

IN THE INDUSTRIAL TRIBUNAL

Case No. Ind Tri 12/2005

BETWEEN:

DANNY BRITTO

Complainant

-AND-

VOCATIONAL TRAINING SCHEME

Respondent

DECISION

1. This is the Tribunal's Decision on an Application by the Respondent that the Complainant's Originating Application for unfair dismissal be struck out. The Application has not been opposed as the Complainant has not participated in the proceedings since their resuscitation in March 2015.

Summary chronology of proceedings

2. The Complainant's Originating Application was filed on 23 September 2005 and sent to the Respondent on 29 September 2005. A Notice of Appearance was filed on 12 October 2005. Following the appointment of a Chairman, Preliminary Hearings took place on 16 February 2006 and 15 September 2006 and case management Orders were made. The matter was set down for hearing beginning on 24 October 2007 but was adjourned.
3. There was apparently no further correspondence from or on behalf of either party in the period 24 October 2007 until the Tribunal wrote to the parties' recorded representatives on 19 March 2015 to advise that the proceedings had been recommenced.

4. A Preliminary Hearing was arranged for 18 May 2015. Notice (dated 28 April 2015) of the same had been given by the Tribunal to both parties' recorded representatives. No response to this was received from the Complainant's representative, nor from the Complainant. The Tribunal attempted to make contact directly with the Complainant's representative to ascertain the position, but with no success. No appearance was made by the Complainant or his representative at the Preliminary Hearing on 18 May 2015, which I adjourned for 1 month as it had not been established by the Respondent or the Tribunal that the Complainant was on notice of that Hearing.

Respondent's Application for strike out

5. The Respondent made an Application dated 28 May 2015 that: "*the Complainant's claim for unfair dismissal be struck out on the basis that it has not been actively pursued and for want of prosecution since 2005*". Isolas for the Respondent advised the Tribunal that they had: "*complied with rule 18(1) of the Industrial Tribunal Rules by providing a copy of [their] letter to [the Complainant] and advising him that any objection to this application must be sent to the Secretary of the Tribunal...*".
6. In Isolas' service letter to the Complainant dated 28 May 2015, it was stated, *inter alia*:

"Should you wish to object to this application, representations should be made in writing and sent to the Secretary of the Tribunal as soon as possible and copies to ourselves. Details of the Secretary are as follows: [contact details provided]. If you wish to be heard on the application, you must attend at the time and place abovementioned. However if you decide not to oppose the application, the Tribunal will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence."
7. No appearance was made by the Complainant or his representative at the adjourned Preliminary Hearing on 18 June 2015. Isolas confirmed that the Complainant was in receipt of their Application dated 28 May 2015 as they had spoken to him by telephone before the Hearing. However, I again adjourned (until 7 July 2015) because I was still not satisfied that the Complainant was on proper notice of the Hearing: Isolas' service letter to the Complainant dated 28 May 2015 had given an incorrect Hearing location.
8. On 23 June 2015, the Respondent made a second Application that the Complainant's claim for unfair dismissal be struck out in identical terms to that dated 28 May 2015 but specifying a correct Hearing location. This was served on the Complainant by letter from Isolas dated 23 June 2015 in identical terms to the service letter dated 28 May 2015 (but with the correct Hearing location).
9. No appearance was made by the Complainant or his representative at the adjourned Preliminary Hearing on 7 July 2015. Isolas advised that they had

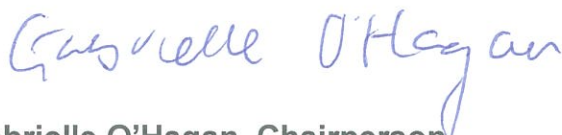
received no contact from the Complainant in the intervening period; and the Secretary of the Tribunal advised that he had not made contact with the Tribunal. Isolas referred me to a recent decision in the analogous case of Ruiz-v-Gibdock Limited (Ind Tri 3/2012) dated 10 June 2015.

The law

10. I concur with the decision in Ruiz referred to above, that the Tribunal has power to strike out a claim if it would be just and fair to do so, pursuant to Rule 16(1) of the Industrial Tribunal Rules: "*Subject to the provisions of these rules, the tribunal may regulate its own procedure*".
11. Applications are brought under Rule 17(2): "*a party may at any time apply to the tribunal for directions on any matter arising in connection with the proceedings*". This is subject to Rule 16(3): "*The tribunal may, if it thinks fit, before granting an application under rule 10 or rule 17 require the party making the application to give notice of it to the other party or parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.*"

Findings

12. I am satisfied that all reasonable steps to notify the Complainant of the revived proceedings, the adjourned Preliminary Hearing and of the Respondent's Application that the Complainant's Originating Application be struck out, have been taken, as required by and in accordance with the Industrial Tribunal Rules (in particular Rule 16(3)) and the Tribunal. I base this finding in particular on the contents of the Respondent's Application service letters dated 28 May 2015 and 23 June 2015; and the fact that it was confirmed to me by the Respondent's solicitors that the Complainant had received the Application documentation.
13. No steps have been taken by the Complainant since 2007 to progress his Originating Application and he did not attend the Preliminary Hearing as adjourned in May, June and July this year, nor has he made any contact with the Tribunal or the Respondent's Solicitors. He has not opposed the Respondent's Application that his Originating Application be struck out.
14. In all the circumstances, I therefore Order that the Complainant's Originating Application for unfair dismissal be struck out on the basis that it has not been actively pursued and for want of prosecution.



Gabrielle O'Hagan, Chairperson

20 July 2015