



EMPLOYMENT TRIBUNALS

Claimant

Jonathan Manuel

Respondent

Whittington Health NHS
Trust

v

Heard at: Watford
Before: Employment Judge Anderson

On: 15 August 2022

Appearances

For the Claimant: In Person

For the Respondent: I Bayliss (counsel)

JUDGMENT

1. The claimant's claim for unfair dismissal is not struck out.
2. No order for costs is made.
3. The claimant's claim for discrimination is dismissed as the employment tribunal has no jurisdiction in relation to discrimination on the basis of professional qualifications.

REASONS

Strike Out

1. The respondent brought an application to strike out the claimant's claim on 25 May 2022 following the claimant's failure to comply with orders to file a schedule of loss, provide details of any discrimination claim or to respond to its emails chasing these matters of 12, 16 and 24 May 2022. The application is brought under rule 371c and d of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 schedule 1. These grounds are that the claimant has not complied with rules or orders of the tribunal and not actively pursued his case.
2. Ms Bayliss, for the respondent, said the claim had not been actively pursued and the claimant's lack of action was both intentional and contumelious. From his evidence the claimant had clearly read the Notice of Hearing as he knew the dates and understood what a schedule of loss was. She said that he had intentionally not followed the directions and in so doing had

made an unreasonable choice. On his own evidence the claimant had decided not to respond to the respondent as he does not like it and this was not a professional or adult way to behave. Ms Bayliss said his actions had increased the cost of the claim to the tribunal and the respondent who is an NHS trust and he had shown clear disdain for the judicial process.

3. The claimant was unclear as to whether he had received the hearing notice and orders of 10 April 2022 but as he confirmed that he was aware of the hearing date I am satisfied that he did receive that Notice. He gave two answers as to why no schedule of loss was filed. He said that he was not sure what amount to put and was unable to obtain advice on that matter. He also said that he did not receive the letter. I note that the claimant was on oath when he made these submissions. The claimant said that he did not want to engage with the respondent. He clearly feels that he has been treated badly by the respondent and said that he wanted nothing to do with it and had planned to attend the hearing and make his case orally to the tribunal at that point. When I explained that there was a process involving the filing of documents and witness statements the claimant said that he had said all he had to say in his defence at his disciplinary hearing. He did not appear to have considered the fact that the tribunal is separate from his employer and has no prior knowledge of his case. In response to the respondent's claim that he had failed to engage in relation to the strike out application he said that he had intended to come and make his case to the tribunal today on that matter too.
4. Having heard both parties the respondent's strike out application is refused. Whilst the actions of the claimant are intentional in that he has quite openly set out that he did not wish to engage with the respondent I do not accept, under the principles in *Birkett v James* [1978] AC 297 that they are contumelious but as the result of a misunderstanding about the tribunal process. Neither am I convinced that the default is inordinate and inexcusable. Whilst the claimant's behaviour thus far has been somewhat short of sensible, I accept that this was because he thought that all matters could be addressed by him orally at hearings instead. He knows now that this is not the case because I have told him so.
5. As to the matter of whether a fair trial is possible, the hearing is listed for April 2023 and whilst the initial deadlines have been missed there is still time for the necessary tasks to be carried out in order for the case to be ready to be heard in April 2023. While I accept that memories fade and also that the fact of responding to such a claim may be as emotionally burdensome to the respondent's witnesses as it can be to a claimant, the timetable is not so far behind that this would have been substantially different if the deadlines had been met.
6. I am sure that if there are any further failures to actively pursue the case by the claimant or to comply with orders, the respondent will bring this judgment to the attention of the tribunal in relation to future applications.

Costs

7. Ms Bayliss, for the respondent, sought the respondent’s costs of preparing for and attending this hearing and for other work carried out by the respondent caused by the claimant’s failure to engage. I have the authority to order costs under Rule 76(2) where ‘a party has been in breach of any order or practice direction...’. I have taken account of the fact that the respondent is a public body and the claimant’s actions were intentional. I have also taken account of the claimant’s explanation for his actions and his evidence on means. I have decided not to make a costs order. I also declined Ms Bayliss’ request for an unless order at this stage. The claimant misunderstood the tribunal process. He is now aware of that process and that further failures to comply could lead to similar applications from the respondent.

Jurisdiction

8. The claimant was directed to clarify his claim of discrimination in the Notice of 10 April 2022. He did not do so. He confirmed today that he believed he had been discriminated against by the respondent because he did not have qualifications. The employment tribunal’s jurisdiction on discrimination is limited to claims founded on the Equality Act 2010 and the claim of discrimination is dismissed.

Employment Judge Anderson

Date: 19/08/22
30/8/2022
Sent to the parties on:
J Moossavi
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For the Tribunal Office