



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MARTIN

BETWEEN: Mrs V Ravina Claimant
and

Rendall & Rittner Limited Respondent

ON: 4 December 2017

APPEARANCES:

For the Claimant: Mr Maxted-Page - Counsel

For the Respondent: Ms E Ravely - Counsultant

JUDGMENT

The decision of the Tribunal is that the Claimant's application for relief from sanction fails and the Claimant's claims remains struck out.

REASONS

1. Written reasons are given at the request of the Claimant.
2. The Claimant presented a claim to the Tribunal on 8 July 2016, claiming unfair dismissal, disability discrimination, whistleblowing, race discrimination and discrimination on the grounds of age. The Claimant's claim for unfair dismissal was withdrawn at a preliminary hearing on 8 September 2016.

3. At that preliminary hearing the claims and issues were unable to be identified and a further preliminary hearing was listed to identify the issues. The Claimant was ordered to provide an impact statement as to the extent to which the impairment in question had a substantial adverse effect on her ability to carry out normal day-to-day activities and whether it was a long-term effect. A footnote to this order referred the Claimant to 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' and she was referred to the website of the Equalities and Human Rights Commission. This was to be provided by 21 October 2016. It was not provided.
4. The second preliminary hearing took place by telephone on 15 November 2016 and it was ordered that there would be a preliminary hearing on 14 December 2016 to determine whether the Claimant was a disabled person, whether the Claimant's claims should be struck out as having no reasonable prospects of success or whether the Claimant should be required to pay a deposit as a condition of being permitted to continue with her Tribunal claims. Documents were to be disclosed no later than 29 November 2016 and witness statements relevant to the issues to be determined no later than 6 December 2016. No witness statement was provided despite the Respondent chasing the Claimant on 6 December 2016 for it. The hearing on 14 December was vacated as the Claimant was not engaging in the process.
5. A further preliminary hearing was listed for 17 March 2017 which was then postponed at the Claimant's request. Two further hearings were abortive because of lack of judicial resources and lack of an interpreter. Still no impact statement had been provided by the Claimant.
6. A hearing was listed on 11 October 2017 before Employment Judge Freer. The Claimant and an interpreter attended, however her Counsel did not attend, he says because of a medical emergency concerning his son. This is subject to an application by the Respondent for wasted costs and will be considered later on the papers. There was no disability impact statement from the Claimant. That hearing could not go ahead, and Judge Freer relisted the hearing for today and made case management orders. Amongst other matters he ordered:

“UNLESS BY 4.00pm on 24 November 2017 the Claimant provides to the Respondent copied to the Tribunal, an impact statement on the long term substantial adverse effects that her back condition had at the material times on her ability to carry out normal day-to-day activities THE CLAIMANT'S CLAIM SHALL BE STRUCK OUT ON THE DATE OF NON-COMPLIANCE WITHOUT FURTHER CONSIDERATION OF THE PROCEEDINGS”.

Judge Freer explained to the Claimant using the interpreter what was required and the implications of non-compliance.

7. The Claimant's solicitor sent an email to the London Central Employment Tribunal attaching a statement. They then sent to the London South Employment Tribunal the statement at 4.05 on 24 November 2017. The

- statement has a brief section on disability saying that the Claimant has back pain and a shoulder injury and was recommended lighter duties at work by her doctor. She says she cannot lift heavy things and mentions heavy bins at work. She says she is not fit to work. However, she does not set out how her back condition affects her normal day to day activities as ordered.
8. I raised the issue about the non-compliance with the order of Judge Freer at the start of the hearing. There was not a copy of the Claimant's statement on the Tribunal file. I told the parties that as there had been non-compliance I considered that the matter had been struck out at the time of non-compliance and invited the Claimant to make an application for relief from sanctions. It then transpired that there was a statement sent at 4.05 pm on 24 November 2017 which had not made it to the file. A copy was provided and I considered the statement in deliberations.
 9. The Claimant submitted that at the last hearing Counsel did not attend with the Claimant due to emergency when his son was unwell and that whilst the Claimant had an interpreter and could understand what going on, there are occasions when interpreters do not cover certain words and she may not have understood the full terms provided under the order. She was also told not to worry as if there was anything she did not understand would be reminded by her solicitors. Her solicitors had not helped the Claimant in producing the impact statement and this was not her fault. It was submitted that it would be unfair to Claimant in light of the solicitor errors to strike out her claim and that it was in the interests of justice to allow the case to go forward.
 10. The Respondent submitted that at the 11 October hearing, the Judge explained in detail what the Claimant needed to do and explained that no further documents or evidence would be accepted on the day of the next hearing if orders were not complied with. It was submitted that the Claimant had over 18 months to provide her impact statement, or to seek assistance if she did not understand what the orders required her to do. The Respondent had been put through continual unnecessary costs.
 11. It was also submitted that for a strike out following an unless order to be set aside, an application should be made within 14 days and that time had passed at 4 pm, 1 December. It was submitted that the test was whether there had been a material breach. It was put forward that there was a material breach both in the statement not being provided on time, and that it does not cover the content required. It was submitted that it was not in interests of justice to set aside the order given that there was nothing in any medical evidence that suggests that Claimant suffers from anything more than general wear and tear. The only thing the Claimant says she cannot do, is lift heavy bins which, it was submitted was not a normal day to day activity in any event, and therefore not sufficient for her to be found to be disabled pursuant to s6 EqA 2010.
 12. The Claimant submitted that the medical evidence shows a condition and the Claimant provided continuous sick notes which were hoped by her legal representatives to attest to her inability to carry out normal day to day activities.

Conclusions

13. The Claimant's claim was struck out at the time of non-compliance with an unless order made by EJ Freer on 11 October 2017 and contained in an order dated 7 November 2017. The date for compliance was 4 pm 24 November 2017. No impact statement was received until 4.05 on 24 November, the Claimant's solicitors having previously sent it to London Central Employment Tribunal. There was no suggestion that the order was not received by the Claimant's solicitor. The Claimant was present at the previous hearing with an interpreter and what was required was explained by Judge Freer together with the implications of non-compliance. The order made it very clear what was needed – it is set out above exactly as it appeared in the order.
14. The statement provided did not deal with normal day to day activities at all.
15. This case has been ongoing for some time with no progress being made in getting it heard. The Claimant was ordered to provide an impact statement as long ago as 8 September 2016 with several hearings being listed to deal with the question of disability. There were two telephone preliminary hearings with legal representatives attending, a preliminary hearing that was vacated as the Claimant did not engage in the process, one which was postponed at the Claimant's request, and then two when due to judicial resource and availability of an interpreter were vacated at the last minute. It was against that history that the unless order was made.
16. I find that the breach is substantial. Not only as it was late (if the timing of the statement being received was the only breach of the order, I would not be dismissing the Claimant's application), but crucially, the statement did not address the substantial adverse effect the Claimant says her disability has on her normal day to day activities. Mr Maxted-Page's instructions are that his solicitors thought that the fit notes in the bundle would suffice to explain the effect on normal day to day activities. I have looked at them and they do not help at all in determining the effect on the Claimant's normal day to day activities. They say 'shoulder pain and back pain' for example (1.3.2016) but nothing else. Given the purpose of this hearing, this is a serious breach of the order. I do not accept that the order was complied with.
17. I also considered the amount of time already expended on this matter. It is now about 17 months since the claim was issued. The Respondent has been put to great expense in the matter so far, and a great deal of judicial resource has been spent. The Employment Tribunal is publicly funded, and as with so many public institutions is under resourced. Parties are having to wait for substantial periods of time to have their cases heard. The former President of the EAT HHJ Langstaff, held in *Harris v Academies Enterprise Trust* UKEAT/0097/14 that the interests of justice includes delivering justice within a reasonable time and at reasonable cost with cases being dealt with in a way that ensures that other cases are not deprived of their own fair share of the resources of the Court.

18. The Claimant has been given numerous opportunities to comply with Tribunal orders and to provide a disability impact statement but has failed to do so. I do not consider it in the interests of justice to give relief from sanction and the Claimant's case remains struck out.
19. When giving reasons I did not address the time point raised by the Respondent. I accept that the application made on the morning of the hearing was out of time, however I extended time of my own motion pursuant to rule 3 of the Employment Tribunals Rules of Procedure 2013.

Employment Judge Martin
Date: 6 December 2017