



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Mohammed

v

Crown Prosecution Service

Heard at: Reading

On: 5 to 9 September 2022

Before: Employment Judge Hawksworth
Mrs D Ballard
Dr C Whitehouse

Appearances:

For the Claimant: In person

For the Respondent: Ms L Robinson (counsel)

JUDGMENT (STRIKE OUT APPLICATION)

The unanimous judgment of the tribunal is that the claimant's application to strike out the respondent's response is refused.

REASONS

1. At the start of the full merits hearing before us, Mr Mohammed applied to strike-out the respondent's response under Rules 37(1)(c), (1)(d) and (1)(e) of the Employment Tribunals Rules of Procedure 2013, on the basis of the respondent's non-compliance with tribunal orders. He says this has impacted on preparations for the hearing and means that the response has not actively been pursued and that it is no longer possible to have a fair hearing.
2. We gave our judgment and reasons on the strike out application at the hearing. Written reasons were requested by Mr Mohammed.
3. We set out first our findings on the relevant chronology.
4. Finalisation of the bundles and exchange of witness statements has taken place very late in the day for this hearing. The responsibility for production of the bundle lay with the respondent. The final version of the bundle was sent to the claimant very late. Two copies (unredacted and redacted) were

received by him on 2 and 3 September 2022, that is only very shortly before the first day of the hearing.

5. Some of the responsibility for that delay lay with the respondent, particularly between the end of July 2022 and the end of August 2022 when unforeseen personal issues were experienced by those with conduct of the case at the time. Some of the responsibility also lay with the claimant. A date for disclosure which had been set by the tribunal was varied by agreement to 13 April 2022. The claimant's documents were not provided by that date. Although he made attempts to provide them, the email he sent the respondent had a large attachment which was not readable. The claimant's documents were re-sent in smaller parts, but not until 19 to 25 July 2022. That was part of the reason for the delay in the production of the bundle.
6. The claimant received the respondent's documents in April 2022. The finalised bundle which was sent late in the day included the documents he had already received from the respondent, with the addition of his own documents which he had obviously already seen.
7. As for exchange of statements, the parties had varied the date for exchange of statements by agreement. The respondent sent its statements to the claimant on 26 August 2022. The claimant sent his supporting statements to the respondent on 1 September 2022 and his own statement on 2 September 2022. The claimant's statements were sent after the final varied deadline for exchange of statements.
8. Rule 37 of the Employment Tribunal Rules of Procedure 2013 says:

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

...

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is not longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).”
9. Strike out is a severe sanction and we do not consider that the circumstances here merit it. This is largely because, although there has been non-compliance with tribunal orders by the respondent, there has been some blame on both sides.
10. Looking at the chronology as we have just outlined it, we do not consider there to have been a failure by the respondent to actively pursue the response. Considering that the claimant had the respondent's disclosure since April 2022 and that exchange of witness statements has now taken place, we have formed the view that it is still possible now to have a fair hearing in this case.

11. We asked Mr Mohammed whether, if we did not strike out the response, he wanted to apply for a postponement of this hearing to allow more time to prepare. He did not. He is aware of the likely delay to the hearing if there were to be a postponement. He would rather that the hearing proceeds this week. He did ask if he could be afforded flexibility and assistance in terms of being able to locate pages in the bundle. We are happy to do that and would be grateful if the respondent's counsel could assist with locating pages as well.

Employment Judge Hawksworth

Date: 3 October 2022

Sent to the parties on: 4.10.2022

GDJ
For the Tribunal Office

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