



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4105463/2022

Mr G McDonald

Claimant
Represented by:
In person

East Ayrshire Council

Respondents
Represented by:
Mr Crawford, Solicitor

JUDGMENT

The claim is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the manner in which the proceedings have been conducted by the claimant has been unreasonable in terms of rule 37(1)(b), of non compliance with an Order of the Tribunal in terms of rule 37(1)(c) and that the claim has not been actively pursued in terms of rule 37(1)(d).

REASONS

1. This case had been listed for a final hearing to be held by Cloud Video Platform on 21 December 2022. The Respondent appeared by way of their solicitor.
2. There was no appearance on behalf of the Claimant. After several attempts to contact him, the clerk spoke to the Claimant who stated that he was waiting to hear if he was being called for jury service. There had been no previous communication regarding this and he had not sought a postponement in advance. He has been aware of this hearing since the acknowledgment of the claim was

issued on 12 October 2022. The Tribunal has no information as to when the Claimant received notification that he was being called for jury service.

3. In these circumstances, the Tribunal decided to postpone the final hearing. The Tribunal had contemplated dismissing the claim on the basis that the Claimant, on whom the burden of proof lay, had not attended and led evidence to discharge that burden but did not consider that it would be in keeping with the Overriding Objective to proceed to the determine the claim in the Claimant's absence without giving him the opportunity to comment on this.
4. However, the Tribunal, of its own motion, was contemplating striking out the claim on the grounds that the manner in which the proceedings have been conducted by the Claimant has been unreasonable (that is, by failing to seek a postponement of the hearing and letting it proceed when he had no apparent intention to attend) in terms of rule 37 (1)(b) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 or that the claim has not been actively pursued in terms of rule 37 (1)(d) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
5. The Claimant was given an opportunity to respond to this with a deadline of 6 January 2023. In particular, the Claimant was directed to provide the following information:-
 - a. When he became aware that he had been cited for jury service? The Claimant was to provide a copy of the citation.
 - b. Why no application for postponement of the present hearing had been made?
 - c. Whether the Claimant sought to be excused from jury service in order to attend the present hearing? If not, why not?
 - d. Whether the Claimant was called to sit on a jury on 21 December 2022 and at what time he knew this?
6. This was sent out in a Note of the hearing sent to parties on 5 January 2023.
7. The Claimant replied to this by letter dated 8 January 2023 stating that he was refusing to provide the information requested by the Tribunal and that this would be provided at the final hearing.
8. The Tribunal did not consider that this is an adequate response and amounted to a refusal to comply with an Order of the Tribunal as well as being unreasonable conduct of the proceedings. The Tribunal explained to the Claimant that this provided additional grounds on which it was contemplating striking out his claim.

9. This was sent to the Claimant by email dated 13 January 2023. Due to an error, the actual letter was dated August 2020 but the covering email was clearly dated 13 January 2023. The Claimant was given a further 14 days to respond. No response has been received.
10. In these circumstances, the Tribunal considers that the Claimant's conduct is unreasonable as he has failed to attend a hearing in circumstances where he was aware in advance that he would not attend, in refusing to provide information sought by the Tribunal and in failing to engage with the Tribunal thereafter. The Tribunal also considers that this behaviour amounts to a failure to comply with an Order of the Tribunal and a failure to actively pursue the case.
11. The grounds under Rule 37(1)(b),(c) and (d) are, therefore, made out and the claim is struck-out under those grounds.

Employment Judge: P O'Donnell
Date of Judgment: 6 February 2023
Entered in register: 6 February 2023
and copied to parties