



EMPLOYMENT TRIBUNALS

Claimants:

Mrs M Oberska (C1)
Mrs MH Storc (C2)
Mrs M Storc (C3)

v

Respondent:

Poundland Ltd

PRELIMINARY HEARING

Heard at: Reading **On:** 27 February 2019

Before: Employment Judge George (sitting alone)

Appearances

For the Claimant: No attendance or representation

For the Respondent: Mr N Thornsby (Solicitor)

JUDGMENT ON AN APPLICATION TO STRIKE OUT

The Respondent's application for strike out is dismissed.

REASONS

1. The claim was presented on 24 April 2018 jointly by Mrs Oberska and Mrs Marzena Helena Storc and Mrs Milena Storc after early conciliation which took place between 23 March 2018 and 23 April 2018. The claim form paragraph 8.2 has been completed in what is conventionally called the narrative form and is rather difficult to understand. It appears that the First Claimant, Mrs Oberska, was at the time of putting in the claim form the assistant store manager at the Friar Street store operated by the Respondent.
2. An acknowledgement of service was sent out to all three Claimants on 21 May 2018 and notice of claim forwarded to the Respondent. Through internal administrative procedures, it did not reach the right person to deal with it immediately and therefore, the deadline for presenting a response passed very shortly before a response was in fact presented. It was accepted late on 31 July 2018 by which time a notice of hearing had been sent out for today's preliminary hearing. That was sent out on 21 May. Following it, a decision was made by the Employment Tribunal on 30 July 2018 that it was not appropriate to enter judgment against the Respondent

at that stage. That decision was made shortly before a response was in fact received.

3. The reason I detail this is that a close look at the Tribunal file shows that the acknowledgement of service and the notice that no judgment had been entered under rule 21 of the Employment Tribunal Rules of Procedure 2013 appear to have been directed towards all three Claimants individually. However, there is no evidence that the notice of today's hearing was sent to all three claimants individually. In the claimant form the First Claimant, who gave her email address as the contact email address for all the Claimants, does appear to be the person who is driving proceedings. She presented an agenda which was received by the Tribunal on 12 February 2019 but then, on 26 February (the day before today's preliminary hearing), she applied for a postponement of it because she said she had domestic issues and in particular she said that: *"My father health conditions is bad and I will have to take care of him."* This application for a postponement was resisted on behalf of the Respondent and was rejected by the Employment Judge on the papers prior to the hearing.
4. The Claimant has not attended at this afternoon's hearing. However, in my view, this is not a case in which the First Claimant has taken no steps to pursue the case. I should not that, according to the Respondent's representative's instructions, some of the information that she has presented on the agenda with regard to disclosure is inaccurate. According to Mr Thornsby, all of the Claimants are still in employment with the Respondent.
5. He applies for an order that the claim brought by the First Claimant be struck out, presumably under rule 47 of the Rules of Procedure 2013. This applies where there has been non-attendance at the hearing and reads as follows:

"If a party fails to attend or to be represented at the hearing, a Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so it shall consider any information which is available to it after any enquiries that may be practicable about the reason for the party's absence."
6. I have concluded that it is not in accordance with the overriding objective to strike out the claim brought by the First Claimant. I take into account that she made a very late application for a postponement and that she did not submit any evidence in support of her allegation that her father was unwell and that this meant she was unable to attend the hearing. Also, I note that the First Claimant knew about the hearing for some time. Nonetheless, it does not seem to me to be in accordance with the overriding objective to strike out the claim as against the First Claimant because there is no reason to think that a fair trial is not possible. However I make plain that the way in which the claim is argued by the Claimants is very unclear and when there has been a failure to attend at a

hearing in those circumstances it may mean that any later failure to pursue the claim with reasonable efficiency does affect whether a fair trial is possible. That is because delay in understanding the claim that is made tends to prejudice the respondent because they are unable to make enquiries of witnesses, whose memories fade and some of whom may leave their employment in the natural course of events.

7. In the alternative, I am asked to make orders for particularisation on an 'Unless' basis against all three Claimants. I will consider that application very carefully because it is certainly true that we are in a situation where nearly a year after the presentation of the claim, the Respondent does not know the claim that it has to meet and because of the non-attendance of the First Claimant today, the next date available for a preliminary hearing is in January 2020. This would mean that the first hearing of the claim at which the issues should be delineated would occur nearly two years after the presentation of the claim, let alone after the acts relied on and that is very unsatisfactory. However, the Claimants are not responsible for the length of time before the Employment Tribunal has available judicial resource to hear the case and in my view, it is not appropriate that that should be visited upon them. Furthermore, I am concerned that if I were to make an order for particularisation on an Unless basis in the first instance, this would lead to injustice. I am mindful of the fact that the Claimants are acting in person. The way that they have set out the claim in paragraph 8.2 of the claim form does not suggest that they have a particularly sophisticated understanding of employment law which is not unusual and there is no criticism of them for that. I am concerned that if I make an order for particularisation on an Unless basis without having explained to them the ways in which the case that they put is not sufficiently clear and what they need to do to rectify that, they may end up having their claims struck out almost by accident.
8. I have therefore decided that the right thing to do is to make very specific orders for particularisation and to ask very specific questions because particularisation is not an opportunity to expand on the claim. I am going to postpone the preliminary hearing and relist it for an open preliminary hearing. I do so in part because I cannot be satisfied that the Second and Third Claimants were aware of the date of today's hearing and that I regard as being an exceptional circumstance within rule 30A of the Rules of Procedure 2013.
9. A notice of hearing will need to be prepared relisting the case for a one day open preliminary hearing on 20 January 2020 at which the following issues will be decided:-
 - 9.1 Are the First Claimant, the Second Claimant and the Third Claimant properly claim-joined as Claimants under rule 9 of the Employment Tribunals Rules of Procedure 2013? This involves considering whether their claims are based on the same set of facts.

- 9.2 If their claims are not based on the same set of facts, and their claims are wrongly included on the same claim form, this shall be treated as an irregularity falling under rule 6 of the Employment Tribunals Rules of Procedure 2013. Should any requirement for the Claimants to present separate claim forms be waived or varied under rule 6A?
- 9.3 Alternatively, should the claims be struck out in whole or in part under rule 37 of the Employment Tribunals Rules of Procedure 2013?
- 9.4 In the alternative, should an order be made requiring the Claimants or any of them to pay a deposit as a condition of continuing to advance any specific allegation or argument in their claim pursuant to rule 37 of the Employment Tribunals Rules of Procedure 2013?

Employment Judge George

Date: ...25 March 2019

Judgment and Reasons

Sent to the parties on: 18 April 2019

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For the Tribunal Office

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