



EMPLOYMENT TRIBUNALS

Claimant: Miss L Murray

Respondent: Riccall Carers Limited

HELD AT: Leeds

ON: 20 May 2019

BEFORE: Employment Judge Keevash
Mrs J A Bowen
Mrs L Hill

REPRESENTATION:

Claimant: Not present and not represented

Respondent: Mr C Booth, Solicitor

JUDGMENT

1. The Respondent's application is refused.
2. The hearing which is fixed for today and the next two days is postponed.
3. By 17 June 2019 the Claimant shall send to the Tribunal and to the Respondent a letter from the York and Selby Early Intervention in Psychosis Service or any other currently treating mental health practitioner which:-
 - a. Explains why the Claimant did not attend the hearing on 20 May 2019;
 - b. Provides a diagnosis for the Claimant's condition;
 - c. Provides a prognosis;
 - d. States (i) when the Claimant will be able to send to the Respondent a schedule of loss and any witness statement on which she intends to rely at the final hearing of these proceedings and (ii) when she will be able to attend a final hearing due to last three days and to conduct the case on her own behalf to include giving evidence and answering questions by way of cross-examination and from the Tribunal.

4 The costs of and occasioned by the postponement of this Hearing are reserved.

REASONS

1. This matter was listed for a three day hearing which was due to start today. At 8.10am this morning the Tribunal received an email from Mr Hibbs which among other matters explained that the Claimant had “a mental crash” over the weekend.
2. At the beginning of this hearing Mr Booth made an application that the claim be struck out provided that the Claimant was given an opportunity to make some representations or to give a letter which clearly and unambiguously stated that she wished to continue with the claim. That application was made under Rule 37(1)(d) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
3. The Tribunal refused this application because there was today an absence of any medical opinion as to the Claimant’s medical condition and, in particular, as to why she was unable to attend the hearing. It decided that to strike out a claim or a response was a draconian step and that it would be inappropriate to take that step without having some better understanding of the Claimant’s medical situation. Further, as Mr Booth rightly acknowledged, the Claimant had not been given an opportunity to make any representations to oppose the application. The Tribunal also agreed with Employment Judge Rogerson that a fair trial was still possible if it happened in the near future even though the manager who was responsible for the Claimant’s dismissal was about to leave the Respondent’s employment.
4. In the Tribunal’s judgment it was necessary to make an informed decision. The Claimant had to be given an opportunity to provide medical evidence. The Respondent had to understand that, when the Tribunal was considering the exercise of its discretion and whether to grant this application or not, it did recognise that there was a need to provide a level playing field. In accordance with the overriding objective it had to ensure so far as practicable that the parties were on an equal footing. The Tribunal had in mind the progress of these proceedings and the fact that the Claimant had not complied with case management orders and that it was told that the Claimant had not promptly attended an earlier preliminary hearing. It also had in mind Mr Booth’s submission that arguably this behaviour was consistent with what had happened during the Claimant’s employment with the Respondent. Against that the Tribunal had to weigh the information it had received today that the Claimant had had a mental crash or some form of mental breakdown. The Tribunal was unaware as to whether the Claimant had been hospitalised or not. If the Claim were to be struck out, she could not pursue it at any time in the future. On balance the interests of the Claimant outweighed those of the Respondent.
5. In those circumstances the Tribunal decided that in accordance with the overriding objective it should not to take any draconian step today. It decided that it was not sufficient to ask the Claimant to provide her own explanation or

to ask her GP to provide such explanation. What was required was a statement from a treating medical practitioner. On receipt of the information the Tribunal would be in a much better position to know how to proceed. In particular, the Tribunal would know whether the final hearing would never take place or that it would not happen until so far in the future that a fair hearing was no longer possible. In those two circumstances the case would undoubtedly be struck out. The third possibility was that the final hearing would take place in the reasonably near future and that would give the Claimant an opportunity to proceed with her claim. In the Tribunal's judgment the Order made today (at paragraph 3 of the Judgment) satisfied the requirements of the overriding objective.

6. The Tribunal has also ordered that the costs which had been thrown away by the postponement of this hearing should be reserved. Accordingly, the Respondent will be in a position to apply for an Order that the Claimant pay to it the costs which had been thrown away by the postponement of this hearing. The Tribunal will then decide whether it is appropriate to make a costs order and, if so, in what amount.
7. Finally the Tribunal explained the consequences of non-compliance with the Order. The Claimant should be aware that, if she failed to comply with this Order, the Tribunal may decide on the application of the Respondent or on its own initiative to ask the Claimant to explain the reason for non-compliance and in the absence of any or any good reason the Tribunal may decide to strike out her claim without any further order or notice.

Employment Judge Keevash

Date 22 May 2019

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