



EMPLOYMENT TRIBUNALS

Claimant: Mr J. Osei
Respondent: Adecco (UK) Ltd
Heard at: East London Hearing Centre (by telephone)
On: 27 May 2021
Before: Employment Judge Hallen

Appearances

For the Claimant: No appearance
For the Respondent: Mr R. Hayes (in-house Counsel)

JUDGMENT

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

The Claim is Struck out

REASONS

Hearings

1. Employment Judge Massarella ordered that there be a further, open preliminary hearing on **27 May 2021**, before me sitting alone to determine any application by the Claimant to join a second Respondent and/or any applications by the existing Respondent for a strike-out/deposit order. It was conducted by telephone.

2. The parties were provided with Judge Massarella's order and provided with directions to comply with for today's hearing. The Respondent's representative informed me that the Claimant has not complied with any of those directions and has not participated in this claim since the Judge's order of 22 February 2021.

Background

3. By a Claim Form presented on 28 July 2020, after an ACAS early conciliation period between 27 and 28 July 2020, the Claimant, Mr Jeffrey Osei, claimed discrimination because of race and/or religion/belief. There was also reference to a claim for holiday pay.
4. The Claimant worked for the London Borough of Barking and Dagenham, via the Respondent employment agency, between 8 April and 2 June 2020, performing work including estate caretaking, street sweeping and ground maintenance. He alleged that during that time, he was subjected to racist comments and conduct. The allegations were expressed in a generalised way in the claim form, without giving the names of the alleged discriminators, or dates on which the discrimination was said to have occurred.
5. By a letter sent to the parties on 22 August 2020, a telephone preliminary hearing for case management was listed for 16 November 2020, to start at 2 PM. The notice specifically stated that: 'to take part you should telephone [number] on time and enter the access code [code] when prompted'.
6. On 15 September 2020, the Respondent presented its ET3, in which it applied for a deposit order (confined to £100) against the Claimant, asking for it to be dealt with at the hearing on 16 November. The basis of the application was that the claim form 'does not contain a single detailed allegation of discrimination by any named individual who could be said to be a servant (employee) or other agent of Adecco'.
7. That hearing came before EJ McLaren. The Respondent attended, the Claimant did not. The Judge recorded the Respondent's position in relation to its strikeout application, and concluded that she would write to the parties, putting the Claimant on notice that she was considering striking out his claim, giving him an opportunity to respond. A strike-out warning (as opposed to an unless order) was duly sent out on 17 November 2020, stating that if the Claimant wished to object to the proposal, he should give his reasons in writing, or request a hearing at which he could make them by 7 December 2020.
8. On 18 November 2020, the Claimant wrote to the Tribunal, asking for a hearing. He explained that he was 'ready and waiting on 16 November but did not receive a phone call'.
9. At the hearing before Judge Massarella on 22 February 2021, the Claimant acknowledged that his failure to attend the previous hearing was because he had not read the notice of hearing carefully. Judge Massarella emphasised to both parties the importance of paying close attention to any orders received from the Tribunal.

10. At that hearing, the Claimant's allegations still have not been properly particularised and as a consequence, the Judge gave ordered the Claimant to clarify his claims.
11. The Judge explained to him that, not only was it important to identify the individuals who he alleged discriminated against him, but also to reflect on whether they were employees/agents of the Respondent, or employees of the local authority. If the latter, the existing Respondent would not be liable for their acts, and he may wish to consider making an application to join the local authority. Mr Hayes accepted that if any of the allegations were brought against workers supplied by Adecco, then it was appropriate that it should remain the Respondent in these proceedings.
12. Judge Massarella explained to the Claimant that if he did seek to apply to join the local authority, the likelihood would be that the local authority would object to that application; the question of whether he should be allowed to do so was an issue which would need to be decided at the substantive hearing which the judge had listed for two days on 11 and 12 November 2021.
13. With regard to the Claimant clarifying his claims Judge Massarella ordered the Respondent to resend to the Claimant its request for further information, previously attached to an email of 12 November 2021 and the Claimant by 9 March 2021, was ordered to send his answers to those questions to the Respondent and to the Tribunal.
14. The Respondent was also ordered to by 1 March 2021, provide contact details for the legal department of the local authority, which could be used by the Claimant in order for him to apply to join the local authority and by 9 March 2021, the Claimant was required to write to the Tribunal, copying in the Respondent, stating whether he applied to join the local authority as a party to the proceedings, explaining why it was necessary to do so, and why he had not previously named the local authority as a Respondent. Alternatively, by the same date the Claimant was required to confirm that he did not intend to make any such application.
15. Due to the Claimant's failure to comply with the above orders, the Respondent made an application for an unless order to Judge Massarella and the Tribunal responded on 16 April 2021 ordering the Claimant to provide his response to the Respondent's request for further information, as ordered on page 3, paragraph 4 of his case management summary, dated 22 February 2021, and send it to the Respondent and the Tribunal by no later than 23 March 2021. In doing so, he was required to carefully consider the guidance the Judge gave at page 3, paragraph 11 of the same summary. If no reply had been received from the Claimant by that date, a Judge would consider striking out the entirety of his case under Rule 37(1)(d) on the ground that he has not actively pursued it.
16. In addition, Judge Massarella ordered that by no later than 23 March 2021. the Claimant must comply with the order at page 3, paragraph 5 of the summary, requiring him to: 'write to the tribunal, copied to the Respondent, stating whether he applies to join the local authority as a party to the proceedings, explaining why it is necessary to do so, and why he had not previously named the local authority as a Respondent. Alternatively, by the same date he shall confirm that he does

not intend to make any such application.' If the Claimant did not comply with this direction, no application, made by him at a later date, would be considered in relation to joining the local authority.

17. The case remained listed for an open preliminary hearing on 27 May 2021 before me today, to consider any application by the Claimant to join a second Respondent and/or any applications by the existing Respondent for a strike-out/deposit order.

Discussion

18. At today's hearing, Mr. Hayes for the Respondent confirmed that the Claimant had not complied with the orders made by Judge Massarella nor had he engaged in the proceedings at all since the hearing on 22 February 2021. This was the reason for his application for an unless order and the reason for Judge Massarella's further order of 16 April 2021 warning the Claimant not for the first time of the need to comply with the Tribunal's directions or face the consequences. Mr. Hayes applied for the claim to be struck out under rule 37 on the basis that the claim had no reasonable prospects of success, that the Claimant had not complied with the Tribunal's orders, that the Claimant had not actively pursued his claim since the previous hearing on 22 February and that the Claimant had not directly pleaded allegations of discrimination against any of the Respondents agents or employees.

Decision

19. After reviewing the history of the claim as stated above and noting the Claimant's complete failure to engage with the process since the last hearing, his ignoring or the orders made by Judge Massarella and his failure to attend today's hearing with no application for a postponement, I decided to strike out the Claimant's claim in its entirety on the basis of Rules 37, (a), that it had no reasonable prospect of success, 37 (c) his noncompliance with the Tribunal's orders, and 37 (d), his failure to actively engage in the proceedings. Before doing so, I satisfied myself that the Claimant had been notified of today's hearing and that he did not make an application for a postponement.

**Employment Judge Hallen
Date: 27 May 2021**