



EMPLOYMENT TRIBUNALS

Claimant: Mr R Bryce

Respondent: Sentry Consulting Limited

Heard at: Nottingham On: 23 August 2022 (by video at the request of the parties)

Before: Employment Judge M Butler (sitting alone)

Appearances

Claimant: In person

Respondent: Mr K Chehal, consultant

JUDGMENT

The judgment of the Tribunal is that the response is not struck out.

REASONS

1. The background to this open preliminary hearing is briefly as follows. On 20 May 2021, Employment Judge Brewer made case management orders in preparation for the final hearing in this matter which is scheduled to take place on 3, 4 and 5 October 2022. On 6 June 2022, the Claimant applied for an Unless Order stating that the Respondent had failed to comply with case management orders. The Tribunal asked the Respondent to comment on the application and give an explanation. The Respondent did not reply so I issued an Unless Order requiring the Respondent to comply with outstanding case management orders by 22 July 2022.

2. At this stage, the outstanding orders were principally related to agreeing the hearing bundle and the exchange of witness statements. On 19 July 2022, the Respondent sent an electronic copy of the bundle to the Claimant who was not

immediately in a position to exchange witness statements which were subsequently exchanged on 28 July 2022.

3. The Claimant wrote to the Tribunal saying the response should be struck out without further notice because the Respondent had not fully complied with the Unless order and had not applied for relief from sanctions.

4. On 6 August 2022, Employment Judge Clark listed an urgent preliminary hearing to determine whether the Respondent is in default of the Unless Order and, if so, whether to grant relief. Hence the matter comes before me today.

5. The first issue is to determine whether the Respondent was in breach of the Unless Order. It is the Claimant's view that it is because the Respondent did not provide a hard copy of the hearing bundle to him by 22 July 2022 and did not exchange witness statements by that date.

6. In order to determine whether the Unless Order was complied with, I consider Employment Judge Brewer's order of 20 May 2021. At paragraph 20 he ordered, "The respondent must prepare a file of those documents with an index and page numbers. They must send a hard copy and/or a PDF copy to the claimant" With respect to the Claimant, who is a litigant in person, albeit a law graduate, the Order does not say a hard copy must be sent to him but either a hard copy or an electronic copy. Thus, by sending an electronic copy, the Respondent complied with the Unless Order in this regard.

7. As for exchanging witness statements, paragraph 28 of Employment Judge Brewer's order says, "The claimant and the respondent must send each other hard and/or PDF copies of all their witness statements...." Again, with respect to the Claimant, I do not see how the Respondent could achieve exchange of witness statements when the Claimant, by his own admission, was not ready to do so. Accordingly, I consider it not to be in the interests of justice or proportionate to blame the Respondent for not exchanging witness statements in compliance with the Unless Order.

8. Accordingly, I consider the Respondent has complied with the Unless Order to the extent it was possible and feasible to do so and the response is not struck out.

Employment Judge Butler

Date 23 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON