



EMPLOYMENT TRIBUNALS

Between:

Mr Y Sharafeldeen Abdelrh
Claimant

and

Asda Stores Ltd
Respondent

At an Open Attended Preliminary Hearing

Held at: Leicester

On: Wednesday 19 September 2018

Before: Employment Judge Brewer (sitting alone)

Representation

For the Claimant:	In person
Interpreter:	Hala Shaffu
For the Respondent:	Mr T Gillie of Counsel

JUDGMENT

A costs award is made against the claimant in the sum of £500.00.

REASONS

Introduction

1. The parties attended a closed preliminary hearing on 29 June 2018 before EJ Clark. At that hearing, the issues were decided and orders were made. Specifically, EJ Clark ordered the Claimant to produce a disability impact statement, his relevant medical records, that is relevant to his two claimed disabilities, and a written witness statement explaining why his claims were not brought in time. The Claimant was ordered to produce those and to send them to the Respondent by 4 pm on 10 August 2018.

2. The case was listed for a one day hearing to take place today to determine the following issues:

- 2.1 whether it is just and equitable to extend time for the presentation of the claims;
- 2.2 whether the Claimant satisfies the definition of disability at the material time;
- 2.3 the Claimant's application to amend his claim to add a claim of direct race discrimination, and
- 2.4 to make any case management orders as are necessary.

3. The Claimant arrived at the hearing today with a disability impact statement and a large number of medical records. He did not produce the required witness statement. Further and much more significantly, he had not sent any of the documents to the Respondent.

4. I canvassed with the parties whether it was possible to undertake a hearing given the complete failure by the Claimant to comply with EJ Clark's orders.

5. Mr Gillie has submitted, and I accept it, that he was not in a position to cross-examine the Claimant on any of the matters, whether that is the question of the disability, the lateness of the claims and the application to amend. He did not know what was in the medical records and it would take some time to go through them as there seemed to be at least 200 pages; he did not know what the Claimant would say about the reason for the delay in making his claims and there is no basis for seeking to add a claim of race discrimination which is significantly out of time.

6. The Claimant's position was that he did not understand what he had to do and he thought that he could bring everything today. I pointed out that if that was right, he did not bring everything today, he failed to bring his witness statement. In any event, having looked at the record of the closed preliminary hearing, it seems to me that EJ Clark was careful to ensure that the Claimant did understand what was going on. EJ Clark says expressly that at the outset of the hearing he explored with the Claimant his level of English for the purposes of the hearing and the Claimant was content that it was good enough to continue, although he may need some explanation from time to time. They did agree that an interpreter would be needed for future hearings, which is of course what happened today. Further, EJ Clark's orders are concise and clear.

7. Given that we are unable to proceed today and having contacted the listing section, a new hearing has been fixed for one day on 13 December 2018 in Leicester before an Employment Judge sitting alone. This should be taken as notification of that hearing, no further notice of hearing will be sent out. The parties should attend at 09:45 ready to start at 10:00.

8. Mr Gillie asked for a short break to take instructions and I allowed that. On return, he said that he was instructed to make two applications before me. The first of those was for an unless order to the effect that the Claimant should comply with the orders otherwise his claim would stand as being struck out. Mr Gillie's reason for doing that is that thus far, simple orders requiring the Claimant to provide his medical

records for example had not been complied with and there needs to be some teeth, as he put it, to the orders. The second was for the brief fee the Respondent had incurred for him to attend today and which had clearly been wasted through no fault of the Respondent. He confirmed that the brief fee was £500. The Respondent is not seeking costs wasted by any solicitors in putting the brief together and Mr Gillie was not seeking the cost of his attendance today.

9. Mr Gillie said that given the clear orders set out by EJ Clark following the closed preliminary hearing and in the context of the claims having clearly been submitted a significant period out of time and an application for a new claim which is even more out of time, the Claimant really should have come prepared to deal with those matters today and the whole day has in effect been completely wasted by his unreasonable conduct in failing to comply with the orders.

10. I listened to the Claimant's response to that although in fairness to him there was not much he could say about his failure to comply with the orders. I did not accept, as I have set out, that he did not understand what he was required to do.

11. The Claimant took the oath and I asked him a number of questions about his means. He has been off sick since August 2017, his sick pay has run out although he had at some point around £4,200 of savings. He has spent a portion of that. He is about to rent out a room in his house and he thinks that he will get something between £300 and £350 per month for that. He currently has a claim for benefit. Other than outgoings for food etc, his biggest expense is a mortgage which is £400 per month. He lives alone.

12. Having considered the context of this case, the circumstances of today and my finding that the Claimant's behaviour was manifestly unreasonable, it seems to me that it is reasonable to award costs in this case and I have done so under rule 76(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. On or before **4 pm on 5 October 2018** the Claimant shall comply with orders 1a, 1b and 1c) set out by EJ Clark in his case management orders made on 29 June 2018.

2. A costs order in the sum of £500 is made against the Claimant and in favour of the Respondent on the basis of the Claimant's unreasonable behaviour in failing to comply with orders 1a, 1b and 1c set out by EJ Clark in his orders made on 29 June 2018 following the closed preliminary hearing.

3. In preparation for the one day preliminary hearing set for 13 December 2018, the Respondent shall on or before **8 December 2018** send to the tribunal (and they shall bring an extra copy to the tribunal) the disability impact statement, the Claimant's witness statement and the Claimant's relevant medical records.

Employment Judge Brewer
02 November 2018

Notes

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’: <https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

(v) The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so”. If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Order sent to Parties on

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