



EMPLOYMENT TRIBUNALS

Claimant: Ms M S Swapna

Respondent: (1) Vision Security Group Ltd;
(2) Jean Daniel Diedhiou &
(3) Fish [sic]

Heard at: East London Hearing Centre

On: 12 October 2017

Before: Employment Judge Tobin (sitting alone)

Representation
Claimant: Neither present nor represented
Respondent: Miss E Bristow (HR Partner)

JUDGMENT having been sent to the parties on 26 October 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

The original decision

1. Following the Preliminary Hearing (Open) of 12 October 2017, the claimant's claims were struck out pursuant to Rules 37(1)(a) and (b).

The claimant's non-attendance at the hearing and the decision to proceed in the claimant's absence

2. This hearing was delayed as the claimant was absent. I (i.e. the Employment Judge) checked the Tribunal's file carefully to see if the claimant had been properly informed about the hearing. I ascertained that the Notice of Hearing had been served on the claimant. I note that the Notice of Hearing had also been sent to the claimant's now former representatives. Furthermore, I determined that the claimant was aware that this hearing was to proceed because the Employment Tribunal had corresponded with her about the hearing. I was also satisfied from reviewing the file and from hearing from Miss Bristow that, on behalf of the respondents', she had corresponded with the claimant about today's hearing.
3. I tried to ascertain whether there was any explanation for the claimant's non-attendance. There was no explanation for the claimant's absence contained within the file.

4. I checked whether there was an outstanding application for the postponement of this hearing. There was no record of any application from the claimant to postpone this hearing contained within the Tribunal's file. Miss Bristow advise me that she had not made any such application, nor was she aware of any application having been made by the claimant.
5. I asked the Tribunal's clerk to check recent incoming emails and telephone messages to see if there was an explanation as to why the claimant had not come to her hearing. Again, there was no apparent contact from the claimant.
6. I saw that there was a mobile telephone contact number on the Claim Form. I asked the Tribunal's clerk to call the claimant to ascertain her whereabouts and to ask her to explain her non-attendance or, in the alternative, to leave a message asking the claimant to contact the Tribunal immediately. The Clerk informed me that she telephoned the claimant and that there was no answer from the claimant's mobile telephone number. The Tribunal's Clerk said that she left a voicemail message asking the claimant to contact the Tribunal immediately.
7. I thereupon adjourned the hearing for some time while I re-read the Tribunal's file, which afforded the claimant additional time to return the Clerk's call.
8. I resumed the hearing later that morning. Having satisfied myself that the claimant knew of this hearing, I considered whether there could be a satisfactory explanation for her non-attendance. I was satisfied that the claimant displayed a pattern of attempting to avoid Tribunal hearings and of avoiding detailing her claims. I considered adjourning this case further. The respondents' representative requested that I proceed. There was no application for any adjournment and I could not see any purpose of adjourning as I was convinced that the claimant would attend any reconvened hearing. I considered the overriding objective and concluded that the interests of justice lay in proceeding with the hearing in the absence of the claimant.

The history of this claim

9. I consider the history of this claim before I came to my conclusion about the respondents' applications. I have set out the germane history of this claim as that form the basis of my decision.
10. The claimant issued on 9 February 2017 at Birmingham Employment Tribunal. The claims were against 3 respondents – her employer, a named individual and "Fish". The claimant was employed as a Security Officer (Relief) from 23 September 2015 and at the time that she made her complaint her employment was ongoing. The claimant said that she complained about: (1) harassment on the grounds of her sexuality; (2) sexual harassment; (3) victimization; (4) loss of her reputation; and (5) abuse, torture (mental). The claimant also ticked the appropriate box in respect of race discrimination, although there was no (explicit or implicit) allegation of race discrimination contained within her details of claim. The details of claim were not clear. The claimant complained of 2 incidences of harassment on: (a) 6 November 2016 and (b) 7 or 8 June 2016. The claimant also said that she was subject to 1 incident of alleged sexual harassment on 6 November 2016 in respect of a police crime report. The claimant said that she

had been sent home from work, so she claimant this was a non-payment of wages. The claimant said she raised a grievance about the incident on 6 November 2016 and she received a written response by letter dated 18 November 2016, which she said did not satisfactorily deal with her grievance as it did not adequately investigate her concerns.

11. The claimant sought compensation and the following additional remedies:
 - i. the second respondent to be dismissed or reminded of policies and equality treatment in the workplace.
 - ii. a fuller proper investigation into the way her grievance was ignored and why rumours which disparaged her around the company were not prevented.
 - iii. job security in the future and a guarantee of 6 days' work per week.
 - iv. compensation for loss of work placements as a result of workplace rumours and victimisation by a Police Community Support Officer (PCSO) Trish Reynolds.
 - v. That PCSO Reynolds should be banned from the claimant's current and future sites.
12. The case was initially listed for a Preliminary Hearing (Open) (i.e., a case management hearing) for 2 June 2017. The claimant sent 80 emails to the Employment Tribunal and on 10 April 2017 the claimant wrote a rambling and unfocused email to the Employment Tribunal, complaining the about additional misbehaviour from PCSO Reynolds. On 11 April 2017, the Regional Employment Judge instigated a request to the claimant to refrain from sending the Employment Tribunal documents unless requested to do so. The claimant was reminded of the Preliminary Hearing due on 2 June 2017.
13. On 17 April 2017 the claimant requested that the Employment Tribunal reschedule the Preliminary Hearing as she had an upcoming GCSE English examination on 6 June 2017 and 9 June 2017. The claimant also complained of police involvement by PCSO Reynolds and of her "employer's tremendous ignorance towards [her] and all of [her] suffering". On 1 May 2017, the claimant again complained that her sufferings were caused by the police at her workplace. It appears at this early stage that the main focus of this dispute was not the claimant's employers and co-workers by the claimant's clash with PCSO Reynolds.
14. By letter of 3 May 2017, the Employment Tribunal declined to postpone the Preliminary Hearing as the hearing was 4 and 7 days away from the claimant's exams. The claimant thereupon requested the case to be transferred to East London Employment Tribunal.
15. The Response was received on 5 May 2017 on behalf of all 3 respondents. The grounds of resistance were generalised because of the lack of specifics in respect of the claims made. The respondent's contended that the Early Conciliation certificate was issued on 5 December 2016, and that all of the discrimination claims prior to 6 September 2016 were out of time and all of the other claims were out of time. The Response denied that the second respondent had touched the claimant inappropriately on 6 November 2016, as alleged. The respondents contended that the claimant was not permitted to work at certain sites, due to a number of requests by clients. Any purported discriminatory

comments made were denied and the respondents requested full particulars of these. The claimant had not provide any information about her claims of race discrimination and the respondents pointed out that the claimant was unclear on her allegations in respect of sex and sexual orientation. The respondent requested full particulars in respect of all of the claimant's claims.

16. The case was transferred to East London Employment Tribunal on 2 June 2017 and was reviewed upon receipt. Regional Employment Judge Taylor listed the case for a Preliminary Hearing to consider striking out claims. A Notice of Hearing was sent to the claimant by email on 5 June 2017.
17. Various emails that the claimant had sent were not forwarded to the East London Employment Tribunal and the claimant complained about this. This complaint was addressed by the Operations Manager on 20 June 2017.
18. On 18 August 2017 the claimant wrote to the Employment Tribunal saying that she was looking for a representative and that the Metropolitan Police had prevented her securing legal assistance. She said that she could not fund private solicitors and that legal aid representatives were on summer holidays. It was not clear that this was an application to adjourn the forthcoming Preliminary Hearing. Nevertheless, the respondent's representative objected to any adjournment. Employment Judge Goodrich refused to postpone the Preliminary Hearing set for 14 August 2017. The claimant was notified of this hearing on 2 June 2017 and EJ Goodrich stated it was important to avoid delays, particularly where it had already been 6 months since the case had started with little progression.
19. On 11 August 2016 the claimant submitted a self-certified sickness absence document for 7 days stating, "food poisoning, temperature". The claimant stated that she was not physically and mentally fit to attend the hearing. The respondent objected to any adjournment. The respondent said, amongst other things, that this was the third time the claimant sought to postpone a hearing and that the document provided was not a GP certificate. The respondent said that the claimant had said that she had seen her GP yet there was no medical corroboration available to confirm her illness. In any event, the hearing was 3 days hence. EJ Goodrich said it was unclear that the claimant was making an application to postpone, but if it was the application was refused and that the Preliminary Hearing would go ahead.
20. The Preliminary Hearing proceeded on 14 August 2017, but the claimant did not attend. The purpose of that hearing was to clarify the issues and consider whether a further Preliminary Hearing should be held to consider striking out part of the claim. EJ Russell's frustration was apparent; she noted that 6 months had elapsed and the issues were still to be clarified. In accordance with the overriding objective, she decided that it was just to proceed with the hearing but to a limited extent, given the claimant's absence and the uncertainty about the particulars of her claim. EJ Russell noted that in the claimant's Claim Form there was no reference to race. It was not clear what was said to be the conduct of PCSO Reynolds that was unlawful nor what was said to be the conduct by the respondents that was the subject of the claim. the Employment Judge further noted that it was not clear whether the claimant advances her sexual orientation case on the grounds of actual or perceived orientation, nor what that sexual orientation is. As for the conduct, it was not clear in respect of which protected

characteristics the claimant was relying upon. EJ Russell made a number of orders in respect of further information and also an Unless Order. In respect of the respondents' strike out application, the Employment Judge ordered that a Preliminary Hearing (Open) with a time estimate of 1 day should be convened to consider whether the claims or any of them should be struck out for: (a) having no reasonable prospects of success; (b) because of the manner in which the claimant had proceeded; or (c) whether the claimant should be dismissed as claims appeared to have been presented outside the statutory time limit. The Employment Judge further ordered that the respondents should set out in writing, and provide to the claimant, its grounds for the application and include evidence to support such an application. The claimant was ordered to respond to the application and provide to the respondents any evidence upon which she wished to rely, not less than 7 days before the Preliminary Hearing.

21. The claimant instructed solicitors, who came on the record on 20 August 2017. On 29 August 2017 the claimant complied with the provisions of the Unless Order and provided further particulars which considerably expanded upon the allegations in her Claim Form.
22. On 15 September 2017, the claimant was sent a Notice of Preliminary Hearing, which was also sent to her representatives with the case management hearing summary.
23. On 27 September 2017, EJ Russell sent 2 letters of the claimant. The first letter requested that correspondence sent to the Employment Tribunal should be copied to the respondents otherwise it would be removed from the Employment Tribunal file. The second separate letter informed the claimant that PCSO Reynolds was not a respondent to proceedings and asked that the claimant to set out in writing, within 14 days, the legal basis upon which the first respondent, the second respondent and the third respondent were liable for the actions of PCSO Reynolds.
24. On 28 September 2017 the claimant acknowledged the forthcoming hearing of 12 October 2017. She said that she could not trust her solicitor and requested the Employment Tribunal to stop corresponding with him. The claimant's solicitor wrote to the Employment Tribunal that day stating that they no longer acted for her.
25. On 3 October 2017, the Employment Tribunal sent the claimant a copy of the Preliminary Hearing Summary and, again, the Notice of the forthcoming Preliminary Hearing set for 12 October 2017.
26. On 5 October 2017, the respondent's representative sent the claimant, a copy of her details skeleton argument (by email and post) and the respondents' Hearing Bundle in compliance with EJ Russell's Order.
27. On 11 October 2017 EJ Gilbert wrote to the claimant, which was sent by email. She asked claimant to say how she could pursue claims against the respondent in the Employment Tribunal under the Equality Act. EJ Gilbert stated that this was the only provision that the claimant had mentioned that was within the Employment Tribunal's jurisdiction.

28. The claimant had not complied with EJ Russell's order that she respond to the respondents' application for a strike out (and also provide her evidence) no less than 7 days before the hearing. This was more notable given EJ Gilbert's prompt.

The preliminary hearing convened to deal with the respondent's application to strike out

29. As stated above, the claimant did not attend the preliminary hearing set for 12 October 2017.
30. I considered Ms Bristow's skeleton argument which had been sent to the claimant on 5 October 2017 together with her 91-page Hearing Bundle.
31. In respect of the claimant's further particulars, there was no application to amend the claim and this considerably expanded upon the allegations contained within the claim form. At this relevant time, the claimant had the benefit of legal advice because she had instructed solicitors and solicitors were on the Employment Tribunal record. The further particulars were not easy to understand, and the claimant was not present to clarify essential aspect of her claim.
32. I accepted Ms Bristow's contention that the claimant had become involved in a dispute with PCSO Reynolds and that somehow this seemed to have escalated into some form of obsession. Ms Bristow contended that the dispute between the claimant and her employer and co-workers was largely incidental to the claimant's dispute with PCSO Reynolds. PCSO Reynolds was not an employee of the first respondent, she worked for the Metropolitan Police.
33. The respondent's submissions were exhaustive and compelling. Many of the incidents quoted in the further particulars were out of time. The claimant was not present to explain fully the delay and to provide evidence upon which I could decide whether or not to exercise my discretion to allow such claims to proceed. I determine, it was not just and equitable to allow extent time.
34. The claimant absence from this hearing was yet another example of her refusal to comply with the Employment Tribunal's attempt to clarify this case. The claimant had not complied with EJ Russell's preparation Order and given EJ Gilbert's letter it could not have been clearer that the Tribunal wanted clarification about the case presented. This made the claimant's absence even more telling. I could not understand the claimant's allegations in law and it was 8 months since the claim was issued and around one years since the incidents complained of. For this reason and also the reasons set out in section 4 of the respondents' skeleton argument, I determine that the remaining claims should be struck out as having no reasonable prospect of success.
35. I also determined that the claimant's non-attendance at the hearing of 14 August 2017 amounted to conduct that was scandalous, vexatious or unreasonable. The claimant avoided attending this hearing by saying that she was unwell. Given the evidence presented by the respondent, I am satisfied that this was not true. From the information available to me at the hearing, I also struck out this claim for misleading the employment tribunal which is scandalous, vexatious or otherwise unreasonable conduct as set out in section 6 of the respondents' skeleton argument.

The claimant's correspondence following the preliminary hearing

36. On the 18 October 2017 (which was some 6 days after the Preliminary Hearing) the claimant wrote to the Employment Tribunal. She referred to EJ Gilbert's email of 11 October 2017 and asked for 2 weeks – presumably to answer this. She said she was “struggling to get an appointment” with a legal clinic. I am satisfied that this was not an application to adjourn the Preliminary Hearing. If it was a post-dated application, it was too late as my decision to proceed had already been made and the Preliminary Hearing had already taken place. In any event, to date the claimant has not responded to EJ Gilbert's correspondence.

Employment Judge Tobin

31 January 2018