



EMPLOYMENT TRIBUNALS

Claimant: Mrs C T Obasuyi

Respondent: Leeds City Council

Heard at: Leeds **On:** 5 June 2019

Before: Employment Judge D N Jones

REPRESENTATION:

Claimant: Not in attendance

Respondent: Mr R Hutchinson, Solicitor

JUDGMENT

The claims are struck out on the ground that the claimant has failed to comply with the orders of the Tribunal and she and her representative have acted unreasonably in the manner in which the proceedings have been conducted.

REASONS

1. This case has an unhappy history. The claim was presented on 23 March 2018. A preliminary hearing was conducted on 15 June 2018 by Employment Judge Brain, by telephone, to make Case Management Orders. At that hearing the claimant's representative had presented a further document entitled "Further and Better Particulars of Amended Claims" which had incorporated tracked changes, but it was not possible to identify how that differed from the claim form and so Employment Judge Brain made orders for clarification of the complaints, by 3 May 2018. He required the claimant's representative to clarify the passages which had been added, by ensuring they were clearly marked to distinguish them from the grounds of complaint in the claim form, and that he should serve any application to amend insofar as that was required. He also ordered the claimant to serve upon the respondent an impact statement to deal with her disability, which at that time was disputed, and the medical evidence upon which she relied.

2. The claimant did not comply with any of those orders by the due date. This led to the Tribunal making an Unless Order on 13 September 2018 for the orders to be complied with by 20 September 2018 in default of which the complaint for disability

discrimination would stand dismissed without further order. There was not compliance with the Unless Order and the claim was dismissed on 24 September 2018.

3. On 20 September 2018 some documents had been sent to the respondent's representative by the claimant's representative and a hearing was arranged to consider an application to set aside the dismissal of the disability discrimination complaint. That was considered at a preliminary hearing by Employment Judge Maidment on 26 October 2018. There had been no service of medical evidence by that stage, but the Tribunal considered whether there had been compliance with the order concerning the further particulars and identification of the tracked changes. The Tribunal allowed relief from sanction and revoked the dismissal of the disability discrimination complaint, but made further orders for the provision of medical information in respect of the alleged disability and the provision of a revised impact statement (one having been provided on 20 September 2018 which was deficient). In addition the claimant was required by 14 December 2018 to provide a written statement of evidence dealing with whether any of the claims were in or out of time and explaining why any delay had arisen in respect of the submission of the claim to the Tribunal.

4. On 30 November 2018 and 14 December 2018 applications were made by the claimant's representative to extend the deadlines for compliance with Employment Judge Maidment's orders. Because of the Tribunal's workload these were not addressed until 18 January 2019 when the parties were asked to update the Tribunal as to whether there had been compliance. An impact statement had been filed on 10 December 2018 but no medical evidence or witness statements addressing time limits had been filed or served. The respondent replied to the Tribunal on 22 January 2019 informing it of that situation. No response was received from the claimant's representative.

5. On 5 February 2019 the Tribunal made a further Unless Order that unless the claimant complied with the request for comments the claim would be struck out in its entirety on 5 February 2019 without further order.

6. On 5 February 2019 the claimant's representative accepted that no witness statement had been filed in respect of the time limit issue, but a medical report had been filed, albeit it was deficient in addressing the issue required by the Tribunal.

7. On 12 February 2019 a preliminary hearing proceeded before me to consider whether the claimant was a disabled person and whether the Tribunal had jurisdiction to consider the claim in the light of time limit issues. I determined that the claimant was a disabled person having heard her evidence and considered medical evidence submitted. In respect of time limit issues, the claimant had provided a witness statement which was deficient, but having heard her evidence I considered that the allegations continued into a period which would have been in time if all events constituted conduct extending over a period. In spite of the claimant's failure to comply with orders, I considered that a fair trial was still possible. I ordered that the issue of jurisdiction arising from time limit issues would be determined at the final hearing unless the respondent's representative sought an earlier preliminary hearing, because it had only had clarification of the dates of the last incidents at the preliminary hearing. I made further orders in respect of disclosure of documentation and service of witness statements.

8. The parties were to exchange lists of documents by 12 March 2019. On that date the claimant's representative requested an extension of time on the basis of his ill health, albeit no medical evidence in support was provided. Employment Judge Lancaster agreed to vary the orders such that lists of documents were to be exchanged by 18 March 2019, requests for such documents by 20 March 2019 and service of the documents on 25 March 2019. The respondent was to prepare a bundle by 28 March 2019 but the exchange of witness statements was to remain as of 3 May 2019.

9. The claimant did not disclose the list of documents by the due extended date of 18 March 2019. This was supplied on 20 March 2019. In addition, there was a failure to provide the documents requested by the extended date of 25 March 2019. The respondent's solicitor requested provision of those documents by letters of 26 March 2019 and 2 April 2019. No documents having been provided by 4 April 2019, this application was made. It was based upon that breach and the earlier repeated breaches of order.

10. The claimant provided some documentation on 8 April 2019. Some of the documentation requested was not provided and further requests were made on 18 April 2019. A commitment was made by the claimant's representative to supply such documents on 24 April 2019. They were not supplied.

11. On 1 May 2019 both parties made applications to extend the time for service of witness statements in the light of the late disclosure of documents. The claimant's representative referred to a huge number of disclosable documents which had previously been lost and since been found which, he said, meant that the extension requested by the respondent's representative was not opposed but supported. A number of those documents were served upon the respondent but they contained odd numbered pages and did not appear to be relevant to the issues in the claim. The respondent requested further documentation from the claimant's representative but this has not been provided. The parties have not disclosed witness statements.

12. The respondent's representative sought postponement of the final hearing which is listed to commence on 17 June 2019 because of the non-compliance with the orders, and that was agreed by Employment Judge Smith. This hearing was retained to consider the application to strike out.

13. Neither the claimant nor her representative attended. The Tribunal made enquiries of both. The claimant was unaware of this hearing. The claimant's representative was at a Tribunal in London and informed the Tribunal that he was unaware of this hearing. The Tribunal had not given the claimant notice of this hearing because she had a named representative. He had been sent, to the email address lodged with the Tribunal, notice of the hearing. This was sent on 14 May 2019, and the claimant's representative had been copied into correspondence sent to the Tribunal by the respondent's representative on 14 May 2019 seeking clarification of what application was to be considered at this hearing and a further letter of 28 May 2019 which referred to the forthcoming hearing on 5 June 2019.

14. I am not satisfied that the repeated failures to comply with the orders of the Tribunal are excusable and they amount to unreasonable conduct. Although reference was made, in a number of letters to the Tribunal to difficulties arising as a consequence of the ill health of the claimant's representative, no medical evidence

has ever been provided in support of that, but the Tribunal has extended a number of time limits to accommodate that difficulty. The failure of the claimant's representative to attend this hearing is further evidence of unreasonable conduct. A number of communications from both the Tribunal and the respondent put him on notice that this hearing was to take place. It was his responsibility to update the claimant about the progress of this claim such that she was aware of today's hearing.

15. There remains a considerable lack of clarity in relation to these claims. They extend over a considerable period time from 2016 up until November 2017 and will depend to a considerable extent on the recollection of witnesses as to the criticisms made by the claimant of the respondent's employees. The delay in this case will inevitably affect the cogency of the evidence. There remains further documentation which has not been disclosed.

16. By rule 37, at any stage of the proceedings a tribunal may strike out a claim if the manner in which the proceedings have been conducted by or on behalf of the claimant has been unreasonable or for non-compliance with an order of the tribunal. Even if such factors are established, a tribunal should not strike a case out if a fair trial is still possible.

17. I am not satisfied, in the circumstances, that a fair hearing is possible as a consequence of the breaches of the orders and the unreasonable conduct to which I have referred. A fair hearing would have been achievable had the original orders of Employment Judge Brain been complied with, or the further orders of Employment Judge Maidment and myself which had allowed considerable latitude in the light of the claimant's representative's stated ill health. Nevertheless, the further clarification required has not been forthcoming and there remains outstanding documentation to be disclosed and work to be undertaken to prepare witness statements to cover a lengthy period of time, which is now over 18 months since the events occurred. The hearing of 17 June 2019 has been vacated and any further case management would result in a hearing many months in the future, even if I could be satisfied that the orders would be complied with. Because of the frequent and repetitive failures to comply with orders to date, I have no confidence that compliance will occur within any reasonable timeframe and, for the reasons I have given, the delay in respect of the events to be determined which are receding into history has impaired the quality of the evidence. That is solely down to the way this case has been conducted by the claimant or her representative and not the respondent.

18. Applying the overriding objective, including with regard to the delays in this case and the additional costs being incurred, the claim shall be struck out.

Employment Judge D N Jones

Date 13 June 2019

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