



EMPLOYMENT TRIBUNALS

Claimant: Mr M Meggs
Respondent: Barts Health NHS Trust
Heard at: East London Hearing Centre (via Cloud Video Platform)
On: 10 May 2023
Before: Employment Judge Brewer

Representation

Claimant: No attendance
Respondent: Ms S David, Counsel

JUDGMENT

The claimant's claims under case number 3205736/2022 are struck out

REASONS

Introduction

1. This case was presented by the claimant on 28 November 2022.
2. In his claim form the claimant alleges unfair dismissal, disability discrimination and that he was owed certain payments.
3. On 12 December 2022 the parties were advised that there would be a case management hearing by telephone on 10 May 2023.
4. The respondent responded to the claim and on 9 February 2023 Acting Regional Employment Judge Burgher issued a number of case management orders including that by 1 March 2023 the claimant was to provide certain further particulars, that the parties should prepare an agreed schedule of issues by 26 April 2023 and send that to the Tribunal, that the claimant should provide a schedule of loss by 1 March 2023 and that there should be disclosure of documents by 1 May 2023.

5. On 9 February 2023 the claimant sent an e-mail to the Tribunal requesting that the case management hearing be cancel.
6. By letter of 16 February 2023 the claimant was asked to confirm whether this amounted to a withdrawal of his claim as it was unclear.
7. The claimant did not respond to that letter.
8. There followed a number of emails from the respondent's solicitor to the Tribunal, each copied to the claimant, seeking to establish whether the claimant had responded to the Tribunal and for confirmation whether the claim was continuing or whether in fact it had been withdrawn.
9. The claimant failed to contact either the tribunal or the respondent's solicitor.
10. On 2 May 2023 Employment Judge Walker wrote to the claimant and to say that he was considering striking out the claim as it appears that it may not be being actively pursued or, in the alternative, to dismiss the claim as it appears that the claimant intended to withdraw it. The claimant was advised that if he wished to object to the proposal to strike out the claim or to dismiss it he should provide written reasons to the tribunal by 9 May 2023. The closed preliminary hearing on 10 May 2023 was converted to an open preliminary hearing specifically so that consideration could be given to striking out the claimant's claim.
11. The claimant did not provide any objection to the proposal to strike out the claim or to dismiss it.
12. The same day, 2 May 2023, the tribunal wrote to the parties confirming that the hearing on 10 May 2023 would be an open preliminary hearing by CVP and that the purpose of the hearing was to determine whether the claim should be struck out or dismissed.
13. The claimant did not attend the open preliminary hearing. The respondent did it attend and was represented by Ms David of Counsel.

Issues

14. The issue for me to determine was whether the claim should be struck out or dismissed.

Law

15. For reasons which will become clear I have set out below the law relating to strike out only.
16. Rule 37(1)(d) of the Tribunal's Rules 2013 is in the following terms:

Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(d) that it has not been actively pursued...

17. The case law decided under the 2001 Rules continues to be relevant to strike-outs under rule 37(1)(d). In **Evans and anor v Commissioner of Police of the Metropolis** 1993 ICR 151, CA, the Court of Appeal held that an employment tribunal's power to strike out a claim for want of prosecution must be exercised in accordance with the principles that (prior to the introduction of the Civil Procedure Rules in 1998) governed the equivalent power in the High Court, as set out by the House of Lords in **Birkett v James** 1978 AC 297, HL. Accordingly, a tribunal can strike out a claim where:
 - 17.1. there has been delay that is intentional or contumelious (disrespectful or abusive to the court), or
 - 17.2. there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondent.
18. The first category is likely to include cases where the claimant has failed to adhere to an order of the tribunal. As such, it overlaps substantially with the tribunal's power under rule 37(1)(c) to strike out for non-compliance with tribunal rules or a tribunal order.
19. The second category requires not only that there has been a delay of an inordinate and inexcusable kind, but that the respondent can show that it will suffer some prejudice as a result.

Findings of fact

20. I have set out the essential findings of fact in the introduction and I repeat those here.

Discussion and conclusion

21. Other than present his claim, the claimant has done nothing to actively pursue that claim.
22. The claimant has:
 - 22.1. failed to comply with even the most basic orders of the Tribunal,
 - 22.2. failed to deal with correspondence from the Tribunal,
 - 22.3. failed to deal with correspondence from the respondent,
 - 22.4. essentially ignored the strike out warning and not provided any reason why the claim should not be struck out and
 - 22.5. failed to attend today's hearing or give any good reason why he did not or could not attend.

23. In my judgement the claimant's behaviour falls squarely within rule 37(1)(d) and the principles set out in the **Evans** case in that his delay is clearly intentional and, given the complete lack of contact from him, also clearly disrespectful. I further consider that his lack of action in pursuing his claims is abusive given his failure to confirm his position on withdrawal causing the respondent to continue to incur legal costs both in trying to understand what the claimant was or was not doing in the case and also in having to prepare to attend and in attending today's hearing.
24. For those reasons the claimant's claims are struck out because the claimant is not actively pursuing the claims.

Employment Judge Brewer

10 May 2023