



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mrs P van Bergen

**The Commissioner of Police of the
Metropolis**

Heard at: London Central

On: 22 October 2018

Before: Employment Judge Lewis

Representation

For the Claimant: Did not attend

For the Respondent: Mr R Oulton, Counsel

JUDGMENT

The claims in this matter are struck out because the case has not been actively pursued.

REASONS

1. The claimant originally brought an unfair dismissal claim (her first claim), which she presented on 21 October 2017. At a preliminary hearing on 22 February 2018, there was some discussion of disability and harassment. Employment Judge Hodgson advised the claimant that if she wanted to proceed with any claim additional to her unfair dismissal claim, she needed to set out details and ask permission to amend her claim. The claimant made no such application.

2. The claimant's employment had terminated on 5 September 2017, following a notice period. On 13 March 2018, she notified ACAS under the Early Conciliation procedure of a proposed new claim. The ACAS certificate was

issued on 16 March 2018 and on 15 April 2018, the claimant presented her second claim, ie the current claim. The claim ticks the boxes for race, disability, sex and sexual orientation discrimination. The grounds simply state:

'I have been unable to question my Ex Employers about a number of things that I had been concerned about. My employers, it would appear had concerns around my gender, my disability and my race, however felt it was unnecessary to speak directly to me about it'.

There is no further detail of the alleged discriminatory actions.

3. On 14 September 2018, following a five day hearing, the claimant's first claim (unfair dismissal) was not upheld. The tribunal had intended to follow the hearing of the first claim with a preliminary hearing on the second claim. At the claimant's request, this was postponed until today (22 October 2018).

4. At the same time, and confirmed in a written Order sent to the parties, the claimant was ordered to state on or before 12 October 2018 whether she was proceeding with the second claim or withdrawing it. Further, if she intended to proceed, she was ordered by that date (i) to make any application to amend the claim and (ii) to provide a witness statement setting out why the claim was not brought sooner and why the time-limit should be extended. The rescheduled preliminary hearing would then deal with any application to amend, whether the claim was submitted in time and any application for a strike out or deposit order.

5. There was then some confusion in that the tribunal treated the claimant's original request for postponement of the preliminary hearing on 14 September 2018 as if it had been made thereafter and referred to the 22 October date. The claimant confirmed that she had not asked for the 22 October date to be postponed. Meanwhile the tribunal wrote to the claimant to say that the 22 October would not be postponed, and the claimant had sufficient time to seek advice and obtain representation if appropriate.

6. On 11 October 2018, the claimant wrote to the tribunal to say she had been unwell since 14 September 2018 and she was still looking for a barrister/solicitor to represent her. She said she was 'unable to inform you of anything at the present time' because she had no representation, but she hoped to be ready for the preliminary hearing.

7. That email does not appear to have been copied to the respondents. On 15 October 2018, the respondents made an application to strike out the second claim ahead of the preliminary hearing on grounds of failure to comply with the 12 October 2018 Order. The application was copied to the claimant.

8. At 6.47 am on 22 October 2018, the claimant emailed the tribunal as follows:

'Due to the impact this case has been having on my health and being unable to get support, I am unable to attend the tribunal today and continue the case.'

9. I read that email as meaning the claimant was unable to continue running her case. So that there was no misunderstanding, the tribunal emailed her back

at 8.50 am to ask her to confirm our understanding that she wished to withdraw her case and that it should be dismissed.' The claimant did not reply. The preliminary hearing therefore went ahead in her absence.

10. Under Sch 1 r37(a) of the Employment Tribunals Rules of Procedure, the tribunal can strike out a claim because it has no reasonable prospect of success. Under Sch 1 r37(1)(c), the tribunal can strike out a claim for non-compliance with a tribunal Order. Under Sch 1 r37(1)(d), the tribunal can strike out a claim because it has not been actively pursued. All three grounds have potential application.

11. I am striking out the claim because it has not been actively pursued. The claimant's email today indicates she does not wish to pursue it. Even if she meant only that she could not attend today, she has done nothing to clarify her claim since putting in an extremely vague claim form. She did not meet the deadline of 12 October. She did not even state by that date whether she intended to pursue her claim. In her 11 October email, she offered no date when she might be able to get representation or pursue things further. This follows a pattern whereby she was unable to specify her discrimination concerns when first invited to in the February 2018 preliminary hearing on the first claim.

12. In the alternative, I strike out the claim because it is out of time. The claimant's employment terminated on 5 September 2017. There is no suggestion of post-employment discrimination. She should have notified ACAS by 4 December 2017. She did not do so until 13 March 2018, over three months late. The claimant must have known about tribunals and time-limits since this was not her first case. She had also had the opportunity in February 2018 to amend her first claim to include her discrimination concerns. She had not wanted to do so. The claimant has not provided any grounds for extending the time-limit on her discrimination claims. Indeed, as I say, even in the claim form they are vague to the point of non-existence.

13. I add that, had the claimant wanted to go ahead, she would have had another difficulty. The matters in her second claim could presumably have been included in her first claim, if not at the outset, at least by later amendment. She would therefore risk being struck out because of the rule in Henderson v Henderson, though I am not in a position to make a conclusive decision on that point.

Employment Judge Lewis

Dated: 22 October 2018

Judgment and Reasons sent to the parties on:

23 October 2018
For the Tribunal Office