



EMPLOYMENT TRIBUNALS

Claimant: Mr W Labuda

Respondent: Johnson Matthey Plc

Heard at: Bury St Edmunds (CVP) **On:** 17 February 2022

Before: Employment Judge Saward (sitting alone)

Representation

Claimant: No attendance or representation

Respondent: Mr Priya Nainthy (Solicitor)

JUDGMENT

The claim is struck out.

REASONS

Introduction

1. The claimant submitted a claim for unfair dismissal on 1 July 2021. A response was filed on 31 August 2021. In its response, the respondent disputed that the claim was presented in time.
2. The respondent subsequently made an application on 1 February 2022 to strike out the claim.
3. The matter was listed for an open preliminary hearing to consider the respondent's application to strike out the claim and to determine whether the claimant's claim for unfair dismissal was presented in time.
4. The claimant failed to attend or to be represented at the preliminary hearing on 17 February 2022. Notice of the preliminary hearing had been sent by the Tribunal to both parties by letter dated 7 February 2022. The hearing was adjourned whilst the Tribunal administration sought to make contact with the claimant. The Tribunal was unable to secure a response from the claimant by telephone or email to establish the reason for the claimant's absence.

5. Having received no prior contact or explanation from the claimant, the Tribunal decided to proceed with the preliminary hearing in the claimant's absence as provided by Rule 47 of the Employment Tribunals Rules of Procedure 2013 ('the 2013 Rules').

Respondent's application

6. The application to strike out the claim was made under Rule 37(1)(b),(c) and (d) of the 2013 Rules on the grounds:
 - “(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious.
 - (c) for non-compliance with an order of the Tribunal, namely Case Management Orders of 15 November 2022.
 - (d) that it has not been actively pursued.”
7. It was clarified at the preliminary hearing that the respondent does not argue that the claimant's conduct has been scandalous or vexatious. Rather, the respondent considers the manner in which the proceedings were conducted to have been unreasonable within the meaning of ground (b) under Rule 37(1).

Findings

8. Within the Notice of Hearing of 15 November 2021, the Tribunal issued Case Management Orders to the parties in preparation for a 2-day Hearing on 17 and 18 February 2022. Those directions included a requirement for the claimant to set out what remedy the Tribunal was being asked to award including evidence in support by no later than 29 November 2021. By 13 December 2021 the parties were also required to send each other a list of any documents that they wished to rely upon and to send each other copies of those documents if requested to do so.
9. On 29 November 2021 the claimant's solicitor advised the respondent's solicitor that a schedule of loss would be finalised and provided as required by the case management order. No schedule of loss was provided.
10. On 6 December 2021 the claimant's solicitors advised the Tribunal and the respondent that they were no longer representing the claimant.
11. The Tribunal heard how the respondent wrote to the claimant on 13 December 2021 reminding him that disclosure of documents was required. The respondent sent its documents to the claimant on 17 December 2021. At the same time the respondent reminded the claimant that his schedule of loss was due and of the duty to disclose documents.
12. The respondent emailed the claimant on 24 December 2021 requesting the schedule of loss and disclosure by 5 January 2022. When no response was received to any of these communications, the respondent informed the claimant on 14 January 2022 that an Order would be sought to strike out his

claim unless he complied with the Case Management Orders. The application for strike out of the claim followed on 1 February 2022.

Relevant Legal Principles

- 13. Rule 37 of the 2013 Rules allows the Tribunal at any stage of the proceedings, either on its own initiative or on the application of a party, to strike out all or part of a claim on any of the grounds within Rule 37(1), including those outlined above.
- 14. Under Rule 37(2), a claim may not be struck out unless the claimant has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

Conclusions

- 15. The claimant failed to comply with the Case Management Orders of 15 November 2021 despite attempts by the respondent to secure a response. The claimant further failed to attend the preliminary hearing or notify the Tribunal of his intended absence.
- 16. For these reasons, there has been non-compliance with an order of the Tribunal, the claimant has not conducted the proceedings in a reasonable manner or actively pursued his claim. Opportunity to make representations on the application to strike out was afforded to the claimant through the preliminary hearing had he attended.
- 17. Accordingly, the claim is struck out. It follows that no determination is required on whether the claim was presented in time.

Employment Judge Saward
28 February 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
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FOR THE TRIBUNAL OFFICE