



EMPLOYMENT TRIBUNALS

Between:

Miss Y Tucker
Claimants

and

South Derbyshire District Council
Respondent

JUDGMENT AT AN ATTENDED PRELIMINARY HEARING

Held at: Nottingham **On:** 2 February 2018

Before: Employment Judge Ahmed (sitting alone)

Representation

For the Claimant: No appearance or representation
For the Respondent: Mr Arora of Counsel

JUDGEMENT

1. The application to strike out the Claim is refused.
2. The final hearing of this case is postponed.
3. The Respondent's application to have a preliminary hearing to consider the out of time issue is refused.
4. The case shall be listed on a date to be fixed for an attended preliminary hearing to consider whether the complaint of victimisation should be struck out.

REASONS

1. This case was listed for a preliminary hearing today to consider the Respondent's application to strike out the Claimant's claim and to make further case management orders if appropriate.

2. Yesterday, the Claimant sent two emails to the tribunal. In the first she wrote:

"Dear all

Please accept my apologies as I will not be able to attend the hearing tomorrow. I have a virus which I was hoping would be gone by now. Unfortunately this is not the case. If a sick note is needed please let me know. Sorry for the inconvenience caused."

3. In a further email sent this morning, which is not necessary to set out, the Claimant asked for an extension of time to deliver her witness statements. The statements were due to be mutually exchanged by 5 February 2018, that is in three days time.

4. The background to today is that there was a preliminary hearing on 15 November 2017 at which various case management orders were made. In particular there were orders for further and better particulars of the Claim to be provided, a bundle to be agreed and for witness statements to be mutually exchanged. It was acknowledged then that the timetable was very tight and required strict adherence if the case was to be ready for the hearing on 26, 27 and 28 February 2018.

5. Following the order (which was sent to the parties on 2 December 2017) the Respondent wrote to the tribunal on 18 January 2018 to say that the Claimant had served further and better particulars on 11 December 2017 and in a further document sent on 8 January 2018 (which was also entitled further and better particulars) the Claimant had added a number of new allegations. The first document also introduced allegations concerning several individuals not previously mentioned by the Claimant and thus contained matters which were apparently outside the ambit of the original claim.

6. The Respondent therefore asked firstly, that the Claimant should not be entitled to rely upon the further and better particulars sent on 8 January 2018 and in the alternative that the matter should be adjourned and re-listed with a longer time estimate. The Respondent also made an application for the Claim to be struck out for failure to comply with orders of the Tribunal, which was intended to be the subject of today's hearing.

7. Rule 37 of the Employment Tribunal Rules of Procedure 2013 states:

"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

[(a-b) not relevant]

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

8. It would not be appropriate in my view to strike out the Claim. To do so for the alleged breach would be wholly disproportionate. What is really needed is a clarification of the issues and whether any amendment is necessary. A fair hearing is still possible though the hearing on 26 – 28 February will clearly need to be postponed as the case is not ready. The application for a strike out is therefore refused.

9. There is an issue in these proceedings generally as to whether the claim has been presented in time. Mr Arora applies today for a separate preliminary hearing to be held on the time point. I do not agree that it would be appropriate to list the case for a preliminary hearing on the time issue. This is a complaint of discrimination. Even if the complaint is out of time the tribunal would need to consider the ‘just and equitable’ extension. There is considerable authority against dealing with time issues as a preliminary issue at a preliminary hearing in discrimination cases where the just and equitable issue needs to be considered (see: **Commissioner of Police for Metropolis v Hendricks [2003] IRLR 96**; **Ma -v- Merck Sharp and Dohme [2008] EWCA Civ 1426** and **Arthur v London Eastern Railway Ltd [2007] IRLR 58**). The tribunal is unlikely to be able to deal with the time issue as a discrete point and what is likely is that the tribunal will need to hear the same evidence twice. On a three day case a lengthy preliminary hearing on the time issue is not proportionate or appropriate. It is more appropriate to deal with the time issue after hearing all of the evidence when any issue as to an extension on just and equitable grounds can be properly considered. The application for a preliminary hearing to be held on the time point is therefore refused.

10. I do agree with Mr Arora however that the victimisation complaint is a fairly discrete issue and can properly be the subject of a preliminary hearing to consider whether it should be struck out. That preliminary hearing will be listed in due course. The application to strike out the victimisation complaint *today* is refused on the grounds that it would not be appropriate to consider making such an order or judgment without representations from the Claimant.

11. Directions as to the future conduct of the case are given in a separate order.

Employment Judge Ahmed
Date: 16 May 2018

Order sent to Parties on

25 June 2018

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