance or misunderstanding, as might be expected by someone not legally qualified or experienced in the Tribunal system, it should have been apparent that both the Respondent's and the Tribunal's correspondence required some form of reply. The Respondent's requests for clarification were reasonable and it should have been apparent, on reflection, that there was genuine difficulty in understanding the nature of the claim that the Respondent was seeking to resolve. It was certainly clear that the strike out warning from the Tribunal required a response.

6. Nonetheless, it would not be appropriate to strike out the claim for this reason. I have born in mind the guidance in *Abegaze v Shrewsbury College of Arts & Technology* [2010] IRLR 236. I must consider not only whether there has been unreasonable behaviour, but also whether, as a result of that behaviour, there cannot be a fair trial and whether strike out is a proportionate sanction. Striking out a claim is one of the most draconian powers a Tribunal can exercise, since it brings the claim to an end and prevents a Claimant's case being determined on its merits. I have concluded that a fair trial remains possible. It has been possible to clarify the issues today and to make progress with the case. Neither party has suggested that there will be any difficult in being ready for the listed hearing in July. Ms Becconsall has apologised to the Tribunal and to Ms Hall. She has promised that, in the future, she will engage with the Respondent and the Tribunal. In these circumstances, strike out is not proportionate.

Employment Judge Reed
Date: 23 May 2022

Sent to the parties on
Date: 26 May 2022