



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Wilson

Respondent: The Insolvency Service

Heard at: Manchester

On:

3 May 2019

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: Not in attendance or represented

Respondent: Mr T Holloway of Counsel

JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that:

1. The claimant's claims are struck out by reason of her non attendance or representation at this preliminary hearing pursuant to rule 47 of the 2013 Rules of Procedure.
2. Further, the claimant's claims are also struck out pursuant to the provisions of rule 37(1)(a) on the basis that they have no reasonable prospects of success , rule 37(1)(c) for non compliance with Tribunal orders, and rule 37(1)(d) that the claims have not been actively pursued.

REASONS

1. The claimant's claims of pregnancy and maternity discrimination, and for automatically unfair dismissal , and her other claims were listed for a preliminary hearing on 3 May 2019 at 10.00am. This hearing had been convened following a previous preliminary hearing which the claimant had attended in person before Employment Judge Porter on 29 January 2019. That was the first preliminary hearing in relation to the claimant's claims, and a number of orders were made in relation to those claims. Employment Judge Porter directed that there be this further preliminary hearing, and indeed this date was fixed in the orders that were sent out

to the parties on 8 February 2019. The purpose of this preliminary hearing was to consider any application the claimant may make to amend her claims, and also to consider the respondent's application to strike out the claims as having no reasonable prospects of success, or in the alternative for deposit orders.

2. A notice of preliminary hearing was also sent out to the parties dated 8 February 2019 confirming this listing. The claimant was ordered to provide further particulars, and also, if she was to pursue any application to amend, to do so by a specified date. The claimant contacted the Tribunal by email on 19 February 2019 explaining that she was waiting to speak to the Citizens Advice Bureau, and seeking an extension of time for compliance with the Tribunal's orders. The Tribunal replied to the claimant's application by letter of 13 March 2019 and she was granted extensions of time as she requested.

3. Amongst the orders that the Tribunal made on the previous preliminary hearing were orders that the claimant, if she intended to pursue an application to amend her claims, do so by a specific date, which was in fact extended to 19 March 2019 by the Tribunal's letter of 13 March 2019. She was also to provide further particulars of the claims that she was making. The claimant by email to the Tribunal of 23 March 2019 did provide some further particulars it would seem, but did not make any application to amend. The respondent subsequently invited the Tribunal to confirm with her that she was not seeking to make any amendments. Having received that communication from the claimant the Tribunal did indeed, by a letter of 29 March 2019, ask the claimant whether the document that she sent on 23 March 2019 was an application to amend her claim or whether it was just further information. She was asked to reply to the Tribunal in writing by 5 April 2019. She did not do so, and has not communicated with the Tribunal since.

4. The case was called on at 10.30am. No message has been received by the Tribunal explaining the claimant's absence, either by telephone or by email. Consequently there was no explanation for her non attendance before the Tribunal. Mr Holloway of counsel appeared for the respondent, and upon enquiry he revealed to the Employment Judge that there had been recent communication with the claimant by those instructing him. She had been provided with a preliminary hearing bundle for use in this hearing, and on 2 May 2019, the day before this hearing, at 10.50am the respondent's solicitor sent the claimant the paginated preliminary hearing bundle "in advance of tomorrow's hearing". Reference was again made to the respondent's counsel having a hard copy of the bundle "tomorrow". The claimant did reply at 13:33 on 2 May 2019, apologising for the delay in her reply which she said was due to a family member being sick. She mentioned documents that she had sent to the respondent, and she was asking to receive her contract and all correspondence in her name from work. The claimant said that this had been asked for from the Insolvency Service "last year". She made no reference, however, to the forthcoming hearing.

5. Consequently the Employment Judge was satisfied that the claimant clearly knew of the preliminary hearing that had been listed some time ago, and of which she had been reminded only the day before by the email communications referred to. There was no explanation for her absence, or any other material before the Tribunal. In those circumstances Mr Holloway for the respondent invited the Tribunal to dismiss the claimant's claims pursuant to rule 47 of the 2013 Rules of Procedure.

6. The Employment Judge considered that application and having made the enquiries required by that rule of the Tribunal staff , and indeed of the respondent, was satisfied that there was no explanation or excuse for the claimant 's non attendance. Consequently he acceded to the respondent's request to strike out the claimant's claims pursuant to that rule.

7. The Employment Judge, however, had the benefit of the preliminary hearing bundle and the submissions prepared by Mr Holloway in support of the respondent's applications to dismiss the claimant's claims pursuant to rule 37. That application is made on the basis that the claimant's claims have no reasonable prospect of success. In support of that application, the respondent has referred to the facts alleged by the claimant which she relies upon in support of her contentions that she was treated in a manner which constituted a breach of section 18 of the Equality Act 2010, and/or that she was automatically unfairly dismissed pursuant to section 99 of the Employment Rights Act 1996 by reason of her pregnancy.

8. At the previous preliminary hearing the claimant was ordered to provide further particulars of her claims and in particular, if she was claiming unfavourable treatment prior to her dismissal pursuant to section 18 of the Equality Act 2010, to provide further particulars of that. The only particulars that she has provided are those of 23 March 2019 in which she contended that her manager had refused a request she made to work from home.

9. A crucial issue in these claims is whether and when the respondent was aware of the claimant's pregnancy. The date of her pregnancy is a matter that was addressed in the previous preliminary hearing, and is a matter that she was required to provide further information upon. Her further particulars of 23 March 2019 identify that she was told that she was pregnant on Friday 15 June 2018. She contended that she was told that she was 4½ weeks pregnant. The respondent's case is that neither the dismissing officer, Andy Oliver, nor the claimant's manager, Tracy Millard, knew of her pregnancy. The claimant has contended that the latter did, but as is pointed out in the respondent's submissions , she has only made this assertion since bringing these claims, and in the appeal against her dismissal she told the appeals officer that this was "new evidence". Indeed , in her appeal the respondent's note is that she said that she had not informed her line manager that she was pregnant, something that she said on two occasions.

10. The claimant's claims arise out of her dismissal, which occurred on 2 August 2018, after a meeting , which the claimant could not attend , was held on 30 July 2018. The reasons for the claimant's dismissal, the respondent contends, were her poor performance, performance which had been monitored by her line manager since May 2018. The claimant was on a probationary period of employment of nine months. The respondent's case, as documented in the response form and the amended response, is that Ms Millard had been auditing the claimant's performance since early May 2018, before any suggestion that Ms Millard knew of the claimant's pregnancy, or indeed of the actual date of the claimant's pregnancy. The claimant herself did not know until 15 June 2018, and it can hardly be suggested that Ms Millard could have known before the claimant. Consequently the respondent's contention is that the manager commenced auditing the claimant's performance before she either was pregnant , or the respondent could even have known that that case have considerable force. The claimant has not , in anything that she has

produced to the Tribunal , addressed this argument as to why she contends that the respondent's case in this regard is unlikely to succeed, or why her case is likely to.

11. In essence the respondent's defence to all the claimant's claims is that she was dismissed for reasons that had nothing to do with her pregnancy , or any pregnancy related illness that she may have suffered, but simply because as a probationer she did not meet the required standard of performance as demonstrated by the audits carried out by her line manager. The dismissing officer, Mr Oliver, was unaware she was pregnant , and the claimant has not contended to the contrary. The highest the claimant's case gets is a suggestion that Tracy Millard was aware that the claimant was pregnant. She has not at any stage given any particulars of how Ms Millard was so aware, when she was told by the claimant if this is what the claimant is alleging, or any details whatsoever of the claimant's crucial contention that Ms Millard was aware of her pregnancy before her dismissal , or before she started any auditing of her performance.

12. On that basis , and for the reasons set out in the respondent's submissions, which the claimant has, the Tribunal understands , been provided with , the Employment Judge does take the view , absent any explanation from the claimant as to why her case does have any reasonable prospects of success, that the respondent has indeed established that the claims have no reasonable prospect of success. Had the claimant attended, she may have been able to point the Employment Judge to other evidence , or potential evidence , from which she could hope to establish a basis for these claims succeeding, but on the papers before him and what she has produced so far, the Employment Judge could see no reasonable prospects of these claims succeeding. Consequently, for the reasons set out in the respondent's submissions, which the Employment Judge accepts, he would strike out these claims in any event pursuant to rule 37.

13. Further, the claimant is in breach of the Tribunal's previous orders made on 29 January 2019. Whilst the respondent has, from what the Tribunal has been told, complied with those orders and has prepared a hearing bundle and given disclosure of documents as required, the claimant has not. Further, she has not replied to the Tribunal's letter of 29 March 2019 , asking her to clarify the document that she sent to the Tribunal on 23 March 2019. The Employment Judge considers that the claimant has failed to comply with the Tribunal orders, and also has failed to actively pursue this claim, and he would be minded to strike out her claims on that basis as well.

14. Consequently, the Employment Judge does dismiss the claimant's claims pursuant to rules 47 and 37. In the event that there is an explanation for the claimant's non attendance and non communication with the Tribunal , and indeed the respondent's representative, so that she considers making an application for reconsideration of this Judgment, the claimant should be aware that in addition to explaining her non attendance before the Tribunal at this preliminary hearing she will also need to address the merits of the respondent's applications , and to explain her default in complying with the Tribunal's orders, her default in not replying to the Tribunal's correspondence, and most significantly why she contends, or will contend, that her claims have any reasonable prospect of success in the light of the respondent's submissions . She would need to address too the absence of any evidence or explanation from the claimant as to the basis upon which she hopes to

establish that Tracy Millard had the requisite knowledge of her pregnancy at a relevant time.

15. Further, whilst the claimant has established the start of the protected period for the purposes of section 18 claims of her pregnancy, she has not provided details of its conclusion. It may well be the case that her pregnancy continued and was concluded with the birth of a child, but it is possible that for unfortunate reasons, noting that she underwent surgery in the summer of 2018, that it may not have proceeded further. Before her claims go any further the claimant would need to establish not only the beginning of the relevant period for her section 18 claims, but also the end of it. Consequently if the claimant is to pursue these matters any further she should be prepared to address those issues in any application that she subsequently makes.

16. These claims, therefore, stand dismissed for the reasons set out in this Judgment.

Employment Judge Holmes

Dated: 9 May 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

14 May 2019

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