



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ward

Respondent: Kapetil (High Peak) Ltd T/A Toni & Guy Macclesfield

HELD AT: Liverpool

ON: 3 February 2023

BEFORE: Employment Judge Shotter

REPRESENTATION:

Claimant: Not in attendance

Respondent: Ms H Robinson, retired HR manager

JUDGMENT

The judgment of the Tribunal is that the claimant's claims for unfair dismissal and disability discrimination are struck out.

REASONS

1. The claimant's claim form was received on the 17 January 2021. A preliminary hearing took place on the 8 March 2022 and case management orders were agreed, including the claimant being ordered to send to the respondent a schedule of loss, impact statement and medical records as disability is in dispute. The respondent has provided the claimant with the documents it intended to rely on at the final hearing, the claimant has provided no documents other than a photograph of his torso, leg, and knee together with a document titled "Benefit Sheet" with a telephone number written on it. The claimant has ignored case management orders.
2. The final hearing is listed for 3-days commencing on the 13 December 2023, almost 3-years after the claimant had issued proceedings and 3 years 2 months from the cause of action which appears to be the 17 October 2020

from the claimant's Grounds of Complaint. I accepted Ms Robinson's submissions that the respondent has been prejudiced by the claimant's non-compliance in respect of the cogency of the evidence to be given by witnesses, taking into account that the respondent no longer trades having sold the business after the claimant's dismissal on the 4 November 2020. As recorded in the 8 March 2022 case management summary the respondent will not wind up the Company pending resolution of this litigation as it took the view there was no merit in the claims and wanted to prove this was the case before winding up.

3. The claimant has been sent a number of letters by the Tribunal which he has failed to respond to, including the letter of 19 October 2022 setting out the following the Tribunal having received numerous correspondence by the respondent that the claimant was ignoring it and the case management orders;

"On the Tribunal's own initiative in the light of recent correspondence, Employment Judge Phil Allen is considering striking out the claim because:

- You have not complied with the Order of the Tribunal made following the preliminary hearing on 8 March 2022 and, in particular orders 1.1, 2.1 and 2.2;
- You have not responded to correspondence from the Tribunal dated 22 June, 5 August, 7 September or 6 October 2022; and
- It has not been actively pursued.

If you wish to object to this proposal, you should give your reasons in writing or request a hearing at which you can make them by 9 November 2022."

4. The claimant ignored the correspondence and did not request a hearing.
5. On the 21 December 2022 the claimant was sent the following notice of today's hearing:

"At the hearing, an Employment Judge will consider whether to strike out the claim because the claimant has not complied with the case management orders made on 8 March 2022."

6. The claimant did not respond and nor did he turn up to the hearing, which was delayed in order for the Tribunal clerk to ring the claimant on two occasions. There was no reply.
7. I concluded that there cannot be a fair trial as a result of the claimant's failure to comply with case management orders and respond to correspondence, including the strike out warning. Striking out claims is draconian and the power should be carefully used. I took the view that the claimant has had countless of opportunities to progress his claim. By the strike out warning sent to the claimant on 3 September 2020 the Tribunal gave the claimant an opportunity to make representations or to request a hearing by 9 November 2022 as to why the claim should not be struck out and he has not provided any reasons or made such a request. Accordingly, I find:

- the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable, or vexatious;
- the claimant had not complied with the Orders of the Tribunal referenced above.
- it has not been actively pursued.

2. The claimant has failed to make representations in writing, and has failed to make any oral representations as to why his claims should not be struck out. The claims are therefore struck out.

Date: 3.2.23

Employment Judge SHOTTER

JUDGMENT AND REASON SENT TO THE PARTIES ON
7 February 2023

FOR THE TRIBUNAL OFFICE

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