



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Miss Z Csator dai

AND

**Respondent**

NHS West Sussex CCG

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN PUBLIC BY VIDEO (CVP) ON

15 January 2021

EMPLOYMENT JUDGE GRAY

### Representation

For the Claimant: Did not attend and was not represented

For the Respondent: Ms Y Genn (Counsel)

### JUDGMENT

UPON the Claimant failing to attend or be represented at this hearing,

AND UPON first considering the information available, the tribunal proceeded with the hearing in the absence of the Claimant under Rule 47 of the Employment Tribunal Rules of Procedure 2013, and

THE JUDGMENT of the tribunal is that the Claimant's claim is struck out pursuant to rules 37(1)(c), (d) and (e) of the Employment Tribunal Rules of Procedure.

In view of the Claimant's nonattendance Written Reasons are also provided as follows:

### REASONS

1. This is claim with a long and full administrative history. It was started by the Claimant by a claim form received on the 28 October 2019. The Claimant

made claims of unfair dismissal, race and disability discrimination, and for money claims being notice, holiday, arrears of pay and other payments.

2. There is then a two-day case management preliminary hearing in person before Employment Judge Emerton on the 19 and 20 February 2020. At that hearing it was noted about the Claimant's claim that it was very detailed but unclear, hence why two days was required. However, despite best efforts over the course of the two days a list of issues could not be finalised. It was possible though to confirm that the complaint of unfair dismissal was not being pursued as the Claimant had been reinstated by that point.
3. Despite the complaints still needing further particularisation and clarification it was agreed that the claim would be listed for a final hearing. It was therefore listed for 10 days before a full tribunal panel at the Havant Justice Centre on the 25, 26, 27, 28, and 29 January and 1, 2, 3, 4, and 5 February 2021. Havant was selected because the Claimant had requested this as she "would find it easier to travel from her home in Brighton to Havant rather than to Southampton...".
4. A further case management preliminary hearing was also listed to:
  - a. Confirm the issues in the case (by reference to the agreed list of issues);
  - b. Hear any other application which it is in the interests of justice to hear at this stage, including any further application under rule 50;
  - c. If the further particulars appear to seek expand, rather than narrow down, the heads of claim, to hear an application to amend or to determine how the matter should be resolved;
  - d. Confirm the position in respect of the claimant's disability, and how it is proposed that any remaining issues be resolved;
  - e. Confirm whether the amended response is accepted;
  - f. List any further PH for case management or to deal with a preliminary issue which may be necessary (which might include an application for strike out or for a deposit order), and to make appropriate case management orders
  - g. Confirm (if possible to do at this stage) the listing and the arrangements for the final hearing (including the number and identity of witnesses) and agree a proposed outline timetable for that hearing; it may be possible to reduce the length of the final hearing;
  - h. Consider listing a further "catch-up" telephone PH;
  - i. Make any further case management orders which may be appropriate, to ensure that the parties are ready for the final hearing; and
  - j. Consider judicial mediation.

5. That further case management hearing then took place before Employment Judge Salter on the 10 July 2020. The Claimant did not attend and the case management summary records ...

“15. This matter was extensively set out in the Case Management Order of Employment Judge Emerton after his two-day Preliminary Hearing on 19th and 20th February 2020. I repeat his exposition of this matter. His Summary and Orders are extensive, and are not repeated in this order. Part of his order was to list a further two-hour preliminary hearing at Bristol Civil Justice Centre for further case management and to determine various applications. During E.J. Emerton’s hearing he heard various applications from the Claimant including adding Respondent’s to the claim including NHS Portsmouth Clinical Care commissioning Group, as well as an application for anonymity; he rejected both.

16. On 16th March 2020 the Claimant presented fresh proceedings against NHS Portsmouth Clinical Care Commissioning Group (1401324/2020), this matter was responded to by that Respondent.

17. The matter could not proceed as an in-person Preliminary Hearing and so the matter was converted into a telephone case management hearing with a time estimate of 2 hours.

18. At just before 6pm on Thursday, 9th July 2020 the Claimant sent to the tribunal, and Respondent, extensive documentation by way of email attaching:

- (a) a “Letter to ET” stating she would not be in attendance at the preliminary Hearing (2 pages);
- (b) a Witness Statement Summary (5 pages);
- (c) an excel spreadsheet consisting of four tabs;
- (d) an application for amendment and anonymity order (13 pages);
- (e) a further particulars document running to 28 pages in landscape.

19. These documents fail to address the structure ordered by Employment Judge Emerton and do not assist in the understanding of the claims. They do not comply with Employment Judge Emerton’s clear and helpful Order.”

6. Case management orders were made and of relevance to today’s hearing it included for full document disclosure by the 25 September 2020 and the exchange of witness statements by the 13 November 2020.
7. A Telephone Case Management Preliminary Hearing was also listed for 30 November 2020 to confirm trial readiness.

8. That further case management hearing took place before Employment Judge Smail on the 30 November 2020. It notes:

“The Claimant did not attend today’s telephone case management hearing. She did not attend the one on 10 July 2020 either. She had a sick note which expired yesterday saying she had generalised anxiety. That is not a reason for not attending today’s telephone case management hearing even if it covered today. The Claimant has not co-operated with the Respondent to define a list of issues. She has not disclosed any documentation. She has not served a witness statement, the extended deadline being 2pm today. One has to doubt whether she actually wishes to pursue this claim. A 10 day full merits hearing has been listed in Havant to start on 25 January 2021. If either the Claimant does not wish to pursue the claim in reality or if she remains in breach of case management orders so her case is not ready, the listed 10 days will be a waste of public resource. Accordingly -...”

... “There will be a preliminary hearing in public but held by video (CVP) on 15 January 2021 at 10am to consider whether or not to strike out the Claimant’s claims on the basis of one or more of –

- (a) the Claimant is in breach of Tribunal orders;
- (b) the Claimant is not actively pursuing the claim;
- (c) it is no longer possible to have a fair hearing.

A day has been set aside to consider the matter and to make any consequential case management orders....

... NB The best chance the Claimant will have of her case surviving the hearing on 15 January 2021 is if she has served a witness statement on the Respondent well in advance of that hearing; if she comments constructively on the list of issues provided by the Respondent and if she actually attends the hearing.”

9. Subsequent to the case management order of Employment Judge Smail the Claimant corresponded with the Tribunal by emails on the 12 and 14 January 2021.

10. The email of the 12 January 2021 simply said ... “Please save me from any further abuse”.

11. Within the email of the 14 January 2021 the Claimant wrote ...

“Please could you advise on what reasonable adjustments have been considered in response to my requests, in light of an imminently pending face to face live case management order having been again scheduled for tomorrow morning. To reiterate, potential reasonable adjustments I have

been asking for are the following, and I would also welcome any other solutions you wish to propose:

- alternative to face to face participation I am unable to keep up with because of my medical conditions and also my lack of legal knowledge and lack of resource capacities, such as conversion to an assessment based on written submissions instead, responding to and actually taking into account my difficulties re. timelines vs fully abled participants,
- access to legal guidance and representation, and
- access to admin support and recognition of the difficulties I'm facing to produce further materials,

recognising the adjustments needed because of my impairments I have been describing re. communication and mobility, evidenced by medical reports.

I have copied the Respondent's legal advisor on this correspondence, who I am also in conversation with about current status of hearing materials, in order to keep them informed about your advice about adjustment that may affect arrangements. I would be grateful for a confirmation of these prior to the time of the currently scheduled meeting tomorrow morning at 10am."

12. By email in response on the 14 January 2021 the Respondent wrote ... "The hearing will take place on the Cloud Video Platform. The claimant can therefore participate from home which should hopefully alleviate any issues caused by impaired mobility. There is also the facility for the claimant to dial in by telephone, rather than on camera, if joining by video would cause any further impediment. The Tribunal is well used to dealing with unrepresented parties who lack specialist legal knowledge and/or experience of the Tribunal system. If necessary, the claimant can be given short breaks during the course of the hearing. It would not be appropriate to deal with the matter by way of written submissions in substitution for a hearing, especially as that may engender further delay to the proceedings given that the scheduled full hearing is due to commence in 11 days."
13. As no application to postpone the hearing was made by either party the hearing proceeded at 10am today.
14. To assist the Tribunal, Respondent's Counsel had submitted for reference at this hearing a chronology of the proceedings and a bundle of pleadings and party correspondence running to 147 pages.
15. This hearing lasted until around 11:10am and in that time the Claimant had not attended.

16. During the course of the hearing the Employment Judge (via the Tribunal clerks) and Respondent's Counsel (via her instructing solicitor) were forwarded emails from the Claimant sent today, attaching an update on a draft index to a bundle of documents and a drop box link. In the Claimant's email timed at 10:17 today she wrote "I have been preparing a response to finalise to send for the hearing this morning, but the time has been taken up by trying to resend the bundle documents to the Respondent and yourselves from last night because the internet is not connecting on my laptop again. Unfortunately I have also had my laptop cable give up the ghost on Monday (see replacement order attached) and have lost several days to prepare to send these to you in advance. In short, the documents are now organised into folders matching the heads of claim, and also the Issues list, the latter which I aim to update as soon as I can, hopefully by Monday, along with tidying up the Witness statement that includes my existing further particulars, ready to be assessed."
17. No explanation for the Claimant's non-attendance was provided and no application for postponement was made, despite the Claimant being able to email the Tribunal and the parties during the course of this hearing. It is noted no medical evidence was submitted today, nor submitted with the Claimant's email of the 14 January 2021, to support her position.
18. From this correspondence and the submissions of Respondent's Counsel the current position on the Claimant's compliance with the case management orders was therefore clear. The Claimant had not complied with the orders made by Employment Judge Salter by the times directed (as varied by the parties' agreement). The Claimant had not heeded the guidance of Employment Judge Smail to serve a witness statement well in advance of today's hearing (this the Claimant was hoping to do by Monday), nor commented constructively on the list of issues provided by the Respondent (again the Claimant was hoping to do this by Monday), nor actually attended today's hearing.
19. These failures by the Claimant are in the context of the final hearing have been listed since February 2020 to start on the 25 January 2021 and last for 10 days.
20. About the final hearing Respondent's Counsel submitted that the Respondent had prepared a bundle (without the Claimant's documents as these had not been received as directed) and its witness statements. However, despite it having made these preparations, the reality for the Respondent was;
  - a. It still did not understand the Claimant's case due to the Claimant not engaging in the production of a list of issues (which has been "in production" since the preliminary hearing in February 2020), nor

producing a witness statement (as directed) from which they could potentially be distilled;

- b. Its currently identified witnesses were to be involved significantly in the COVID vaccination programme which would curtail their ability to assimilate and review any evidence now produced by the Claimant before the final hearing starts;
- c. As set out in the chronology document provided by Respondent's Counsel for this hearing ... "In relation to C's disclosure it is to be noted that her claim spans a period of more than 4 years. She names a significant number of personnel. Many have left R's employment. Although correspondence may have emanated from their employer's systems during the course of their employment many documents are not now be capable of retrievable once staff leave. C's disclosure therefore needs to be seen, even though she identifies that documents have originated in the CCG, in order to enable targeted searches to be undertaken by R to ensure compliance with the ongoing duty of disclosure, and to identify whether any other staff need to give evidence."

21. It was therefore the position of Respondent's Counsel that the Claimant's claim should be struck out pursuant to rules 37(1)(c), (d) and (e) of the Employment Tribunal Rules of Procedure (as already identified by Employment Judge Smail and alerted to the Claimant via his case management order), and rule 37(1) (b) could also potentially apply on the basis of the Claimant's conduct being unreasonable.

22. In support Respondent's Counsel submitted;

- a. The Claimant had breached case management orders since the hearing in February 2020, remained in breach of those and had failed to attend Tribunal hearings on the 10 July 2020, 30 November 2020 and today.
- b. Further, that the correspondence from the Claimant sent in advance of the 30 November 2020 hearing (as copied at pages 113 to 114 of the bundle Respondent's Counsel had provided for this hearing) suggested the Claimant may not attend the final hearing in any event as it noted "Also, because of the severe nature of currently substantially triggered symptoms of extreme dysmenorrhea, chronic adrenal fatigue, and SOB asthmatic attacks in reaction to the pain medication needed to cope with the re-occurring pain, I feel it is necessary to indicate that although I have committed to fully cooperate and engage in the judiciary process meetings and its CMOs when asked at the February 2020 Preliminary Hearing, the

monthly presenting debilitating illness is very unfortunately currently looking due to happen during the 10-day hearing scheduled for 25 Jan – 5 Feb 2021, and therefore there is a strong likelihood that this will substantially affect my participation and attendance at the hearing.” This is all asserted by the Claimant without support of relevant medical evidence.

- c. That the Claimant’s conduct in these proceedings is one of “active inactivity”. Before the previous hearings, as with this one, the Claimant creates a flurry of last minute correspondence to the Tribunal that suggests activity, but does not actually progress matters as the case management orders are not complied with, and the Claimant does not attend the hearings. This causes disruption and prejudice to the Respondent.
- d. A fair trial was not possible. There would be a real injustice to the Respondent to meet this claim in this way resulting from the failure of the Claimant to engage in the process.
- e. Considering the matter objectively there were no lesser sanctions that would remedy these wrongs to ensure a fair hearing. So far, the Claimant has not done what the Tribunal has directed, nor attended the hearings. An unless order would make no difference as the Claimant had not heeded the guidance of Employment Judge Smail contained in his case management order.
- f. For all these reasons it was fair and proportionate to strike the Claimant’s claim out. There have been four case management preliminary hearings at which the Respondent has attended, but the Claimant has attended only the first. The Tribunal rules should be followed by the parties, and the Claimant has been in breach of them and orders of the Tribunal, with breach after breach.

23. Considering then the relevant rules of the Employment Tribunal Rules of Procedure:

- a. Rule 37:

“Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;

- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out) ...

b. Rule 47:

“Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”

- 24. Considering then the rules of Rule 37 that the Claimant was on notice would be considered at this hearing;
- 25. Rule 37(1)(c) the non-compliance by the Claimant of the Rules or with orders of the Tribunal (which would include attendance at hearings). The Claimant’s non-compliance has been continuous since February 2020. It is therefore of a significant magnitude.
- 26. The Tribunal accepts the submissions of Respondent’s Counsel that this would cause disruption and prejudice to the Respondent. From the commencement of the claim until now the extent of the complaints and the issues relevant to those remain unclear due to the lack of active engagement by the Claimant in the process. Due to the time that has now passed without the necessary clarification (particularly where the final hearing has been listed since February 2020 and the Claimant has known what she has needed to do since then and then been reminded of such through subsequent case management orders and in particular that of Employment Judge Smail), it is accepted that a fair hearing would not now be possible.
- 27. There is nothing to suggest that a lesser sanction would be appropriate as the Claimant’s conduct, as complained about by the Respondent and as noted first hand by the Tribunal at previous case management preliminary hearings and by her nonattendance at those hearings, has not altered despite the clear guidance given by Employment Judge Smail.

28. Considering rule 37(1)(d) that it has not been actively pursued, this appears to be so for the reasons referred to in respect of rule 37(1)(c) and as Respondent's Counsel submits, the Claimant has been involved in the claim process with "active inactivity".
29. Considering rule 37(1)(e), that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, this appears to be so for the reasons referred to in respect of rule 37(1)(c).
30. Therefore, the judgment of the Tribunal is to strike out the Claimant's claim pursuant to the Employment Tribunal Rules of Procedure, rules 37(1)(c), (d) and (e) and in accordance with rule 47 in the absence of the Claimant.

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Employment Judge Gray  
Dated 15 January 2021