



## **EMPLOYMENT TRIBUNALS**

**Claimant** Miss C Baldwin

**v**

**Respondents** Cleves School  
Chris Hodges  
Sarah Miller

## **PRELIMINARY HEARING**

**Heard at:** London South Employment Tribunal

**On:** 21 November 2017

**Before:** EJ Webster

### **Appearances**

**For the Claimant:** Did not attend

**For the Respondent:** Mr Cox (Counsel)

## **JUDGMENT**

1. The Judgement of the Tribunal is that the Tribunal does not grant the respondents' application for the claims to be struck out.
2. The Tribunal upholds the respondents' application for an Unless Order under Rule 38.

## **REASONS**

3. Today's hearing was listed by a Notice of Hearing dated 30 October 2017 as a preliminary hearing to consider the following matters:
  - 3.1 If not already conceded whether the Claimant was at the relevant time a disabled person as defined in Section 6 of the Equality Act 2010

3.2 If so whether the Tribunal has jurisdiction to consider the Claimant's complaint given the relevant time limit in Section 23 of that Act.

The Notice of Hearing also set out that case management orders may be made at the conclusion of the hearing.

4. The claimant did not attend today's hearing. By email to the Tribunal dated 14 November the claimant stated that she was well enough to attend the hearing but that due to possible repossession of her home she had to prioritise attending an appointment with a legal aid lawyer scheduled for 10 am today and asking that the hearing was postponed. Following representations by the respondent and consideration by the tribunal, that application for postponement was refused.
5. The hearing was attended by the Respondent's representative and an observer from the Respondent. In the absence of any material or evidence on which to consider the matters set out in the Notice of Hearing, the tribunal was unable to consider the questions set out in the Notice of Hearing.
6. The respondent made an application for the case to be struck out. There were 4 bases for that application:
  - (i) Rule 47 Employment Tribunals Rules of Procedure 2013 (the 'Rules) – Failure to attend the hearing
  - (ii) Rule 37(c) – For non-compliance with an order of the Tribunal
  - (iii) Rule 37(d) – that the claim had not been actively pursued
  - (iv) Rule 37(e) - that it is no longer possible to have a fair hearing in respect of the claim because of the significant time that has elapsed since the events in question occurred.
7. In the alternative, the respondent made an application for an Unless Order to be made under Rule 38. Unless Orders state that if a Tribunal order made under this Rule is not complied with then the claim (or part of it) shall be dismissed without further order. This means that if the Orders are not complied with then the Tribunal shall strike out the claim without any further hearing or consideration of the issues.
8. In considering the applications I considered the time line of the tribunal claim (not the incidents which form the basis for the claims). I set it out here so that the parties and future tribunals can easily refer to what has or has not happened to date.
9.
  - (i) 18 August 2015 - the Claim was issued against 5 Respondents.
  - (ii) 21 September - the Claim was listed for a general case management hearing on 16 November 2015.

- (iii) 2 November 2015 - Two separate ET3s were received (one for respondents 1-3 and one for respondents 4-5) following an agreed extension of time to submit them.
- (iv) 2 November the respondents apply for the case against respondents 4 and 5 to be struck out.
- (v) 11 November – the claimant applies for a postponement of the hearing listed for 14 November because she is too unwell to attend.
- (vi) 12 November the claimant's application is approved and the claimant is asked to provide a medical certificate confirming that she is too unwell.
- (vii) Medical confirmation was received in the form of a letter from her GP dated 17 November 2015.
- (viii) On 3 December 2015 the tribunal wrote to the claimant asking her to confirm when she would be well enough to attend a hearing. She was asked to respond by 10 December 2015.
- (ix) 4 December 2015 - The claimant responded stating that she was awaiting an urgent consultant's appointment and would respond when she knew more.
- (x) 19 January 2016 – the tribunal wrote to the claimant asking her to indicate when she would be well enough to attend the hearing.
- (xi) 22 January 2016 – the respondent applied for the claim to be struck out or to seek confirmation from an expert as to when the claimant would be well enough to attend a hearing.
- (xii) 29 January the claimant stated that she had asked her GP for a letter and that she had evidence from a consultant. The letter from the consultant was not forwarded.
- (xiii) 15 February 2016 – the tribunal refused the application for strike out but ordered the claimant to provide a medical report as to whether the claimant was fit to attend a hearing on or before 26 February 2016.
- (xiv)
- (xv) 18 February a letter was sent from the claimant's GP to confirm that the claimant had been unwell and so could not attend court. It does not set out the basis for that ill health.
- (xvi) 29 February the claimant said that she had forwarded the letter from the consultant but it was not attached.
- (xvii) 17 March – the claimant is written to by the tribunal saying that she must provide the consultant's letter she refers to by 28 March 2016.
- (xviii) 28 March copies of personal medical information including letters from consultants were sent to the Tribunal.
- (xix) 27 April – EJ Baron writes to the parties and orders that an open PH be listed.
- (xx) 13 May 2016 – a Notice of Hearing is sent to the parties setting out that it will consider:
  - To clarify the claims
  - To decide whether the Tribunal has jurisdiction to hear the various claims

- To decide how to determine whether the claimant was a disabled person
  - To make any other appropriate case management orders
- (xxi) 28 July – the PH went ahead. The claims were struck out against respondents 4 and 5. Various case management orders were made which are recorded in the Judgment and orders from that day. A further preliminary hearing was listed for 19 September 2016. To date, none of the orders requiring the claimant to provide information have been complied with. A further PH was listed for 14 September to determine
- (xxii) 12 September 2016 - the claimant applies for a postponement of the hearing on grounds of ill health.
- (xxiii) 16 September – the PH was postponed and the claimant was asked to provide a letter from her GP confirming her ill health. That letter has not been received by the tribunal to date.
- (xxiv) 3 October 2016 – a Notice of Hearing was sent listing the same PH for 8 December 2016.
- (xxv) 11 November 2016 – the claimant wrote to the tribunal seeking an application for a postponement of the hearing on 8 December due to confidential ill health matters.
- (xxvi) 18 November 2016 – the Tribunal confirms postponement of the hearing.
- (xxvii) 22 November 2016 – a Notice of preliminary Hearing is issued for a hearing on 19 January 2017. The issues to be determined remain the same.
- (xxviii) 11 January 2017 – the claimant applies for the hearing to be heard by way of a telephone hearing on medical grounds.
- (xxix) 18 January 2017 – that application is refused.
- (xxx) 18 January 2017 – the claimant provides medical evidence regarding her ill health at that time.
- (xxxi) 18 January 2017 – the hearing is postponed and the claimant ordered to provide evidence of when she will be fit to attend a hearing.
- (xxxii) 14 March 2017 – claimant provides a narrative medical update.
- (xxxiii) 21 March 2017 – the tribunal writes to the claimant stating that it requires a letter from a medical practitioner.
- (xxxiv) 25 April – the tribunal chased a response to that request and required a response by 2 May 2017
- (xxxv) 24 May 2017 – the tribunal wrote stating that it was considered striking out the claim due to the claim not being actively pursued and requiring a response.
- (xxxvi) 26 May – the claimant responds enclosing some medical evidence and informing the tribunal that she is due to have surgery.
- (xxxvii) 15 June – the tribunal write extending the time for response by 1 month until 15 July 2017.
- (xxxviii) 15 June – the claimant responds but does not provide medical evidence.

- (xxxix) 28 June – the claimant forwards medical evidence including confirmation of surgery.
- (xl) 13 July – the respondent's application for strike out is refused but further medical evidence is required by 17 September 2017 otherwise a preliminary hearing will be listed to consider strike out.
- (xli) 20 August the claimant writes confirming her availability to attend a hearing.
- (xlii) 30 October – the matter is listed for today's hearing.

10. It is clear that this claim has been beset by delays and there has only been one preliminary hearing to date. The claims have not been clarified, there is no medical evidence regarding the relevant period (when the claimant was an employee) and no information regarding what acts the claimant relies upon as being acts of discrimination. These are significant issues which need to be progressed to enable this case to be decided.
11. Whilst I have carefully considered the respondent's application for the claims to be struck out, particularly in light of the claimant's failure to attend today's hearing and the fact that she has not yet complied at all with the orders made by Judge Spencer in July 2016, I think that to strike out the claim today would be disproportionate and is not in the interests of the Overriding Objective (Rule 2).
12. Rule 54 states that parties should be given reasonable notice when a strike out application is to be considered at a preliminary hearing. It is clear that prior to today's hearing the claimant had not been given notice of the possibility that her claim was at risk of being struck out.
13. Whilst Mr Cox argued that the possible strike out had been trailed by EJ Spencer's letter to the claimant stating that she would consider striking out the matter, the Notice of Hearing for today's hearing makes no mention of that possibility. The claimant wrote to the tribunal by email after the postponement was refused and addressed the issues set out in the Notice of Hearing, again confirming that she was unaware that strike out of her claim might be considered today. I therefore conclude that it is not in the interests of justice, particularly with a litigant in person, that the tribunal strikes out the case as she has not been given an opportunity to respond to their application.
14. However I am mindful of the fact that this matter has now not progressed in any meaningful way for over 2 years. Mr Cox highlighted that memories of events fade over such time, that the respondents continue to incur expenses in fighting this claim, and that it is possible that we are reaching the point where a fair trial is no longer possible. Further I have considered the fact that the claimant is pursuing her claim against 2 individuals as well as her employer and the impact of having this matter hanging over them for so long needs should be considered.

15. The claimant has not complied with the orders set out by EJ Spencer following the last preliminary hearing in 2016 at all. No evidence or explanation for that failure has been provided by the claimant to date. Her correspondence with the tribunal and the respondents has, to the best of my knowledge, dealt with why she cannot attend hearings but does not address why she has not been able to respond to those orders as set out in July 2016.
16. Therefore, in order to ensure that the claims are appropriately progressed and in light of all the matters raised above and the considerable delay that has been experienced to date I consider that it is proportionate for me to use my discretion and make Unless Orders under Rule 38 as set out above. The orders given are simply those already issued in July 2016 by EJ Spencer and need to be complied with in order for this case to progress. The Claimant has had since July 2016 to action them and whilst I am mindful of the considerable health issues she has suffered she has now said that she is well enough to attend a hearing and progress her case. I therefore consider that it is in the interests of the Overriding Objective that the claimant is now required to comply with the orders also made today for her claims to continue.

**Employment Judge Webster**

**22 November 2017**