



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr M Idowu

Respondents
NHS Professionals (1)
George Eliot Hospitals NHS Trust (2)

REASONS OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham

ON 29 March 2017

EMPLOYMENT JUDGE Anstis (sitting alone)

Representation:

Claimant: In person

Respondent: Ms L Gould (counsel, first Respondent)
Mr R Powell (counsel, second Respondent)

WRITTEN REASONS

Introduction

1. There were several different applications before me at the hearing on 29 March 2017, but I took the question of whether the Claimant had complied with the requirements of the “unless” order as the first matter, since if he had not the claim would be automatically struck out and the further applications became irrelevant.
2. At the outset of the hearing I set out for the parties what I considered to be (subject to any submissions they may make) the present state of the law on unless orders. While the Claimant has had legal training I was conscious that he did not have formal legal representation and in particular I wanted him to understand the framework within which I was considering the matter. I set out below the summary propositions on the law which I set out for the parties:
 - a. A failure to comply with an unless order meant that the claim was automatically struck out (*Scottish Ambulance Service v Laing* UKEAT/0038/12)
 - b. This included a failure to comply in any material respect (*Marcan Shipping (London) Limited v Kefalas* [2007] EWCA Civ 463)
 - c. Assessing material compliance is a qualitative rather than quantitative matter (*Johnson v Oldham Metropolitan Borough Council* [2013] UKEAT/0095/13)
 - d. Any strike out would be of the whole of the claim – in cases of partial compliance I could not pick and choose elements of the claim to strike out (*Royal Bank of Scotland v Abraham* UKEAT/0305/09).

Submissions

3. The matter then proceeded to submissions by the parties on the question of the unless order.
4. Mr Powell took the lead for the Respondents in this respect. He said that he would add to my propositions of the law that under *Marcan* the particulars had to be sufficient to enable a party to know the case they had to meet.
5. He took me through his skeleton argument and chronology of the relevant orders, pointing out various deficiencies on the Claimant's responses to those orders, including the final unless order. Mr Powell referred to the Claimant's legal qualifications and an extract from his LinkedIn entry. He drew my attention to various items of correspondence from the Claimant which he said showed that the Claimant was perfectly capable of understanding and working with the employment tribunals rules of procedure. He said that the relevant particulars had been outstanding since August last year, and there remained fundamental defects with the Claimant's lack of particularisation of his indirect discrimination, direct discrimination and victimisation claims. He said that the result of this was that the whole of the claim had been struck out because of non-compliance with the unless order (*Abraham*).
6. Ms Gould added that there had been material non-compliance in respect of the claim for "other payments" with no detail as to the payments claimed, or on what basis they were claimed. She said that her clients still did not understand the case that they had to meet. She said that the Claimant's non-compliance was compounded by the fact that he held himself out as a legal practitioner. She said that the correct outcome was a strike out of the whole of the claim.
7. Mr Idowu provided a skeleton argument and statement of agreed facts and said that there had been qualitative and factual material compliance with the unless order. He said that he had specified his claims in respect of discrimination and victimisation, and in all other respects. He had done everything that he needed to do to establish his case. He said that if there had been a failing it was in respect of the Respondents' failure to provide answers to his requests for disclosure and the names of comparators. He said that the matters now raised by Mr Powell and Ms Gould were red herrings to defeat and deflect from the substance of his claim.

Decision

8. The unless order of 13 January 2017 was the culmination of a series of case management orders by the tribunal, with the Claimant originally having been ordered to provide the information requested in the letter of 26 August 2016 in an order on 6 September 2016. That was to be done by 5 October 2016.
9. The requirements of the letter of 26 August 2016 are extensive. No doubt EJ Woffenden took that into account in her order, and it does not appear to me that there is anything improper or unreasonable required in that letter. I also note the Claimant's apparent legal experience and expertise which ought to have meant that he was well-equipped to reply. I accept that the letter was written in order that the Respondents could understand the case they have to meet.
10. The Claimant's document purporting to comply with this order was served on 20 January 2017 and is at pages 138 – 142 of the bundle I have. The Claimant has not replied directly to each question asked, but instead has set out his narrative of the claim. That is not necessarily a problem provided that the questions asked are addressed during the course of that narrative – but they are not. This is particularly a problem with the allegations of racial discrimination. Harassment and victimisation are specifically mentioned, but the Claimant also recites the sections of the Equality Act dealing with direct discrimination, without addressing any of the questions in the letter about actual or hypothetical comparators. The section dealing with victimisation states three detriments, but there is no mention of any protected act, which is an essential ingredient of a victimisation claim and was required by questions in the

letter, or of how this could have caused the detriments. These are just examples of the difficulties and failure to comply.

11. It is not at all clear to me that the Claimant has given any of the required particulars under "other payments". That might be satisfied by the section headed "schedule of loss" but it is not clear if those are the payments referred to, and in any event there was a separate requirement to provide a schedule of loss. There is a section dealing with agency workers which cites regulation numbers from the Agency Workers Regulations but gives no real particulars of the underlying issue or the dates on which it occurred (which is, of course, a key issue in any claim).
12. Perhaps most telling is that if those questions had been properly answered it would have been clear what the legal basis of the Claimant's claims were – but having read his responses I still do not understand exactly what it is that he is claiming or on what basis it is claimed.
13. The Claimant has materially failed to meet the requirements of the unless order, and the automatic consequence of that, given the terms of the order, is that his entire claim against both Respondents is dismissed under rule 38(1).
14. Having given my decision, both Mr Powell and Ms Gould wanted me to note that their clients reserved their position on costs and may later make an application for costs within the necessary time limit.

signed on 18 May 2017
Employment Judge Anstis

Reasons sent to Parties on

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18 May 2017-