



# EMPLOYMENT TRIBUNALS

## Claimant

Ms C Morgan

## Respondents

AND

NHS Digital and others

**HEARD AT:** London Central

**ON:** 2 November 2018

**BEFORE JUDGE:** Employment Judge Hemmings

## Representation

**For Claimant:** Not present

**For Respondent:** Ms C Souter – Counsel

## RESERVED JUDGMENT ON A PRELIMINARY HEARING IN PUBLIC

The Judgment of the Employment Tribunal is to strikeout of the Claimant's claims against the Respondents in their entirety. The Respondents' Application for costs is adjourned.

## REASONS

### Preliminary Hearing Agenda

1. This is a Preliminary Hearing in public to determine an Application by the Respondents for the Employment Tribunal to strikeout the Claimant's claims in their entirety.
2. That Application was made to the Tribunal on 5 September 2018. The Respondents have complied with Rules 30 (2) and 92 of the employment Tribunal rules of procedure.
3. On the 28 September 2018 the Regional Employment Judge directed today's Preliminary Hearing to be listed in order to determine the strikeout Application.

### The History of these Proceedings

4. At a Preliminary Hearing-Case Management on 2 March 2018 Employment Judge Hodgson made a number of Case Management Orders to be complied with by the parties, primarily directed at the inability to identify definitively the issues in the case as a result of the way in which the Claimant, a litigant in person, had set out her grounds of claim.

5. The Employment Judge listed a Final Hearing spanning 10 days between 22 October until 2 November 2018.
6. The scope of the Case Management Orders included an Order that the Respondent, rather than the Claimant who would normally have responsibility for such a task, should produce a list, in the format of a Table, (a "Scott Schedule"), no later than 23 March 2018 identifying each fact referred to in the Claimant's Claim Form which the Claimant had advanced as an allegation of victimisation, harassment or direct discrimination, each allegation to be supplemented by the Respondent recording in relation to each allegation whether further and better particulars had been given by the Claimant and if so what those additional particulars were.
7. The Claimant was ordered to confirm, no later than 3 April 2018, whether or not she agreed that the Scott Schedule accurately identified each of the specific factual detriments on which she would rely at the Final Hearing.
8. The other Case Management Orders provided for a Schedule of Loss (deadline 19 March 2018), disclosure of documents (deadline, 10 April 2018), exchange of Lists of Documents (deadline 3 September 2018) a Bundle of documents for the Final Hearing (deadline 10 September 2018), exchange of witness statements (deadline 24 September 2018) with a Cast List and a Chronology to be made available to the Tribunal Panel at the Final Hearing commencing on 22 October 2018.
9. On 23 March 2018, compliantly with the Orders, the Respondents sent the Scott Schedule to the Tribunal identifying each fact set out in the Claim Form which appeared to be advanced by the Claimant as an allegation of victimisation, harassment or direct discrimination.
10. 23 March 2018 was a Friday. The Claimant had asked the Respondents not to send her correspondence on Fridays. Accordingly, the Scott Schedule was sent to the Claimant on Monday 26 March 2018.
11. The Claimant defaulted in responding to the Scott Schedule by 3 April 2018, placing herself in breach of the Employment Judge's Orders.
12. On 9 April 2018 the Respondents wrote to the Claimant and the Employment Tribunal informing the Claimant that she was in default of the Orders and requesting her compliance with the Orders as soon as possible by providing the Respondents with her observations on the Scott Schedule.
13. The Claimant responded the same day. She said that she had been unable to comply with the Orders due to ill-health and requested an extension of time until 30 April 2018. The Respondents agreed to that request.
14. The Claimant remained in breach of the Orders as at 30 April 2018 and remains in default regarding the provision of her observations on the Scott Schedule up to this present moment.
15. All the subsequent deadlines for compliance with the other Orders made by Employment Judge Hodgson have passed with the Claimant defaulting and remaining in default up to this present moment.
16. On 15 May 2018 the Respondents sought a Final Order from the Tribunal against the Claimant requiring her compliance with the Order in relation to the Scott Schedule.

17. The Claimant responded the same day asserting that she had complied with the Order. The Respondents requested evidence of compliance which the Claimant failed to supply.
18. On 20 June 2018 the Respondents wrote again to the Tribunal repeating their request for Final Order against the Claimant.
19. On 21 August 2018, the Tribunal ordered the Claimant to comply with the March Order in respect of the Scott Schedule by 4 September 2018.
20. The Claimant responded the same day. She suggested that the Tribunal's letter had been sent to her in error.
21. On 28 August 2018 the Claimant corresponded again with the Tribunal, informing the Tribunal that its correspondence to her had been inappropriate because it had been decided at the Case Management hearing on 2 March 2018 that her Grounds of Claim set out in her original Claim Form would be used. That, self-evidently, was not the case.
22. The Record of the Case Management hearing issued by Employment Judge Hodgson to the parties was clear, explicit and comprehensive.
23. On 31 August 2018, the Tribunal corresponded with the Claimant informing her that the Tribunal's letter of 21 August 2018, ordering compliance with the Scott Schedule Order by 4 September 2018, had not been sent in error.
24. That communication from the Tribunal also informed the Claimant that failure by her to comply with the Orders would result in consideration of striking out of her claims on the ground of unreasonable conduct of the proceedings, on the ground of failure to comply with the Orders, or on the ground that a fair hearing would not be possible.
25. The Claimant responded the same day. She raised a complaint against one of the Tribunal's Administrative Officers, alleging unacceptable treatment of her through the behaviour and attitude displayed by that Officer.
26. The deadline set by the Tribunal for compliance by the Claimant expired on 4 September 2018 with the Claimant defaulting again.
27. On 5 September 2018 the Respondents wrote to the Tribunal inviting the Tribunal to strike out the Claimant's claims, or alternatively to list a Preliminary Hearing to determine whether or not the Claimant's claims should be struck out, the Application which falls for determination today.
28. On 22 September 2018, a Preliminary Hearing for Case Management purposes was listed, conducted by the Regional Employment Judge. The Claimant arrived at Victory House, but became too ill to participate. Her symptoms were serious enough to call for emergency medical support and paramedics attended to care for the Claimant's medical needs.
29. The Regional Employment Judge adjourned the strike out Application Hearing until today's date, postponed the Final Hearing listed for October 2018, and relisted it for 10 days in March 2019.
30. On receipt on 28 September 2018 of the Notice of Adjournment of the strike out Application until today's date, the Claimant responded the same day stating that she had made a police report in respect of her treatment by the Respondents' solicitors.

31. On the following day, 29 September 2018, the Claimant applied to the Tribunal for the Respondents' defences to be struck out on the grounds of vexatious and unreasonable behaviour and reported that she had been offered a case worker by Victim Support.
32. On 29 September 2018 the Claimant wrote to the Tribunal complaining that her previous correspondence to the Tribunal had been ignored and suggested that the Tribunal regarded her complaints to be "a joke".
33. The routine consideration of the Tribunal's file this morning discloses confusing communications from the Claimant and the use of intemperate language towards the Tribunal.
34. A consideration of the correspondence passing between the Respondents' solicitor and the Claimant also discloses intemperate language but of a more serious and, in some respects, of an unacceptably offensive nature.
35. The Claimant is not present today. Her absence is unexplained. A search of Victory House by the clerk did not locate the Claimant, nor any person present to represent her, nor any last-minute correspondence or other communications from the Claimant designed to explain and justify her absence, or making any applications to accommodate any inability, for reasons beyond her control, to attend.
36. The Claimant has not lodged any Written Submissions or anything else in documentary form for the Tribunal to consider in reaching its decision on the Respondents' Application to strike out her claims.
37. THE LAW

A Tribunal's discretion to strike out a claim is set out in Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 - Schedule 1 which provides that:

- (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) *that it is scandalous or vexatious or has no reasonable prospect of success;*
  - (b) *that the manner in which the proceedings have been conducted by or on behalf of the Claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
  - (c) *for non-compliance with any of these rules or with an order of the Tribunal;*
  - (d) *that it has not been actively pursued;*
  - (e) *that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*

38. CONCLUSIONS

- (1) The Claimant is a litigant in person. Litigants in person encounter substantial challenges, including those arising from the legal process itself, communicating what they want to complain about to a Court of law, who they want to issue proceedings against, which laws appear to have been broken by the treatment they consider they have received, how to get ready for pre-trial hearings, and effective preparation for the Final Hearing itself with witnesses, statements and documents.
- (2) Nevertheless, many litigants in person put considerable effort into successfully acquiring the information they need, any professional support they can get, come to any pre-trial

preliminary hearings, complying with the Orders that are made, and come to the Final Hearing fully prepared to present their case and to challenge the employer's case.

- (3) The challenges of a litigant in person are magnified if the litigant is unwell and struggling to cope with even the basic requirements of making a claim and pursuing it, step-by-step through the pre-trial stages to the trial itself.
- (4) Everything this Tribunal has seen both within the bulky Employment Tribunal file itself but also the papers placed by the Respondents before the Tribunal today, suggests to me (an Employment Judge with no prior knowledge of this case, nor the parties whatsoever) that the Claimant has not been well throughout these proceedings and is not currently in good health. It is clear that she cannot, or will not, comply with the Tribunal's Orders.
- (5) Unfortunately, the Claimant's reaction to the demands and stresses of this litigation has been one of anger, accusations and disrespectful abuse, even to the extent of aggressiveness. The careful assistance afforded by Employment Judge Hodgson to the parties on 6 March 2018, designed to convert somewhat opaque claims to a state of clarity, to enable all the parties, the Claimant and the Respondents, to be trial fit for October, and to conclude this litigation one way or the other so that it would be behind them by early November has all been in vain beyond the helpful Scott Schedule prepared by the Respondents on 23 March 2017.
- (6) This Tribunal has no confidence that any further initiatives by the Tribunal or actions taken by the Respondents, will progress these proceedings beyond the stage these proceedings were at on 23 March 2017, since when it has been in a state of paralysis solely due to the manner in which the Claimant has conducted the proceedings and her non-compliance with the Case Management Orders made on 6 March 2018 and the Order repeated to the Claimant in respect of the Scott Schedule Order by the Tribunal on 21 August 2018.
- (7) Accordingly, on the Application of the Respondents, the Tribunal strikes out all the Claimant's claims on the grounds that the manner in which the proceedings have been conducted by the Claimant has been unreasonable, and on the grounds of the Claimant's non-compliance with the Case Management Orders made by Employment Judge Hodgson on 6 March 2018.
- (8) The Respondents' Application for an award of costs against the Claimant is adjourned, with the Respondents' agreement, to be restored and listed for Hearing only on their request to the Tribunal.

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**Employment Judge Hemmings**

Date 14 December 2018

JUDGMENT AND REASONS SENT TO THE  
PARTIES ON

18 December 2018

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FOR THE TRIBUNAL OFFICE