



EMPLOYMENT TRIBUNALS

Claimant: Mr A Wanis

Respondent: Royal Mail Group Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Sheffield **On:**29 March 2019

Before: Employment Judge Rostant

Appearances

For the claimant: In person

For the respondent: Md K Hall, solicitor

JUDGEMENT

I am not prepared to revoke my judgment striking out the claimant's claims of race discrimination.

REASONS

The background and procedural history.

- (1) The claimant presented his claim on 18 June 2018. Because it contained evidence of claims of discrimination it was automatically set down for a preliminary hearing on 8 August.
- (2) On 13 July the claimant to the tribunal say asking to extend the time for many reasons but amongst those that he felt that he had insufficient time to prepare and he also had medical and family issues he also made reference to the fact that English was not his first language.
- (3) By emailed letter of 23 July, Judge Cox refuse that application and asked the claimant to provide more detailed explanation for his inability to attend, supported by any appropriate medical evidence.

- (4) The claimant responded by way of an email of 25 July 2018. Up to this point all correspondence with the claimant had been by email, despite the fact that the claimant's claim form, but he had a preference for correspondence by post. That continued to be the case, without protest from the claimant until January 2019.
- (5) The claimant's email of 25th of July included a letter from his general practitioner Dr Deasy, referring to his medical conditions of bilateral leg oedema, venous insufficiency, chronic ulceration of the lower left leg. A Med 3 note was also enclosed saying that the claimant was unfit for work because of leg ulcers.
- (6) On 1 August 2018, a further letter was received from the claimant's general practitioner Dr Lehane, supporting the application for a postponement, this time on the basis of the claimant's deteriorating mental health.
- (7) As a result of that correspondence, Judge Maidment ordered the hearing of 8 August to be postponed and required the claimant to write to the tribunal stating when he will be fit to attend within the next six weeks.
- (8) The claimant did not comply with that requirement and he was sent a reminder letter on 27 September 2018.
- (9) There was no response to that letter either and on 10 October 2018 the claimant was sent a strike out warning for failure to pursue his claim.
- (10) In fact, the claimant had written to the tribunal on 2 October saying that he was still unwell but that email had not been filed.
- (11) The case was then listed for a three-hour preliminary hearing on 4 January 2019 and the claimant appeared before me on that date.
- (12) At that hearing, and all subsequent, the tribunal had the benefit of the services of an Arabic interpreter.
- (13) At the hearing, I ordered that the claimant pay a deposit of £46 as a condition of his continuing with his claims of race discrimination. At the hearing I explained the effect of my making a deposit order and I told Mr Wanis that the deposit would be required by 25 January 2018.
- (14) I also made a separate case management order, identifying the other issues in the case which were not subject to a deposit order and rejecting an application on the part of the claimant to amend his claim to include claims of harassment and religious discrimination.
- (15) The case management order repeated the fact of my having made a deposit order in the sum of £46 payable by 25 January.
- (16) Both the deposit order and the case management order was sent to the claimant by email on 9 January 2019.

- (17) The email address used was that email address which the tribunal had been using to correspond with the claimant up to this point.
- (18) Today Ms Hall put it to the claimant that she had used the same email address to correspond with him and that there had been no difficulties with that correspondence. The claimant accepted that.
- (19) On 24 January 2019, the claimant wrote a handwritten, posted, letter. He complained that he had yet to receive the deposit order through the post and that he did not have access to the internet. He added that he had a medical condition which reduced his ability to walk and added that the English language is not his first language. He asked for an extension of time to pay the deposit.
- (20) By order of 4 February 2019, sent to the parties by post on that date, I extended the date for the payment of the deposit to 21 February 2019.
- (21) On 11 February 2019, Mr Wanis emailed the tribunal querying whether the amount of the deposit was £46 and instead asserting that the amount that I had given in the hearing was £36. He telephoned the tribunal to the same effect on 19 February, apparently adamant that the wrong figure was given in the order. My own note and that of the respondent solicitor are clear that the figure of £46 was given. That is repeated in the deposit order and the case management order as is the fact that the figure was given to Mr Wanis orally.
- (22) On 21 February an email was sent to the claimant confirming that fact.
- (23) The claimant did not pay the deposit until 22 February.
- (24) By judgement of 28 February 2019, I struck out the claims of race discrimination in accordance with the provisions of Rule 39 (4) Tribunal Rules of Procedure 2013.
- (25) The matter had been set down for a preliminary hearing on 8 March to complete the case management aspects of the first hearing of 4 January and to deal with further applications to amend. At that preliminary hearing the claimant applied for me to reconsider my strike out judgement.
- (26) A hearing for 29 March (today's hearing) was set down to deal with reconsideration issue and to complete necessary case management for the substantive issues in the case.
- (27) I rose to deliberate on the application for reconsideration at 12:15. I returned and gave a judgement, without reasons, at 12:30. I did not give reasons because I was conscious that they would take some while to deliver and that it was very important that case management of this case be done in the time remaining in this hearing.
- (28) Mr Wanis asked me to give brief reasons and I declined. I told him that full reasons would be sent shortly but that I did not consider that there was enough time for me to give all of my reasons and that it would not be appropriate for me

to give a summary at this point. In making that decision, I was conscious of the fact that I expected to complete the typing of this decision by the end of today and that, accordingly, full reasons will likely be with the parties by the middle of next week, a short delay in the circumstances.

The Law

- (29) Rule 70 Tribunal Rules of Procedure provides that any judgement may be reconsidered and upon reconsideration may be confirmed, varied or revoked.
- (30) The claimant's application for reconsideration was made and recorded at the preliminary hearing of 8 March and detailed grounds sent to the tribunal and to the respondent by email of 25 March. Accordingly, the provisions of Rule 21 were complied with.
- (31) Rule 72 required that I first consider whether the application stood any reasonable prospect of success. Because Mr Wanis was relying on issues in relation to his health and to his command of language I did not consider that I could reject the application without a detailed consideration. The claimant indicated that he would wish the opportunity of an oral hearing.
- (32) Rule 70 provides that reconsideration shall take place where it is necessary in the interests of justice.

My Reasons

- (33) In deciding this matter, I have had the benefit of evidence under oath from the claimant. I have also considered as he requested me to the letter of 25 March and three Med 3 notes covering a period from early October 2018 to the present day.
- (34) The two notes that cover the period during which the deposit order was made and ought to have been paid both confirmed that the claimant was unfit for work by reason of a leg problem.
- (35) Both the claimant and Ms Hall were also given an opportunity to make closing submissions.
- (36) I have borne in mind the overriding objective
- (37) In considering the interests of justice I have identified the following relevant matters
 - (i) The claimant's explanation for the lateness of the deposit payment
 - (ii) How late that payment was.
 - (iii) The effects on the claimant's case of not permitting him to pursue a claim of race discrimination
 - (iv) the effect upon the respondent of permitting the race discrimination claim to proceed.

- (38) I did not find the claimant's explanation of the lateness of the deposit satisfactory.
- (39) The claimant relied on a number of matters. In summary, these were as follows
- (i) the only way to pay the deposit was by cheque through the post
 - (ii) the claimant had medical conditions which restricted his walking
 - (iii) the claimant's wife is very busy, having a part-time job the care of two children and conducting studies
 - (iv) the claimant received the original deposit order "very late"
 - (v) the claimant received the extension order late
 - (vi) the claimant struggled financially to find the amount for the deposit.
 - (vii) the cheque was sent on 17 February but did not arrive until 22 February
 - (viii) the claimant did not have access to the internet at home
 - (ix) the claimant had miss-transcribed the amount of the deposit at the original hearing.
- (40) I did not accept the claimant's evidence about the date on which he sent the cheque. In the ordinary way, first class post can be expected to arrive, at the latest, on the second day after posting. The claimant's assertion that the cheque was posted on 17th means that it did not arrive until the fifth day after posting. The claimant cannot supply any evidence of the date of posting. The claimant worked for Royal Mail, knew of the existence of systems that would recorded date of posting and knew of the importance of the deposit being paid on time. In the circumstances, a failure to ensure some proof of posting is strange even if that would have cost money which I accept the claimant does not have much to dispose of.
- (41) The claimant's own evidence is that he has experience of first class post from the tribunal only arriving with him several days after posting. For example, his evidence was that the order sent to the parties on 4 February was not received by him until either the 11th or 12th of February. If that evidence is true, and again it is surprising, it is curious that the claimant chose to wait as late as the 17th to post such an important letter for arrival on the 21st.
- (42) In any case, other parts of the claimant's evidence gave me cause to doubt that he was being completely straightforward. His assertion that he had no access to the internet at home proved to be untrue. His wife's mobile telephone has 4G and is set up to receive emails sent to Mr Wanis's email address, a fact which Mr Wanis accepted whilst giving evidence. In any case there is ample evidence on the file of his ability and willingness to communicate by email.
- (43) Furthermore, the impression that the claimant wished to give that he had not received the deposit order in any form until it was sent to him by post on 29th January, turns out also to be inaccurate. In cross-examination, Mr Wanis accepted that he had been sent the order by email. He first stated that he

had not received the email. When I pointed out that there was no record on the tribunal file of the email bouncing back from his address, he then said that he *had* received the email albeit much delayed. When pressed on the length of the delay, he said that he thought that he must have had it by about 18 January.

- (44) Because of my concerns about Mr Wanis's credibility, I have concluded that it is more likely than not that the cheque was not posted until 21 February.
- (45) I turn now to a consideration of the other grounds Mr Wanis sets forward.
- (46) Mr Wanis agreed that a summary of his evidence is as follows
- (i) by not later than 12 February, he had received the deposit order
 - (ii) by the same date he had received the order extending the date of payment
 - (iii) by the same date he had spoken to the finance department and had been told that payment would have to be by cheque.
- (47) In fact, in light of the evidence I take the view that by not later than 18 January Mr Wanis had received a deposit order. That means that by that date, he had twice been told of the amount that he was required to pay and the effect of not paying it. It also means that by 21 February, he had had seven weeks in which to raise the amount which I considered, on the evidence, he could have raised in three weeks. I do not consider that shortage of money in this case is a plausible explanation for delay.
- (48) I do not accept that the extension order, sent on 4 February by 1st class post took until 12 February to arrive. Even if it did, that left Mr Wanis, nine days, more than ample.
- (49) I do not accept that the claimant's medical condition is the basis of a plausible explanation for delay. On the claimant's own evidence the nearest source of postage stamps and the nearest post box of 40 minutes away on foot. Although I accept that the claimant's wife is busy, she is, happily, not disabled and indeed does a part-time job which presumably requires her to travel from home. I also observe that Mr Wanis has somehow got himself to the Tribunal, several miles from where he lives, on no fewer than three occasions. I do not accept that his condition amounts to a barrier that would prevent the posting of a letter on time.
- (50) Nor do I consider that the claimant's misunderstanding about the amount of the deposit can form part of a plausible or acceptable explanation. The amount of the deposit was given to the claimant verbally and in two documents. He had no reason not to accept that figure other than the possibility that he had mistakenly written down a different one. In any case, the claimant had sent the cheque before he received further confirmation of the correct figure.

- (51) For all of those reasons I reject the claimant's explanation for the lateness of his payment.
- (52) The lack of a good explanation is of course not necessarily fatal although, in this case it is a weighty consideration. Had the effect of my strikeout judgement being to deprive the claimant of any cause of action against the respondent I might have been more prepared to allow the race claims to go forward, particularly bearing in mind that Mr Wanis paid the deposit only one day late.
- (53) In fact, however, Mr Wanis already complains of his dismissal as being unfair, and motivated by his disability, and the inevitable result of the failure to make reasonable adjustments. Those claims will proceed in any case.
- (54) I bear in mind also the effect on the respondent of bringing these claims back at this stage. The claims relate to the claimant's dismissal, which took place 11 months ago, and to events in 2017. A reference to my original deposit order will provide the background to the way in which these claims were first articulated on 4 January 2019. It follows that the respondent will not have had the opportunity of addressing the substance of those claims until now. I consider that that is inevitably going to lead to some prejudice by way of effect on the cogency of the evidence.
- (55) Finally I bear in mind the important principle of the finality of litigation.
- (56) For all of the above reasons I do not grant the application for reconsideration and revocation

Employment Judge Rostant

Dated: 29 March 2019.

Sent to the parties on:

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For the Tribunal:

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