



EMPLOYMENT TRIBUNALS

Claimant: Mr S. Kamanda

Respondents: Royal Free Hospital NHS Foundation Trust

**London Central
Employment Judge Goodman**

29 October 2018

JUDGMENT

1. The application to reconsider the deposit order fails because it has no reasonable prospect of success.
2. The unfair dismissal claim is struck out under rule 39(4).

REASONS

1. On 6 June 2018 an order was made that the claimant pay a deposit of £100 to an office in Bristol within 28 days as a condition of proceeding with an unfair dismissal claim. This followed a hearing on 29 May at which decisions were reserved.
2. For administrative reasons not known to me, the order and reasons were not sent to the parties until 5 September. That meant the deposit must be paid by 3 October 2018.
3. The deposit was not paid by 3 October. However, on 23 October the claimant sent a postal order for £90 dated 20 October to London Central. Accordingly, the claimant has not complied with the order. He has paid too little, too late. For that reason the unfair dismissal claim is struck out under order 39(4) of the 2013 Employment Tribunal Rules of Procedure, unless there is a successful application to reconsider.
4. The claimant wrote by his representative on 19 September seeking (though not in those words) to have the deposit order reconsidered and set aside. In so doing it was stated that he was bankrupt. At a telephone preliminary hearing for case management on 8 October, I ordered the claimant to send documents about the bankruptcy. The order was sent to the parties on 11 October.
5. On 23 October the Tribunal received a copy of the adjudication, dated 22 November 2017, that the claimant was made bankrupt on his own petition. The official receiver was appointed his trustee in bankruptcy.
6. Under the Insolvency Act 1986 from that date the claimant's right to pursue proceedings vested in the trustee (sections 283(1) and section 436). He is precluded from pursuing it further.

7. There is an exception where the relief is for personal injury including injury to feelings, and there is no claim for loss of earnings – **Grady v Prison Service 2003 ICR 753, Khan v Trident Safeguards Ltd 2004 ICR 1591.**
8. I understood during the May hearing that there was no claim for loss of earnings after the transfer to medical records, as he continued to be paid until he resigned. If correct, he can continue to pursue the remaining claim for discrimination or harassment for having been transferred from nursing duties to medical records pending investigation of complaints about him. However, if in fact there is a claim for financial loss for the transfer, it is a hybrid claim which vests in the trustee and the claimant cannot pursue any of it.
9. As for the unfair dismissal claim, plainly that was not a personal claim but a claim for money and so a chose in action which vested in the trustee. The claimant could not pursue it himself after 22 November 2017. For that reason, the application to reconsider the deposit order has no reasonable prospect of success and I refuse it under rule 72. As it turns out, the order was futile because the claimant could not pursue the claim whether he paid it or not. If his bankruptcy had been known to the Tribunal at the hearing in May the claim would have been stayed pending confirmation whether the trustee wished to pursue it.
10. I do not know if the £90 postal order was later sent to Bristol. If accepted there, the claimant can apply for a refund of the money.
11. The claim under the Equality Act for the transfer to medical records remains listed for hearing on 24 and 25 January 2019. The case management orders still apply, save that the claimant need not provide documents about earnings after he resigned employment, as there is no dismissal claim to consider.

Employment Judge Goodman

Date 29 October 2018

JUDGMENT SENT TO THE PARTIES ON

31 October 2018

FOR THE TRIBUNAL OFFICE

Note

Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless requested within 14 days of this written record of the decision being sent to the parties.