



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000010/2022

Employment Judge M Whitcombe

Mr D Adams

Claimant

British Gas Trading Ltd

Respondent

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:

(a) the claim has not been actively pursued (rule 37(1)(d)); and

(b) the claimant's failure to comply with orders, such that it is not possible to have a fair hearing (rule 37(1)(c)).

REASONS

1. There has been little significant progress towards a final hearing since this claim was commenced on 1 August 2022, more than 16 months ago. The claimant's health has played a part and the Tribunal has responded flexibly. Many deadlines have been set, extended and then re-set. The Tribunal has drawn the claimant's attention to potential sources of free legal advice. The first significant case management intervention was that of Employment Judge Sutherland on 4 October 2022. She gave directions to progress the issue of disability, and also for further information regarding the nature of the claims and the remedy sought by the claimant.
2. At a second preliminary hearing for case management held on 27 January 2023 (before me), the claimant was able to join the call and was helped and supported by Ms Williamson, his former partner. It was agreed that until further notice all correspondence sent to the claimant would also be sent to Ms Williamson. That was to ensure that important letters and deadlines were not missed. Prior to the commencement of the hearing on 27 January 2023 the respondent had made an application for an "unless order" under rule 38, but that application was withdrawn at the hearing. The claimant was set a new deadline to provide medical evidence by 24 February 2023. The claimant did not meet that deadline.
3. On 22 March 2023 the claimant sent an e-mail enclosing a report from his psychiatrist Dr Haque dated 10 March 2023 which stated that *"Mr Adams has capacity to participate in the employment tribunal process but due to his mental health it can bring his anxiety back which can affect replying to correspondence and complying with deadlines"*.
4. On 15 May 2023 the claimant asked for a further 6 weeks to comply with the outstanding orders, saying that it would *"give adequate and manageable time for me to do so"*. The respondent agreed in those circumstances to a further extension of the deadline to provide various forms of medical evidence to 26 June 2023.
5. On 27 June 2023 the claimant e-mailed asking for a further *"1 or 2 days' extension. I will not ask for any further extensions and guarantee that I will send on the documents I have produced"*. On 30 June 2023 the claimant finally provided his "impact statement" on the issue of disability, his preliminary hearing agenda and also apologised for the delay. No further documents or information were provided in accordance with the other orders previously made by EJ Sutherland.

6. At a further (third) preliminary hearing for case management on 15 September 2023 the claimant told Employment Judge Strain several times that his health no longer prevented him from complying with the orders originally made by Employment Judge Sutherland on 4 October 2022. On that basis, new deadlines were set. Those deadlines were not complied with, despite Employment Judge Strain's warning of the potential consequences.
7. The Tribunal wrote to the claimant on 4 November 2023 warning again of the potential consequences of a failure to comply, in the following terms: "*The claimant is reminded that Order 1 from PH note and Orders sent to parties on 18 September 2023 is overdue, please reply by return. Given the history of this case, Employment Judge Whitcombe is concerned that orders are still not being complied with fully and on time. The claimant's position before Employment Judge Strain appears to have been that there was no medical reason why he could not do so. Inevitably, the Tribunal has to think about an escalation of sanctions if the claimant continues to fail to comply with orders. That could include ordering the claimant to pay some of the respondent's legal expenses, or even striking out claims for a failure to comply with orders (i.e. bringing them to an early end). That point has not yet been reached, but it will be an option if the claimant continues to fail to comply with orders*". The Tribunal has not received any reply to that letter.
8. The respondent made an application for an unless order by e-mail dated 20 November 2023 providing a summary of deadlines set, extended and re-set. It was copied to the claimant. There was no reply from the claimant.
9. On 22 November 2023 the Tribunal wrote to the claimant advising that I was considering striking out the claim. After summarising some of the procedural history the letter said, "*There has not been any reply to my own letter of 14 November 2023 warning again of the potential consequences of a failure to comply. What is needed from the claimant is not just a reply to correspondence, but substantial progress in the proceedings and compliance with orders already made. Otherwise, the point may now have been reached at which it would be proportionate, fair and consistent with the overriding objective to make an order bringing the claims to an end. Against that background, I am now considering making an order striking out the claim on either or both of two bases: (1) It is not being actively pursued (rule 37(1)(d)) (2) The claimant's failure to comply with orders, such that it is not possible to have a fair hearing (rule 37(1)(c))*".

10. The claimant was given an opportunity to give written reasons why the claim should not be struck out or to request a hearing for that purpose. The deadline was 6 December 2023. There was no reply.
11. I am satisfied that the claimant's failure to comply with orders now makes a fair hearing impossible. I am also satisfied that his claim is not actively pursued. The use of the Tribunal's other, less drastic, case management powers has not resulted in compliance with orders or much substantial progress. In those circumstances, regrettably, even the most drastic orders can eventually become proportionate. I strike out the claim.

Employment Judge: M Whitcombe
Date of Judgment: 13 December 2023
Entered in register: 13 December 2023
and copied to parties