



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

Ms Y Cooke

Arsenal Football Club

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford

**On:** 10 July 2019

**Before:** Employment Judge Alliott (sitting alone)

### Appearances

**For the Claimant:** Not in attendance

**For the Respondent:** Miss J Mulcahy QC

## JUDGMENT

1. The claimant's claims for age and sex discrimination and victimisation are struck out pursuant to rule 37 ET's (Constitution & Rules of Procedure) Regulations 2013, on the grounds of non-compliance with an order of the tribunal and that they are not being actively pursued.
2. The claimant's claim is dismissed pursuant to rule 47 ET's (Constitution & Rules of Procedure) Regulations 2013, on the basis that the claimant has failed to attend.

## REASONS

1. This preliminary hearing was listed as a CPH for today on 31 December 2018.
2. Consequent upon the respondent's response form, which requested further information about the discrimination claims, on 16 March 2019 Employment Judge Lewis directed that the claimant, no later than 6 April 2019, send to the tribunal and the respondent a list of all the events which

she asked the tribunal to decide were matters of sex or age discrimination. Directions were given as to the nature of the information that was required.

3. On 10 April 2019 the claimant e-mailed the Employment Tribunal indicating that she had not received the order of 16 March 2019 and requested an extension of time in order to comply.
4. Employment Judge Smail granted the claimant an extension of time to comply until 31 May 2019. The claimant did not comply.
5. On 5 June, the respondent repeated its application that the sex and age discrimination claims should be struck out on the basis that there was no reasonable prospect of success and/or that the conduct of the proceedings had been unreasonable and/or that there had been failure to comply with orders of the tribunal. On 23 June 2019 Employment Judge Lewis sent a notice to the parties as follows:-

“Employment Judge Lewis is considering strike out of the claims of age and/or sex discrimination because:-

1. They are not actively pursued,
2. Have no reasonable prospect of success;
3. The claimant has failed to comply with the tribunal’s direction of 16 March 2019.

If the claimant wishes to object, or comment, she should write to the tribunal with reasons by 1 July 2019.”

6. The claimant failed to write to the tribunal as directed by 1 July 2019.
7. Consequently, Employment Judge Lewis converted today’s hearing from a closed preliminary hearing to an open preliminary hearing in order to consider the tribunal’s letter of 23 June 2019.
8. The claimant is not in attendance today. On 9 July 2019 the claimant sent an e-mail to the Employment Tribunal which states as follows:-

“Hello

I received a message earlier from Celia (or it may have Cecilia) to confirm my attendance tomorrow. I have just returned home and have been trying to call back the number given but it is continually engaged.

Extremely reluctantly, I have decided not to attend tomorrow. I have been informed that the lawyer representing Arsenal is very aggressive and given that I am self-representing and have no knowledge or experience of this type of situation, I feel quite intimidated. I don’t understand the forms or how I am supposed to present myself or the case. I am in a position through no fault of my own and just want a fair outcome, but I do not want to be unfairly questioned or made to feel that I am the “baddy” and given the track record of behaviour to date, I have no reason to believe it will be anything other than what my fears predict.

Furthermore, I have had a second interview today for a job and I would not want this case to interfere with that.

.....”

- 9. I have considered the reasons for the claimant’s absence. Even giving due allowance for the fact that the claimant is representing herself, it seems to me that the real reason she has not attended today is due to the fact that she had a second interview for a job on 9 July and, as she says, did not want this case to interfere with that job application. It is noticeable that the claimant has not sought an adjournment or deferment of this hearing due to her job interview.
- 10. The claimant has been given two opportunities to comply with the order of 16 March 2019 and has singularly failed to comply. The claimant has been given an opportunity to make representations as to why her age and sex discrimination claims should not be struck out. She has not done so in writing or in attendance here today. In my judgment, the claim for victimisation falls to be considered as an age/sex discrimination claim.
- 11. Accordingly, I find that the claimant is in breach of orders of the tribunal and I also conclude that her claims are not being actively pursued. Consequently, I strike out the age and sex discrimination claims and the victimisation claim under rule 37 of the Employment Tribunal Rules.
- 12. As regards the balance of the claimant’s claim, I do not consider that the reasons for non-attendance advanced by the claimant are justifiable. The Employment Tribunal is regularly presented with litigants in person who have very little understanding of the process. I also take into account that there are Citizens Advice Bureau who offer free advice and many solicitors who will offer representation on a conditional fee basis. Taking into account the reasons why the claimant says she is not here, in my judgment this claim stands to be dismissed. Accordingly, I dismiss it pursuant to rule 47 of the rules.
- 13. As the claimant is a litigant in person and may not be familiar with the Employment Tribunal rules, I set out that she can apply to the tribunal in writing for reconsideration of this judgment within **14 days** of the date upon which this decision and reasons have been sent to her setting out why reconsideration of this decision is necessary.

\_\_\_\_\_  
Employment Judge Alliott

Date: ...24/7/19.....

Sent to the parties on: .....

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For the Tribunal Office