



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

TG

(1) VA
(2) KS

JUDGMENT AND ORDER ON PRELIMINARY HEARING

HELD AT: London Central

ON: 6 September 2022

BEFORE: Employment Judge A M Snelson (sitting alone)

On hearing Miss H Platt, counsel, on behalf of the Claimant and Ms S Aly, counsel, on behalf of the Respondents, the Tribunal determines and orders as follows:

JUDGMENT

The Claimant's claim for unpaid commission is dismissed on withdrawal.

ORDER

- (1) Save as stated in the Judgment above, no adjudication is given on the Respondents' applications numbered 1-9 on pages 2-3 of their representative's letter to the Tribunal dated 14 July 2021.
- (2) No later than 21 October 2022 the Claimant shall deliver to the Respondents' representatives and copy to the Tribunal a schedule of all remedies claimed in the proceedings.
- (3) No later than 10 February 2023 the parties shall exchange lists of all documents which are, or have been, in their possession or control and which are, or may be, relevant to any issue in the proceedings including, for the avoidance of doubt, any document which may not assist the disclosing party's case and/or may assist the opposing party's case.
- (4) No later than 17 February 2023 the parties shall afford one another facilities for inspecting the documents contained in their lists and taking copies. Alternatively, this direction may be complied with by each party supplying to the other such copy documents as may be requested.

- (5) The parties shall cooperate to agree a common bundle of documents for use at the final hearing referred to in para (8) below ('the final hearing'), primary responsibility for its preparation resting with the Respondents. Preparation of the bundle shall be completed no later than 14 April 2023 and one copy index supplied at once to the Claimant. At the hearing the Respondents shall produce five paper copies for the Tribunal's use.
- (6) No later than 19 April 2023 the parties shall write to the Tribunal summarising the main directions which they intend to seek at the preliminary hearing for case management referred to in para (7) below.
- (7) A preliminary hearing for case management shall be held at 10.00 a.m. on 24 April 2023, with one sitting day allocated.
- (8) A final hearing to determine all issues of liability, *Chaggar/Polkey* and contribution shall be held at 10.00 a.m. on 11 September 2023, with 15 consecutive sitting days allocated.

NOTES:

- (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.
- (2) The Employment Tribunals Rules of Procedure 2013 (to which any reference below to a rule refers) provide by rule 6 that if an Order is not complied with, the Tribunal may take such action as it considers just, which may include waiving or varying the requirement, striking out the claim or response (in whole or in part), barring or restricting a party's participation in the proceedings and/or awarding costs.
- (3) You may apply under rule 29 for this Order to be varied, suspended or set aside.

COMMENTARY

1. The matter came before me in the form of a public preliminary hearing held by CVP to determine applications on behalf of the Respondents for striking-out and deposit orders. For reasons given orally, I declined to strike out any part of the Claimant's case. I did signal an intention to make a deposit order in relation to her claim for unpaid commission only, but it was not necessary to do so because, following an adjournment, she withdrew that claim and consented to my dismissing it.
2. Because of the way in which the preliminary issues were formulated (from which it was not open to me to deviate), my decision on the (time-based) striking-out application was simply that there was no good ground for holding that the Claimant had no reasonable prospect of showing that the relevant claims (numbered 2(b), 3, 4 and 5 in the latter of application) together amounted to "conduct extending over a period" for the purposes of the Equality Act 2010, s123(3)(a). That being so, the time issues are, in principle, live matters for the final hearing.

3. Having reviewed the agreed list of issues delivered after the hearing, I note that it says nothing about the time point. I suggest that, while the case is fresh in the minds of all concerned, further thought should be given to this aspect and, if necessary, the agreed list should be amended. This important topic should in any event be revisited at the further case management hearing on 24 April 2023.
4. Counsel were happy with my direction (Order, para (6)) for the parties to outline their main points ahead of that hearing. The aim is to avoid surprise, ensure common ground where possible and save time and expense. But in broad terms the key considerations are likely to be: (a) whether any adjustment(s) or special arrangement(s) are required to cater for the Claimant's mental health condition; (b) whether any r94 Order or any further r50 Order is necessary, and if so, what form such an Order should take; (c) whether the list of issues does justice to *all* matters to be decided at the September 2023 final hearing (my only doubt is on the time points); and (d) what further directions are required for the preparation of the final hearing.
5. The hearing dates and allocations were agreed. It was also agreed that, given the sensitivity of some of the evidence, the 'default' assumption must be that all further hearings will be 'face-to-face'.

EMPLOYMENT JUDGE SNELSON
28/09/2022

Judgment entered in the Register and copies sent to the parties on: 28 September 2022

Secretary of the Tribunals