



EMPLOYMENT TRIBUNALS

Claimant
Miss Theo Harris

Respondent
**v Kingston Centre for Independent
Living (KCIL Ltd)**

PRELIMINARY HEARING

Heard at: London South

On: 10 September 2018

Before: Employment Judge Martin

Appearances

For the Claimant: In person

For the Respondent: Ms Clarke - Counsel

REASONS FOR JUDGMENT PROMULGATED 10 SEPTEMBER 2018

1. The Claimant requested written reasons of the judgment given on 10 September 2018 by email dated 18 September 2018.
2. The Claimant originally brought her claim to the Tribunal on 15 September 2014. Her application for remission of fees was rejected on 15 September 2014. The Claimant said she was unable to deal with the additional information required for the remission application and therefore did not proceed with her claim and it was struck out. In July 2017 the decision in R (on the application of UNISON v Lord Chancellor [2017] UKSC 51 was delivered resulting in fees being removed from the Tribunal regime. The Claimant received a letter on 15 December 2017 asking if in light of the Unison decision the Claimant wanted to proceed with her claim. The Claimant responded that she did on 26 February 2018 when she sent the papers to the Tribunal.
3. Unfortunately, the Tribunal did not have the original papers. The Claimant said that she completed the original claim on line and did not retain a copy of the full document. She said that the particulars submitted to the Tribunal for the reinstated claim were similar to those submitted in 2014 and that it took her some time to get everything together as the original claim was so long ago.

4. The Respondent submitted that a fair trial was not possible due to the passage of time. The Respondent referred to the Claimant saying she had difficulty due to the passage of time in getting matters together and that it was the same for them. The main difficulties for the Respondent are that the staff who need to be witnesses to defend the claim are now no longer working for the Respondent and have not responded to attempts to contact them. Mr. Withers for example, resigned in February 2014 and they only have an email address to which he is not responding. I was told that all the other characters have also left the Respondent and that the Respondent would be unable to put together a response or to defend the claim.
5. An additional problem is that Mr. Tarrant who attended the hearing in his capacity as a director of the Respondent said he did not have access to correspondence from the relevant times. Mr. Tarrant is a retired solicitor and conducted his correspondence from his work email account. The firm he worked for has now been taken over by another firm and I was told that due to some technical issue all correspondence from the relevant times has been lost.
6. The Respondent submitted that the claim is against Mr. Withers who can not be contacted and points to discrepancies between the agenda and the ET1. The agenda suggests the complaint is about how her complaints were dealt with rather than specific allegations against Mr. Withers. It was submitted that there would have been one to one meetings with Mr. Tarrant but no documents supporting what was said so if the allegations were of lack of support, the Respondent is unable to confirm what was said. Mr. Tarrant is unable to recollect in any detail given the matters complained of are now at least four years old. Mr. Tarrant said that although the personnel file was to hand, no individual notes of meetings are in that file and that they are now lost.
7. The Claimant disputed that correspondence had been lost as alleged by the Respondent as she believes that solicitors must retain correspondence for a certain number of years. She does not accept that correspondence can not be accessed.
8. I carefully considered the submissions made by both parties considering the overriding objective contained in rule 2 of the Employment Tribunal Rules of Procedure 2013. This provides that I must deal with matters proportionately and in the interests of justice to both parties. The starting point is to consider the allegations as set out in the ET1. The Claimant cannot find the original and the Tribunal therefore has to accept that what is before it now is the same or sufficiently similar to the original claim.
9. The Claimant's claim is of constructive unfair dismissal on the grounds that the Board did not work to resolve an ongoing grievance against the Chairman. In the particulars of claim the Claimant makes a number of substantial allegations that Mr. Withers had sexually harassed her.
10. I have to consider whether a fair trial is possible. The events complained of are in the region of 4 years old and I am satisfied that given the lack of documentation (I have to believe the Respondent when it says that a technical problem deleted all documents relating to the relevant time in the same way as I have to believe

the Claimant when she says that the particular of complaint are the same as submitted in 2014) and the absence of a key witness means that a fair trial is not possible. In all the circumstances the Claimant's claim is struck out.

Employment Judge Anne Martin

Date: 15 October 2018