



EMPLOYMENT TRIBUNALS

Claimant: Mr R Rogers

Respondent: Ceva Logistics Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Remotely via CVP

On: 1 November 2024

Before: Employment Judge Richard Wood

Appearances

For the claimant: Did not attend and was not represented

For the respondent: Represented by Counsel

JUDGMENT

The claimant's claims are struck out under rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claimant's conduct has been unreasonable; that he has failed to comply with the directions of the Tribunal; and that he has failed to actively pursue his claims.

DECISION

1. This is a note of the oral decision I gave at the hearing. Of course, the parties may apply for a full statement of reasons in the normal way.
2. This claim was listed before me today for consideration of an application by the respondent to strike out the claim on the pursuant to rule 37 of the Tribunal Procedure Rules i.e. on the basis that the claimant has failed to comply with the directions of the Tribunal and/or that the claimant has failed to actively pursue his claim. I have also consider whether the claimant has acted "unreasonably".
3. It is important to note that the striking out of a claim is always the very last resort. Not only must I be satisfied that the claim, or the conduct of it, falls within one of more of the categories prescribed by rule 37, I must also be satisfied that it is fair and proportionate to strike out the claim in all of the circumstances. I must consider

where the fairness of the situation for all parties can be adequately addressed by some other sanction which falls short of striking out a claim, given the latter's draconian impact on the claimant. A claim should only be struck out in rare circumstances.

4. I also make my decision on the basis that the claimant has mental health conditions. I have limited medical evidence. However, what I have seen during the course of these proceedings satisfies me that the claimant has anxiety and depression for which he has been prescribed medication. I note in particular the letter from the claimant's GP, Dr K Krishan, dated 28th February 2024 in which Dr Krishan gives the opinion that the claimant has mental capacity but that his conditions have been made worse by the tribunal case. In Dr Krishan's view, the claimant was not, at the the time of the letter at least, able to represent himself at a tribunal hearing. I accept that there is some limitation on his ability to conduct these proceedings as a litigant. What the genuine limits of any impairment may be have been more difficult to assess, not least because it has proved so difficult to facilitate the claimant's meaningful involvement in the process.
5. In making my decision, I have given careful consideration to what is fair in the circumstances, having regard to the interests of both parties, and to the overriding objectives of the Tribunal. I have reminded myself of the relevant authorities in the area of striking out claim under rule 37.
6. The chronology of this case makes for frustrating reading. He lodged his claim on 16 May 2023. On 3 November 2023 and 4 January 2024, the claimant sent emails to the Tribunal. At some length, and in varying terms, the claimant made it clear that he did not accept the jurisdiction of the Tribunal and preferred to have his claim adjudicated upon directly by King Charles III. In the November email, he also indicated that he had health issues which might affect his participation in the proceedings.
7. The first hearing was held on 5 January 2024. The claimant did not attend. Judge Young set down directions by which the claimant was to provide further information as to his mental health conditions, his capacity, and his general ability to engage in the proceedings.
8. The matter next came before me on 18 April again for case management. Again, the claimant did not attend. He had however provided the letter from Dr Krishan referred to already. On that occasion, the claimant sought an adjournment in his absence, to await the outcome of an intervention from the King. I declined to adjourn on the basis that I took the view that there were insufficient grounds to believe that he could not attend a brief remote video hearing, and because the claimant was continuing to make clear that he did not trust the judiciary and did not accept the jurisdiction of the tribunal. There seemed little prospect of the claimant's attitude to the Tribunal changing. I set the matter down for final hearing and made various directions for the preparation of the case. This included a direction that the claimant notify the Tribunal by 30 May 2024 as to whether he wished to proceed with his claim, having explained that in order to so he must engage with the Tribunal in terms of case progression.

9. By email to the Tribunal dated 10 June 2024, the respondent applied to have the claim struck out on the basis of a failure to comply with directions I had set down in April, and that consequently, the claimant was not actively pursuing his own claim. I set the application down for today and required the claimant to respond in writing to the application to strike out.
10. I first of all note that he has not attended today. He has forward an email which does not really address any of the issues the claimant was required to address, or respond to the application.
11. He has not provided any medical evidence to excuse his non-appearance, despite my clear advice that he should either attend or submit such information. Since the last hearing, the claimant should have indicated whether he wished to proceed with his claim; indicated whether he wished to engage in judicial mediation; provided a schedule of loss; exchanged documents; and agreed which documents should go into the bundle. I am told that none of this has been done. Neither has there been an explanation for the failures. It is difficult see why, four instance, the claimant could not have told the Tribunal if he was interested in medication. It requires a very short letter or email. I know that the claimant is capable of drafting long and detail emails, notwithstanding his conditions.
12. It is my view that the claimant is of the mindset that he has bypassed the Tribunal, and that he is instead seeking justice directly from the Crown. It is difficult to understand the rationale for that. I suspect that it may be, in part, the result of his conditions. However, I do not have medical evidence to this effect, and I fall short of making this finding. The crucial point is that the claimant has demonstrated this attitude repeatedly, and for almost 12 months. He is impervious to suggestions from the Tribunal, even when matters are set out in robust terms. He is, in my view, unlikely to cooperate in the ordinary processes of the Tribunal in the future, or to have regard to his shared obligations under the overriding objectives. I am satisfied that he considers compliance with Tribunal directions to be optional. He doesn't even recognise the need to provide explanations for default. In every sense of the term, he does not recognise the authority of the Tribunal in this matter.
13. The claimant has chosen to lodge a claim with the Tribunal. Having initiated proceedings, the Tribunal is under an obligation to progress the matter. I find that the claimant has capacity, and is able to participate but refuses to do so. There is much the Tribunal can do to facilitate the participation of a litigant in person, and one who has medical conditions which may act as an impairment. But only if he/she is prepare to cooperate.
14. Accordingly, I find that the claimant has failed to comply with directions and has failed to pursue his claim as suggested. I also find that by reason of his expressed reluctance to accept the jurisdiction of the Tribunal, that he has behaved "unreasonably". I must then consider whether it is proportionate to strike out the claims. The default is in my view, deliberate. Further, I can see no prospect at all of the claimant's approach to this case changing. He awaits an intervention of the Crown directly. In other words, he is not interested in what happens before the Tribunal. It is therefore an unfair and disproportionate use of the Tribunal's resources, which could be better used on parties who do accept the Tribunal's

authority. It would also be unfair on the respondent to continue to require it to prepare for a final hearing, and to attend, when there is no prospect of the claimant engaging in that process. It would be an unfair waste of time and money.

15. The claims are therefore struck out in their entirety.

Richard Wood

1 November 2024

Sent to the parties on:
18/12/2024

For the Tribunal Office:
N Gotecha