THE EMPLOYMENT TRIBUNALS

BETWEEN

Ms Elizabeth George ***Claimant***

and

Pearson College Limited

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central **ON**: 24 July 2019
EMPLOYMENT JUDGE: Mr Paul Stewart

Appearances:

For Claimant: did not appear and was not represented

For Respondent: **Ms Dee Masters of Counsel**

JUDGMENT

The claims should all be struck out pursuant to Rule 37(1)(c).

REASONS

1. The Claimant has not appeared today and is not represented at today's hearing which has been scheduled to be heard in Room 509, the room in Central London Employment Tribunal that is equipped with such equipment as is required for receiving evidence by videolink. The reason the hearing was so scheduled was because, at the Preliminary Hearing (Case Management) on 10 June 2019, Employment Judge Snelson reacted to the (too) late application made by the Claimant after office hours on Friday 7 June 2019 for the 20 June 2019 hearing to be conducted by video conference on the basis that she suffers from agoraphobia by providing her with information as to how she might timeously apply for hearings to be conducted by video link.

2. The Claimant was sent along with a copy of Employment Judge Snelson's order dated 12 June 2019 a copy of an information sheet on how to arrange for video conferencing. She has not made contact with the administrative officer named in

the sheet, Mr Mobarak Joaque, to arrange either for a test call to be instituted or for conferencing to take place without a call.

3. Ms Masters made the point that a copy of the video conferencing sheet did not accompany the order that was sent out by email to the parties at 1241 hours on 12 June 2019. However, paragraph 12 of the Observations of Employment Judge Snelson accompanying the Order he made would have alerted the Claimant to the fact that a "one-page standard form note" should have been sent to her with the Order and that advice could be obtained from the administrative officer responsible, Mr Mobarak Joaque. If the Claimant did not receive such a sheet, she was thus on notice not only that she should have done but that she could obtain advice on the subject from Mr Joaque.

4. And, indeed, the Claimant was alerted for she emailed the Tribunal on 20 June 2019 addressing the email to Mr Joaque saying:

> Please refer to the Employment Judge A M Snelson's case management orders dated 12 June 2019. Given my Agoraphobia disability and medical recommendation to participate in our hearing via video I was directed to liaise with the relevant administrative staff i.e. yourself to arrange how one may join the 24 July 2019 preliminary hearing by video given the Central London Employment Tribunal as a public body is committed to making reasonable adjustments related to people with disability.

5. Mr Joaque wrote to the Claimant on 28 June in response to her email of 20 June setting out precisely the information that was contained in the one-page standard form note.

6. As the Claimant has not followed up on her contact with Mr Joaque to arrange for a video conferencing link to be established and has failed to attend today, I have decided to proceed with the Preliminary Hearing in her absence.

7. Following the Agenda set out by Employment Judge Snelson in paragraph 8 of his Order of 12 June 2019, the first item should be to deal with the Respondent's application to strike out and / or deposit order.

8. However, as Ms Masters for the Respondent accepts, it is appropriate to deal with the application made this morning by the Claimant in a letter emailed to the Employment Tribunal at 0923 hours. In that letter which, it should be noted, extends into 20 pages of single-paged typing, the Claimant asks for three things:

   a) A stay "due to High Court proceedings"

   b) Rule 52 discontinuance

   c) That the Respondent's ET3 and complete defence should be struck out for dishonesty.

9. I am informed by Ms Masters that the Respondent has not been served with any Claim form in respect of High Court proceedings issued by the Claimant and is not aware of such service on any of the five people threatened with the commencement of proceedings by the Claimant in a letter dated 10 July 2019 and headed "Pre-Action Protocol for Defamation & Letter of Claim". Those five individuals are all employees of the Respondent. One of them, Mr Will Nash, is a

lawyer occupying the position of Senior Counsel for the Respondent. He had no dealings with the Claimant ahead of her dispute with the Respondent and, therefore, he appears to have been threatened with proceedings as a representative of the Respondent rather than in his own right.

10. But, in any event, the Claimant's letter of 10 July 2019 in its penultimate paragraph gave the recipients 10 days within which to acknowledge the letter and a deadline of 4 p.m. on 23 July 2019 for "your full defendant's response". That rather suggests that proceedings, were they to have been issued because of the failure to the recipients of the letter to provide a response, would not have been served by 10.00 a.m. today.

11. In the circumstances, therefore, there would appear to be no High Court proceedings which give rise to the application made by the Claimant for a stay. The Claimant asks secondly for:

> "Rule 52 Discontinuance: Given commencement of High Court proceedings that the Tribunal needs to be fair and approve a discontinuance in accordance with rule 52"

12. This request is based again on High Court proceedings having been commenced. As there is no evidence of the same, that basis for the application disappears. What I – and Ms Masters – understand from the way the application is made and from the wording of Rule 52 is that, in the absence of obtaining a stay, the Claimant wishes to withdraw the claim but with the proviso of reserving the right to bring a further claim and wishes the Tribunal to be satisfied that there would be legitimate reason for so doing. However, I am not so satisfied. It seems to me that, if I am not satisfied that there is a good reason for a stay, I cannot – on the same information – be satisfied of a legitimate reason for the Claimant withdrawing her claim but reserving to herself the right to bring a further claim. Therefore, I not only reject the application of a stay of proceedings due to the alleged commencement of High Court proceedings, but I also reject the application of the Claimant to discontinue on the terms she seeks.

13. As for the third application of the Claimant: viz

> The Respondent's ET3 and complete defence needs to be struck out for dishonesty. Claimant will show should show irrefutable evidence how Respondent, are misleading the Central London Employment Tribunal. The Respondents made up to 30 false statements in their ET3, letters and in court. This is dishonesty, perjury intent and justice pervasion.

I cannot strike out a response on the basis that the Claimant considers certain of the allegations contained therein to be false and dishonest. To arrive at the conclusion that what the Claimant says is correct would require a trial. If I were to strike out the ET3, there would be no trial. Therefore, I reject that application.

14. We can therefore proceed to consider the agenda as set out by Employment Judge Snelson. The Respondent applies for the Claimant's claims to be struck out under Rule 37(1)(c) which states:

> 37.— (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
>
> …
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;

15. Ms Masters has provided a Skeleton Argument which sets out a Chronology demonstrating principally two things; first, the occasions when the Claimant missed a deadline and, second, the dates on which the Claimant sent a letter or an email to the Respondent or the Employment Tribunal. In her Chronology, she highlighted those occasions when deadlines were missed by using a red font to which, for the benefit of those to whom this judgment is printed out without colour, I have added 15% shading to the background. Ms Masters has highlighted the dates on which the Claimant corresponded with the Tribunal or Respondent by using a blue font. I have adjusted her regular blue font to an italic blue font for the benefit of those reading without colour. Her Chronology thus adjusted is set out as an Appendix to this judgment. The page numbers refer to the Bundle which the Respondent prepared for this hearing

16. Ms Masters took me through the Chronology. The first entry is a Judgment and Orders in the East London Employment Tribunal Case No. 3200482/2018 between Dr B Beeka and Coventry University London Campus Ltd ("*Coventry*"), a decision of Employment Judge Russell of 27 September 2018. The Claimant was apparently hired by the Respondent as Dr B Beeka and the respondent in that case was her previous employer. Ms Masters pointed out that there are similarities between the hearing presided over by Employment Judge Russell and today's hearing. The Claimant neither attended nor was represented in either. The Claimant applied for a stay of her case against Coventry pending resolution of High Court proceedings the existence of which, unlike those in this case, was accepted. In that application, she was successful.

17. However, the thrust of Ms Masters observations on the Coventry case is that the Claimant is experienced in the procedure of the Employment Tribunal. And the main point of her Chronology is to demonstrate that the Claimant is well capable of writing at some considerable length on the subjects of her choosing but manages to avoid complying with any directions or orders she does not care for.

18. She has not fully complied with the direction given on 25 March 2019 to produce a statement of remedies. She has not produced an index to her discrimination claim by 30 May 2019 or at all as ordered by the Employment Tribunal on 2 May 2019. She has failed to comply with the first three orders of Employment Judge Snelson made at the Preliminary Hearing of 10 June 2019, the order having been sent to the parties on 12 June 2019. All three orders required her to take certain positive steps by 24 June 2019. She did not comply with any of these orders by 24 June or at all. She was, however, able to write to the Tribunal on 21 June 2019 seeking to have the 24 June 2019 deadline "extended by two or three weeks". She was further able to email on 24 June itself enclosing a typed single spaced letter twenty pages in length seeking an extension of the deadline.

19. The seventh of Employment Judge Snelson's orders made on 10 June required the Claimant to deliver to the Tribunal and copy to the Respondents' representative by 15 July 2019 much medical evidence as she may wish to rely upon in support of any application to be made today for any reasonable adjustment in the procedural handling of the case. She had supplied, ahead of that order being made, a letter dated 5 June 2019 from a general practitioner asserting the Claimant to suffer from agoraphobia, the symptoms of which had prevented the Claimant leaving her house and opining that a forthcoming court attendance would make her symptoms worse. The doctor considered a video link would be beneficial to aid the Claimant. That letter had been attached to the letter sent after close of business on Friday 7 June 2019 seeking to have the preliminary hearing of Monday 10 June conducted via telephone or audio / video technology and Employment Judge Snelson would have seen it. He made an observation in respect of his order relating to medical evidence that "the medical evidence is intended to inform the tribunal's handling of the case procedurally, given its duty as a public body to make reasonable adjustments in favour of persons with disabilities".

20. It is clear that the intention behind the order was to allow the Claimant to provide the medical evidence that might be used to support any application for reasonable adjustment in respect of any medical condition that might amount to a disability. It is also clear that Employment Judge Snelson did not think that the GP's letter of 5 June 2019 represented the medical evidence that informed the tribunal's handling of the case procedurally – otherwise he would not have made the order. However, the Claimant did not comply with the order by 15 July or at all.

21. I also bear in mind that, when refusing the Claimant's request made on 21 June 2019 to have the 24 June 2019 deadline "extended by two or three weeks", Employment Judge Snelson directed the Claimant be told that:

> [the order of 10 June] sets up a timetable up to the hearing on 24 July. You must make this litigation a priority.

22. I should also record that the Claimant, while failing to comply with the orders made in the litigation she initiated, found time to write a 17-paged letter on 8 July 2019 sent to the five employees of the Respondent entitled "Pre-Action Protocol for Defamation & Letter of Claim". She has not complied with the advice of Employment Judge Snelson to make this litigation a priority.

The law

23. I have already set out Rule 37(1)(c). Ms Masters directed by attention to the well-known case of **Blockbuster Entertainment Ltd v James** [2006] IRLR 630 and to the judgment of the court delivered by Sedley LJ who said, at paragraph 5, of the power to strike out:

> 5. This power, as the employment tribunal reminded itself, is a Draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to

consider whether, even so, striking out is a proportionate response. The principles are more fully spelt out in the decisions of this court in Arrow Nominees v Blackledge [2000] 2 BCLC 167 and of the EAT in De Keyser v Wilson [2001] IRLR 324, Bolch v Chipman [2004] IRLR 140 and Weir Valves v Armitage [2004] ICR 371, but they do not require elaboration here since they are not disputed. It will, however, be necessary to return to the question of proportionality before parting with this appeal.

24. In one of the decisions cited by Sedley LJ, that of **De Keyser v Wilson**, a judgment of the EAT, Lindsay J (President), provides guidance on the principles to be applied in deciding whether striking out is a proportionate response. He said this:

> 24.. As for matters not taken into account which should have been, the Tribunal nowhere in the course of their exercising their discretion asked themselves whether a fair trial of the issues was still possible. In a case usefully drawn to our attention by both sides' Counsel, namely *Arrow Nominees Inc -v- Blackledge [2000] 2 BCLC 167 the Court of Appeal* had before it a case where the Judge below had more than once declined to strike out the proceedings on the basis that whilst one party had, in the course of discovery, disclosed forged documents and had lied about the forgeries during the trial, a fair trial was, in his view, still possible. We pause to reflect on the magnitude of the abuse there in comparison with Mr Pollard's and De Keyser's. Whilst in other respects the context of the *Arrow Nominees* case is very different, there are passages in the judgment in the Court of Appeal of relevance. Thus at **page 184** there is a citation from Millett J.'s judgment in *Logicrose -v- Southend United Football Club Ltd (1988) The Times 5th March 1998* as follows:—
>
> > "But I do not think that it would be right to drive a litigant from the judgment seat without a determination of the issues as a punishment for his conduct however deplorable, unless there was a real risk that that conduct would render the further conduct of proceedings unsatisfactory. The Court must always guard itself against the temptation of allowing its indignation to lead to a miscarriage of justice."
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> 24.. In *Arrow Nominees* Chadwick L.J. adopted those observations in a passage which, although directed to discovery, is of more general application. Thus at **page 193 g–h** one finds:—
>
> > "But for my part I would allow that appeal on a second, and additional, ground. I adopt as a general principle, the observations of Millett J. in *Logicrose* … that the object of the rules as to discovery is to secure the fair trial of the action in accordance with due process of the Court; and that, accordingly, a party is not to be deprived of his right to a proper trial as a penalty for disobedience of those rules, even if such disobedience amounts to contempt for or defiance of the Court, if that object is ultimately secured, by (for example) the late production of a document which has been withheld. But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the processes of the Court as to render further proceedings

> unsatisfactory and to prevent the Court from doing justice, the Court is entitled, indeed, I would hold bound, to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the Court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the Court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke."

24.. Later, Ward L.J. speaking of the risk of a fair trial not being possible said at **p. 201** :—

> "It undoubtedly is a factor of very considerable weight. It may often be determinative. If the Court is satisfied that the failure to disclose a document or the effect of a tampered document can no longer corrupt the course of the trial, then it would be a factor of much less and perhaps even little weight in considering a strike out. Where, in my judgment, Evans-Lombe J. erred, was to treat the question of a fair trial as the only material factor. It was not; other matters have now to be put into the scales and weighed."

25.. We must keep in mind, too, that the case at hand is a case not involving disobedience to or failure to perform an order of Court; wilful, deliberate or contumelious disobedience was not in issue. Parts of those passages from *Arrow Nominees* and in particular the passage from *Logicrose* show the great importance, in relation to a discretion to strike out the whole of a case where there has been no such disobedience, of an inquiry into whether a fair trial is or is not still possible. Unfortunately there is no sign whatever of that having been considered by the Employment Tribunal in the case before us. Whilst no-one would suggest that it is incumbent upon a Tribunal necessarily to set out every consideration which, in the exercise of its discretion, affects its mind one way or another, to leave out so crucial a factor as the question of whether a fair trial is still possible either indicates that the matter was not within the contemplation of the Tribunal (thereby committing the error of law of leaving out of account something which so obviously should have been taken into account) or, if the matter had truly been in the Tribunal's mind but is omitted from express mention, leaves the Tribunal open to argument that it has failed the *Meek -v- City of Birmingham* test.

Discussion

25. Given the ability of the Claimant to construct long letters of considerable complexity, it is well within the Claimant's abilities to comply with the orders made in her case. I am driven to the conclusion that her failure to obey the orders of the court is wilful and deliberate. I also consider the Claimant's failure to be "contumelious" because, while it is difficult to detect scornful and insulting behaviour from mere inaction, the repeated failure to comply with case management orders is somewhat insulting to the judicial institution from which the

Claimant has sought to remedy whatever wrong or wrongs she believes she had suffered. The orders that have been ignored by the Claimant include the first three of Employment Judge Snelson's orders which read as follows:

(1) No later than 24 June 2019 the Claimant shall deliver to the tribunal and copy to the Respondents' representative a draft of the new claim(s) for automatically unfair dismissal and 'whistle-blowing' detriment which she wishes to add by way of amendment of her claim form, setting out in each case the legal nature of the claim the core facts on which it is based.

(2) No later than 24 June 2019 the Claimant shall deliver to the tribunal and copy to the Respondents' representative a completed version of the "Schedule of Claims" proforma already supplied to her. In accordance with the direction of the Tribunal contained in this letter of 2 May 2019, the allegations must be set out in chronological order and the document must not exceed two pages of A4.

(3) No later than 24 June 2019 the Claimant shall deliver to the Respondents' representative and copy to the Tribunal a schedule of all remedies claimed in the proceedings.

26. Compliance with the first two of these orders would have allowed the Respondent to have complied with consequential orders that would have seen the Respondent file and serve draft amended 'Grounds of Resistance' and file and serve a first draft list of issues. As it is, they have not be able to comply.

27. Compliance with the third order would have allowed the Respondent to assess and cost the risk that the claims presented.

28. In addition, there is the failure of the Claimant to comply with the seventh order, that which required her to file such medical evidence as she may wish to rely on in support of her any application to be made today for any reasonable adjustments. Non-compliance with that order prevents the Tribunal from carrying out its duty to make reasonable adjustments in favour of persons with disabilities although, whatever adjustments might be made would be rendered useless if, as was the case today, the Claimant ignores the facilities offered her to participate by video link.

29. I ask myself whether a fair trial is still possible. My view is that it is not. If the Respondent is not provided with either a draft of the new claims the Claimant wishes to bring and a completed version of the "Schedule of Claims" proforma already supplied to her by the Respondent such that it cannot amend its response or prepare a draft list of issues, then the whole purpose of case management is negated and the overriding objective of dealing with cases fairly and justly is frustrated.

30. The Claimant initiated the litigation. She has experience from a previous claim she has brought of the requirements of case management. She chooses to concentrate on the matters she wishes to concentrate on and not to give priority, as Employment Judge Snelson advised, to this litigation. I see no prospect of her altering her behaviour. Her non-compliance, in my view (adopting and adapting the words of Chadwick LJ) amounts to such an abuse of the processes of the

[Tribunal] as to render further proceedings unsatisfactory and to prevent the [Tribunal] from doing justice.

31. Therefore, I have acceded to the Respondent's application that the case be struck out.

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EMPLOYMENT JUDGE STEWART
On: 24 July 2019

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DECISION SENT TO THE PARTIES ON

25 July 2019

FOR SECRETARY OF THE TRIBUNALS

Appendix - Respondent's Chronology

Date	Action	Page No
27.9.18	Claimant seeks a postponement / stay of a different claim in East London Employment Tribunal which was due to start on that day.	247-264
2.2.19	Claim lodged in the Employment Tribunal.	1-41
25.3.19	Employment Tribunal writes to the parties listing the substantive hearing for October 2019 and setting down case management directions. Hereafter referred to as the **First Orders.**	42-46
25.3.19	Employment Tribunal writes to the parties listing a PH for 10 June 2019.	47-48
22.4.19	Deadline to comply with production of a statement of remedies as per the First Orders missed. To date, no complete compliance.	42-46
26.4.19 And 30.4.19	Respondent writes to the Claimant seeking her statement of remedies as per the First Orders. NB. Claimant states in this correspondence that she did not see the First Orders.	79-82
2.5.19	Employment Tribunal writes to the Claimant and orders her to provide an index to her discrimination claim by 30 May 2019. Hereafter referred to as the **Second Order.**	69
10.5.19	*Claimant writes to the Employment Tribunal seeking an application to amend, seeking an extension of time re compliance with the various orders by at least 4 weeks and other matters.* NB. Claimant states in this correspondence that she did not see the First Orders.	83-89[1]
10.5.19	Claimant writes to the Respondent and sets out "initial thoughts" on remedy.	90
20.5.19	Respondent writes to the Employment Tribunal copying in Claimant.	91-94
21.5.19 and 22.5.19	*Claimant writes to the Respondent and the Employment Tribunal with a lengthy letter including amongst, many matters, an application for specific disclosure and to strike out the ET3.*	95-112
30.5.19	Deadline to produce an index as per the Second Order missed. To date, no compliance.	69
7.6.19	*Claimant requests at 18:27 on a Friday evening for the PH on the following Monday to be via video conferencing. She also attaches extensive documentation in order to criticise the Respondent.*	114-159[2]
10.6.19	PH. Claimant did not attend. Various orders made, hereafter referred to as the **Third Orders.**	70-73

[1] There is also duplicate correspondence.
[2] There is also duplicate correspondence.

10.6.19	*Claimant emailed the Respondent purporting to comply with the Pre-action Protocol on Defamation and complaining about the Respondent's compliance with a Subject Access Request.*	160-164
14.6.19	*Claimant emailed the Respondent purporting to comply with the Pre-action Protocol on Defamation and complaining about the Respondent's compliance with a Subject Access Request.*	165-179
14.6.19	*Claimant emailed the Respondent making a request for specific disclosure.*	180-181
16.6.19	*Claimant emailed the Respondent raising data protection issues.*	182-184
21.6.18	*Claimant emailed the Employment Tribunal seeking to postpone the Third Orders.*	185-195
24.6.19	Deadline to comply with **Third Order (1)** missed. To date, no compliance.	70
24.6.19	Deadline to comply with **Third Order (2)** missed. To date, no compliance.	70
24.6.19	Deadline to comply with **Third Order (3)** missed. To date, no compliance.	70
24.6.19	*Claimant emailed the Employment Tribunal seeking to postpone the Third Orders.*	196-203
28.6.19	EJ Snelson wrote to the Claimant refusing her request to extend the dates on the case management orders and explained that "You must make this litigation priority".	207
8.7.19	Deadline for Respondent to comply with **Third Order (4)**. Respondent unable to do so as no compliance with **Third Orders (1) and (2)**.	70[3]
8.7.19	*Claimant made an application to stay the Employment Tribunal proceedings due to potential High Court litigation.*	208-211
8.7.19	Respondent complied with **Third Order (5)** i.e. particularisation of strike out application.	212-216
10.7.19	*Claimant emailed the Respondent purporting to comply with the Pre-action Protocol on Defamation.*	217-236
15.7.19	Deadline for Respondent to comply with **Third Order (6)**. Respondent unable to do so as no compliance with **Third Orders (1) and (2)**.	70
15.7.19	Deadline to comply with **Third Order (7)** missed. To date, no compliance.	70
17.7.19	EJ Snelson rejected the Claimant's stay application.	243
22.7.19	Claimant writes to the Employment Tribunal implying that stay application may be renewed.	244-245
24.7.19	PH as per **Third Order (8)**.	71

[3] There is also duplicate correspondence.

8.8.19	Deadline for **Third Order (9)** i.e. disclosure.	71
29.8.19	Deadline for **Third Order (10)** i.e. bundle.	71
17.9.19	Deadline for **Third Order (11)** i.e. exchange of witness statements.	71
8.10.19	Deadline for **Third Order (12)** i.e. agreed cast list and chronology.	71
8.10.19	Start of a 7-day substantive hearing.	42

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