



EMPLOYMENT TRIBUNALS  
London Central Region

Heard by CVP on 5/8/2022

Claimant: Mr T Scott-Obene

Respondents: (1) Wicked London Production Ltd  
(2) Mr N Salmon

Before: Employment Judge Mr J S Burns

Representation

Claimant: No appearance

Respondents: 1 Ms H Slarks (Counsel)  
2 Ms A Beech (Counsel)

JUDGMENT

1. The claims against the First Respondent are struck out
2. The claims against the Second Respondent are dismissed
3. The Claimant must pay the First Respondent's costs of £5000 by 19/8/2022
4. The Claimant must pay the Second Respondent's costs of £5808 by 19/8/2022

REASONS

1. I have changed the name of the First Respondent so it reads as above, as that is the correct name of the company sued by the Claimant.
2. I was referred to a bundle of 79 pages, to a skeleton argument from Ms Slarks dated 4/8/22 and to a statement from the Second Respondent's solicitor dated 2/8/22.
3. The Claimant presented his claims on 18/2/22 for unfair dismissal, age, race, race, sex and religion or belief discrimination, arrears of pay and other payments.

The claims against the First Respondent

4. The Claimant's claim was presented out of time. The Claimant's engagement terminated on 10 September 2021; the Claimant commenced ACAS Early Conciliation on 3 October 2021 and the ACAS Early Conciliation Certificate against the First Respondent was issued on 14 November 2021. The last date on which the claim in relation to the dismissal should have been presented was 20 January 2022 (and before this date for any claims in relation to events during his engagement). The claim was not presented until 18 February 2022. The Claimant has not put forward any material or evidence that it was not reasonably practicable for him to present his unfair dismissal and money claims in time and or that it would be just and equitable to extend the time limit for his discrimination claims.
5. I therefore strike out the claims on the basis that the Tribunal has no jurisdiction over them because of time limitation.

6. Had I not struck them out on this basis I would have struck them out because they have not been actively pursued as contemplated by Rule 37(1)(d). The details of this are set out in Ms Ms Slarks's skeleton argument, notably in paragraphs 10 to 20 and 36 to 38 thereof which I incorporate by reference into these Reasons.

#### Claims against Second Respondent

7. The Claimant's claim against the Second Respondent should not have been accepted by the Tribunal because the Claimant failed to notify ACAS of his intention to make that claim and obtain an appropriate EC certificate. No exemption applies here to the requirement to notify ACAS.
8. It appears that, upon first receiving the Claimant's claim, the Tribunal did intend to reject the claim against the Second Respondent in accordance with Employment Tribunal Rule of Procedure 10(1)(c)(i). The Notice of Claim sent to the parties included the following: "*Part of the claim has been rejected, namely the complaints of Nick Salmon.*" This wording was wrong and should have read "*Part of the claim has been rejected, namely the complaints against Nick Salmon*". It appears that, as a result an administrative error, the Second Respondent remained a party to the proceedings, or at least, in the absence of clarification, prudently assumed that he so remained.
9. The Second Respondent's solicitors wrote to the Employment Tribunal on at least three occasions in April and May 2022 seeking clarification from the Employment Tribunal whether the Second Respondent had been included and if so whether he remained as a party. The Claimant was copied into each of these communications. Unfortunately, the Tribunal did not provide that clarification. On behalf of the Tribunal I apologise to the Second Respondent for the inconvenience and costs he has been put to by this.
10. As Mr Salmon should not have been accepted as a Second Respondent in the first place, it is confirmed that he is released from the claims, which claims are dismissed to the extent that they ever existed.
11. If I had not reached the conclusions about the Second Respondent explained in the previous paragraphs, I would have struck out the claims against him in any event for the same reasons for which I have struck out the claims against the First Respondent set out above. I also rely on the contents of paragraphs 7 to 12 inclusive of the Second Respondent's solicitors statement dated 2/8/22, the contents of which are incorporated herein by reference.

#### Costs

12. The First Respondent included an application for costs in its letter of 8 July 2022, and filed and served a schedule of costs of £23872.50 on 3 August 2022.
13. At paragraph 14 of the Record of Preliminary Hearing on 23/6/22, Employment Judge Sutton QC noted that should the Claimant not provide a tenable basis for the Second Respondent's continued participation in the proceedings or should the Claimant not respond to the Second Respondent's direct communication to the Claimant regarding his failure to notify ACAS of his claim against the Second Respondent, this would be a matter that the Tribunal may wish to consider as a basis for a costs order.
14. The Claimant was put on notice, in an email of 5 July 2022 from the Second Respondent's solicitors (written pursuant to EJ Sutton's direction), that an application for an order for costs

would be made by the Second Respondent if the Claimant did not respond to the email or provide a tenable explanation for why the Second Respondent should continue to be a party to the claim. A further warning email was sent on 8/7/22. The Claimant did not respond to any of this.

15. The Second Respondent's solicitors filed and served a costs schedule of £5808 including VAT.
16. Rule 75(a) of the ET Rules empowers the Tribunal to order a party to pay another party *"in respect of the costs that the receiving party has incurred while legally represented"*.
17. Rule 76 provides that the Tribunal shall consider making a costs order in the following relevant circumstances: *"(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or any claim or response had no reasonable prospect of success...(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party."*
18. In this case none of the claims had any reasonable prospect of succeeding, because they were out of time and the Claimant never offered any explanation to justify an extension of time.
19. The Claimant caused the first case management hearing to be adjourned, without notifying the Respondents of his application, even when they attempted to correspond with him about preparation for the hearing.
20. The Claimant attempted to adjourn the second hearing only two days before it was due to take place.
21. The Claimant has never provided any detailed explanation or evidence supporting his attempts to adjourn the hearings.
22. The Claimant failed to cooperate with any attempts to discuss or clarify the issues (including by attending the hearings listed for this purpose), meaning that the Respondents could not formulate strike out or deposit applications based on the merits of his claims.
23. The Claimant failed to comply with EJ Sutton's orders that would have enabled the Respondents to understand his defence to their applications in advance of this OPH.
24. The Claimant left the Respondents no option but to actively defend the case, while doing nothing to advance his own case.
25. The Claimant has therefore acted unreasonably and vexatiously (i) in bringing the proceedings against the Second Respondent and (ii) in conducting the proceedings against both Respondents. His claims also had no reasonable prospect of success.
26. Hence my discretion to award costs is engaged.
27. In deciding whether to make the order and for what amount, the Tribunal may have regard to the Claimant's ability to pay, pursuant to Rule 84. I have limited information about the Claimant's means, which situation arises from the Claimant's failure to attend the hearing and failure to otherwise provide such information. The only information I have is that he has been in work as described in the ET1.
28. The First Respondent's costs of the three scheduled hearings are over £20,000. The First Respondent however asks the Tribunal to award only £5,000 of its costs. The Second Respondent asks for an award of the whole of the costs on his costs schedule namely £5808.

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29. I am satisfied that it is proper to award both those sums.

J S Burns Employment Judge  
London Central  
5/8/2022  
For Secretary of the Tribunals  
Date sent to parties : 05/08/2022

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