

**IN THE EMPLOYMENT TRIBUNAL**



Cases No. 2 of 2017, No. 22 of 2017 and 35 of 2017

[Consolidated by Order dated the 23<sup>rd</sup> April 2018]

**BETWEEN:**

Peter Gustafson

Claimant

-and-

Gibraltar Joinery & Building Services Limited

Respondent

**RULING**

At a hearing on the 20<sup>th</sup> June 2018, I directed the Claimant to give (by sending to the Tribunal and to the Respondent) on or before the 31<sup>st</sup> July 2018 the Further and Better Particulars of his claims requested in the Respondent's application of the 18<sup>th</sup> May.

On the 9<sup>th</sup> July, however, the Claimant wrote to the Tribunal, refusing to comply with that direction on the ground of what he considers to have been an impropriety on the part of the Respondent's solicitors which is alleged to have occurred during the hearing which took place on the 23<sup>rd</sup> April and which he alleges was "An effort ... by the Tribunal to merely sweep this under the carpet as an isolated incident ..." which "the Chairman was insistent should be swiftly forgotten" because the "incident took place 'on his watch' ..."

The conduct of the Respondent's solicitors and of the Tribunal which he complains of relates to the draft of suggested directions for consideration by the Tribunal which Ms Michelle Walsh, appearing on behalf of the Respondent, handed round at the hearing of the 23<sup>rd</sup> April. I will henceforth refer to the document as "**the Draft**".

In the event, the Draft was not touched upon or considered at that hearing and the Tribunal's directions were somewhat different.

On the 29<sup>th</sup> May the Claimant wrote to the Tribunal to record the Respondent's failure to comply with items 2 and 3 of the Order of the 23<sup>rd</sup> April but, unknown to the Claimant, the Respondent's solicitors had, in fact, written to the Tribunal on the 18<sup>th</sup> May and their letter is recorded by the Tribunal as having been received on the 22<sup>nd</sup> May. Due to an administrative oversight within the secretariat of the Tribunal, the Respondent's solicitors' letter was not copied to the Claimant.

In that letter, he also took "issue with the handout given to [him] by Hassans on the 23<sup>rd</sup> April ...", referring to the Draft.

At the hearing on the 20<sup>th</sup> June, he renewed his challenge of what he believed to be the Respondent's assertion that that was an Order made by the Tribunal on the 1<sup>st</sup> March. The Respondent made no such assertion but the Claimant accuses the Respondent's solicitors of "fraud", having acted dishonestly and misled the Tribunal and all sorts of misdemeanours.

I explained to the Claimant that the Tribunal was well aware that no hearing had taken place on the 1<sup>st</sup> March (whether before Ms.

O'Hagan or any other Chairperson) nor were the Respondent's solicitors understood to be asserting otherwise. I went on to explain to the Claimant that it was usual in the course of litigation for solicitors to the parties to attend directions hearings armed either with agreed directions for approval by the court or tribunal or with suggested directions for consideration at that hearing. I also explained that I had seen the Draft among the papers at the hearing on the 23<sup>rd</sup> April but that Draft was neither considered nor discussed at the hearing nor did its terms form any significant part of the Tribunal's directions.

The Claimant then insisted that the Respondent's solicitors ought to be directed to submit a written explanation of why or how that document came to be put forward by them which I emphatically declined to do since I was well aware of and had explained to the Claimant in plain and simple English the nature, purpose and irrelevance of the Draft and I took the view that no useful purpose would be served putting the Respondent to the expense of a written explanation by its solicitors of that which I had already explained.

On the 14<sup>th</sup> August, the Claimant wrote to the Tribunal applying for the Respondent's response to be struck out pursuant to Rule 36(1) of the Employment Tribunal (Constitution and Procedure) Rules 2016 on the ground set out in -

- (i) paragraph (b) of the sub-rule that the manner in which the proceedings have been conducted by or on behalf of the Respondent has been scandalous, unreasonable or vexatious by the rendering of false evidence to the Tribunal on the 23<sup>rd</sup>

April;

- (ii) paragraph (c) of non-compliance by the Respondent with an order of the Tribunal made on the 23<sup>rd</sup> April that the Respondent deal with items 2 and 3 thereof by the 18<sup>th</sup> May;
- (iii) paragraph (d) that the claim has not been actively defended by the Respondent, but delayed by its non-compliance with the Tribunal's Order of the 23<sup>rd</sup> April and "by being effectively terminated by criminality ...", referring to his repeated allegations regarding the Draft; and
- (iv) paragraph (e) that it is no longer possible to have a fair hearing in respect of his claims in the light of the false evidence tendered by the Respondent, meaning the Draft.

The grounds for striking out based on or connected with the Draft are doomed to failure because of my finding that there was nothing fraudulent, misleading or improper about the Respondent's solicitors' conduct in relation to it.

In so far as the Claimant bases his application on the ground of the Respondent's non-compliance by the 21<sup>st</sup> May with items 2 and 3 of the Order of the 23<sup>rd</sup> April, as stated earlier in this Ruling and, indeed, at the hearing on the 20<sup>th</sup> June, Messrs. Hassans had written to the Tribunal on the 18<sup>th</sup> May and its letter was received by the Tribunal on the 22<sup>nd</sup> but, due to an administrative oversight on the part of the Tribunal's secretariat, the letter was not copied to the Claimant.

[I]t is pertinent to mention here that, notwithstanding my urging at the hearing on the 23<sup>rd</sup> April, the Claimant has flatly refused to receive any communications direct from the Respondent or its solicitors. Had he not imposed such an unreasonable prohibition, he might have

become aware of the letter of the 18<sup>th</sup> May by the time the Tribunal did.]

If anyone is guilty of non-compliance with an Order of the Tribunal, it is the Claimant, who by his letter of the 9<sup>th</sup> July has made it clear that he does not recognise the authority of the Tribunal. I do hope he will reconsider his position in the light of this Ruling and I will give him a final opportunity to comply with the directions given on the 20<sup>th</sup> June before **12 noon on the 31<sup>st</sup> August 2018**, failing which his claims will be struck out under Rule 36(1)(c) without further ado.

16<sup>th</sup> August 2018.



*Hareesh K. Budhrani, QC*

Chairperson