



EMPLOYMENT TRIBUNALS

Claimant: Mr M Knighton
Respondent: Asda Stores Limited
Heard at: Bedford **On:** 30 March 2017
Before: Employment Judge Adamson

Appearances
For the Claimant: In person
For the Respondent: Ms Rachel Barrett, Counsel

RECONSIDERATION HEARING JUDGMENT

1. The Unless Order made 15 July 2016 is not set aside. The claim remains dismissed.

REASONS

2. Notice of today's hearing was sent by the tribunal's administration to the parties on 12 January 2017. The purpose of the hearing was reconsideration of the decision to make an Unless Order made by myself at a preliminary hearing on 15 July 2016 which had been sent to the parties on 1 August that year. I had the benefit of oral submissions from both parties together with written submissions from the respondent's counsel. I had regard to the Employment Tribunal's Rules of Procedure 2013, in particular rules 2 and 70 to 73.
3. The claim was presented to the tribunal on 7 February 2016, the claimant complaining of disability discrimination and also bullying and harassment. The only detail provided at the time was that the claimant would be sending his personnel file to the tribunal as soon as possible. I rejected the claim on the basis that it could not be sensibly responded to.

4. On 2 March 2016 the claimant sent to the tribunal 14 sides of documentation containing information regarding his claim following which a preliminary hearing took place, again conducted by myself, on 6 May. Pursuant to rule 13(4) of the rules, I determined that the claim should be treated as received on 2 March that year.
5. In paragraph six of the reasons I gave at the time and which were recorded in writing and sent to the parties, I identified the types of complaint that the claimant was bringing, albeit I also stated there was some vagueness as to whether there was a victimisation complaint and made, what I hope, was a positive critique of the information the claimant had provided. I recorded that the claimant's details required a lot of refinement, possibly additional information, and the information itself lacked precision. I considered that the respondent could however present a response. The respondent indeed did so in general terms. I do not criticise the respondent for presenting a response in general terms because of the way the claimant had provided his information.
6. At a further preliminary hearing on 7 July, again conducted by myself, the claimant did not attend. AI made an Unless Order for further details of the claim amongst other things, to be provided to the tribunal and the respondent by 12 August 2016. The claimant did not do so. During that intervening period the claimant did provide information to the tribunal, and I believe to the respondent, in respect of his medical condition. He also wrote to the respondent. The information sent to the respondent only did not provide the information sought by the Unless Order.
7. The effect of the non compliance with the Unless Order was that it came into effect and the claim was dismissed. The claimant was so notified.
8. During the period between my instructing the administration to send to the parties the letter required by the rules to be sent in such circumstances the claimant wrote to the tribunal, on 11 November, three emails at 9:38, 9:50 and 9:54 in the morning. Two of the emails did not relate to the Unless Order and the third, in the main, he objected to the striking out of his claim.
9. Today the claimant informed that he had received his personnel file from the respondent five or six weeks ago. Further, that his sister unfortunately died some two to three months before the July preliminary hearing which combined with the affects on himself and his family, together with his mental health problems, caused him difficulty with complying with the Unless Order. The claimant further informed me today that the respondent has known what has taken place, and at some length and with feeling, informed that the respondent does not live up to its mission statement or the values it espouses. That may or may not be the case but it does not mean that the tribunal or the respondent is any further forward n understanding the details of the matters about which the claimant complains.
10. For the purpose of my consideration of this matter today only I accept that the claimant has a mental health impairment, or impairments, such that he

is disabled (that is not a finding of fact in these proceedings but is based on the claimant's representations today and in other proceedings some time ago, the details of which I do not recall, I did make a finding to that effect. The findings in that case of course are not binding in this (unless the parties of course are the same that I do not recall who the respondent was).

11. I consider whether it is in the interest of justice to set the Unless Order aside. I consider specifically the submissions and the overriding objective.
12. I take into account the claimant's mental health impairment and its effect on his abilities. The claimant also informed that he has recently been diagnosed with a thyroid issue and that can cause a "fog storm". The claimant does however attend work and can and has written to the tribunal and the respondent, as referred to before. The claimant has had the benefit of the notes to the May preliminary hearing, and the contents of the Unless Order which not only required information to be provided but and explained what that information was. The claimant did not provide the information as required by the Unless Order within the timescales set out in that order, nor for that matter has he done so since. The tribunal and parties are, in effect, no further forward than when the claim was treated as received over a year ago. The respondent, for its part, remains unable to present more than a generalised response.
13. The claimant defaulted in complying with the Unless Order and I am not persuaded that there was in fact any good reason for that default. I do not know whether the default was deliberate in the sense that it was wilful but I am not persuaded that the claimant could not in fact provide the information sought. The default is serious and has had the effect that the proceedings could not move forward. The default in itself has caused costs and disruption to both parties (I am not inviting an application for an order in that respect).
14. Both parties are prejudiced by the claimant's default, the respondent has a claim hanging over it which it can neither identify nor address and the claimant has a claim which he must either pursue or withdraw, had it not been for the dismissal of it pursuant to the Unless Order. Further, records can get lost and memories fade, such that the details and nuances of conversations or events become less certain. For the respondent and perhaps the claimant also, witnesses may no longer be available. Sooner or later a fair trial becomes impossible. In this case the claimant's lack of provision of detail will have the effect that the respondent will not have been able to identify those records it needs to specifically retain, nor inform witnesses or others who may be involved that they may so be involved. It follows that people will not have endeavoured to recall particular matters about which the claimant may complain, they having no reason to do so. That will certainly impede a fair trial. At this stage however, because of the lack of clear information, it is not possible to say with certainty that that is the case. The claimant, for his part, did say, in passing, that one of the recipients of his emails, about which he referred today, has now left the respondent's employment.

15. The claimant, not having complied with the Unless Order, having had sufficient opportunity to do so, and still not having complied with the requirements of that order since the date for compliance, over half a year ago, I find that it is not just and equitable to set aside that order. The effect is that the claim remains dismissed.

Employment Judge Adamson

Date: 4 April 2017.....

Sent to the parties on:

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For the Tribunals Office