



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102881/2022

Decision made on documentation

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Employment Judge A Kemp

Mr J Ross

**Claimant
In person**

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Fife Resource Solutions

**Respondent
Represented by
Ms D Rookes
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal strikes out the Claim under Rule 37 of the Employment Tribunal Rules of Procedure.

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REASONS

Introduction

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1. The respondent made an application for strike out in an email dated 5 August 2022. The Tribunal wrote to the claimant by letter dated the same day, giving the claimant an opportunity to respond by 4pm on 12 August 2022, and suggesting that he consider taking independent advice.
2. The claimant did not respond. The matter was then referred to the Judge.

Respondent's application

3. This is set out in the email dated 5 August 2022, and is made on two grounds, firstly not actively pursuing the claim and secondly for not complying with case management orders. That email is referred to for its details, which are accurate. The application included one for an unless order if the primary application were not to be granted.

The law

4. A Tribunal is required when addressing such applications as the present to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

"2 Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

(i) Strike out

5. Rule 37 provides as follows:

"37 Striking out

(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—

.....

- 5 (c) for non-compliancewith an order of the Tribunal.....
- (d) that it has not been actively pursued.”

6. The EAT held that the striking out process requires a two-stage test in ***HM Prison Service v Dolby [2003] IRLR 694***, and in ***Hassan v Tesco Stores Ltd UKEAT/0098/16***. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim. In ***Hassan*** Lady Wise stated that the second stage is important as it is 'a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit' (paragraph 19).

Discussion

7. I take into account that the claimant is a party litigant and that he has referred to having mental health difficulties. He has not however complied with a number of case management orders, that includes giving fair notice to the respondent of the case he intends to make, and the claim for compensation that is to be sought. That does mean that the respondent is not able properly to prepare for the forthcoming Final Hearing. The respondent is suffering prejudice as a result of that.

8. The claimant has been given more than one opportunity to address the issues, with case management orders granted on 27 June 2022 and 28 July 2022. He did not comply with them, nor did he correspond either with the Tribunal or the respondent through its solicitor about the issues raised by those orders.

9. The Tribunal sent a message to him on 5 August 2022 which gave him a final opportunity to respond, or to address the reasons why he could not do so. It required an answer by 4pm on 12 August 2022, and referred also to the possibility of his seeking independent advice. He did not take that opportunity. The messages, including that of 5 August 2022 and the earlier

case management orders, were sent to the claimant at the postal address given by him, as he has not provided any other means of communication, such as an email address. There has not been any indication that they have not been received, as none of the letters sent has been returned.

- 5 10. In light of the background, the circumstances set out above, and having regard to the terms of the overriding objective, I am satisfied that it is appropriate for me to strike out the Claim on the basis of both a failure to comply with orders, and not actively pursuing the claim.

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15 Employment Judge : A Kemp
Date of Judgment : 16 August 2022
Date sent to parties : 16 August 2022