



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mrs A Mayhew

AND

Respondent
(1) Mr R Kroner
(2) Mr G Manzie

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON A PRELIMINARY HEARING

HELD AT Birmingham ON 3 December 2019

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant: Ms J Norris (Solicitor)
For the Respondent (1): Mr S Swanson (Consultant)
(2): Mr T Hussain (Consultant)

JUDGMENT

The Judgment of the tribunal is that: -

- 1 The claimant's application, pursuant to Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013, for the strike-out of the respondents' responses to her claims is refused.
- 2 The claimant's alternative application, pursuant to Rule 39 for an order that the respondents be required to pay a deposit as a condition of continuing to defend her claim is refused.
- 3 With the consent of the first respondent, the claimant's application, pursuant to Rule 29, dated 12 November 2019 (with draft amended grounds attached) for permission to amend her claim is allowed. (For the avoidance of doubt, further service of the amended grounds is not required).
- 4 By 4pm on **20 December 2019**, the claimant is ordered to provide to each of the respondents photocopies of the following documents: -
 - (a) All correspondence including emails, WhatsApp messages, and communications by other electronic means, passing between the claimant and other employees of the respondents during the period of their joint employment by either of the respondents. (Communications which relate to the preparation of witness statements for the purposes of the current proceedings attract litigation privilege and need not be disclosed.)
 - (i) In the case of communications passing between the claimant and Helen

Evans, disclosure shall cover the period from 1 September 2017 to the date of this Order.

- (ii) In the case of communications passing between the claimant and Imogen Jenkinson-Kierly, the disclosure shall include communications passing between the claimant and Ms Jenkinson-Kierly which post-dates the claimant's employment with the respondents but relates to Ms Jenkinson-Kierly's complaint against either of the respondents to the General Dental Council.
 - (b) Documents in the claimant's possession or control relating to an investigation by Health Education England/West Midlands into the claimant's conduct.
 - (c) Documents in the claimant's possession or control relating to a complaint made by the claimant against the first respondent to the General Dental Council.
 - (d) Documents in the claimant's possession or control relating to a complaint made by the claimant against the first respondent to the police.
 - (e) Documents in the claimant's possession or control relating to the transfer of data from the respondents' "Dropbox" account to any other account and copies of any documents so transferred which have not already been disclosed or transferred to the respondents' account. This disclosure shall include communications with IT Consultant Mr Kyle Heath relating to any instructions given to him by the claimant or her solicitors to take action in relation to the deletion/retention/return of such data. (Communications between the claimant's solicitors and Mr Heath relating purely to the preparation of a witness statement for the purposes of these proceedings attracts litigation privilege and need not be disclosed.)
 - (f) Documents in the claimant's possession or control relating to work done by the claimant for Broseley Dental Practice, St Mary's Dental Practice and Happy Smiles during the period of her employment with either of the respondents.
- 5 If it is the case that documents within the categories set out at Paragraph 4 above either do not exist; or previously existed but are no longer available; or exist but are not within the possession or control of the claimant; the claimant shall by 4pm on **20 December 2019** identify such documents and provide an explanation in writing.

CASE MANAGEMENT ISSUES

- 6 The Final Hearing of this claim remains listed to commence on Monday **6 January 2020** with a time allocation of 10 days.
- 7 The parties brought to my attention two Case Management Issues: -
- (a) In the amended grounds of claim (permission for which is granted at

- Paragraph 3 above) there is a typographical error at Paragraph 35. This Paragraph refers to the second respondent; whereas the reference should be to the first respondent. The correction of this error is agreed by all parties and duly noted. There is no requirement for the claimant to file or serve a further amended document.
- (b) The second respondent handed to me a copy of a Judgement made by Employment Judge Camp dated 7 May 2019 and sent to the parties on 31 May 2019 together with an email from the second respondent to the tribunal dated 7 June 2019. The email requests a correction to the Judgement to which the parties have received no response. The parties are agreed that Paragraph 2 of Judge Camp's order requiring the payment of £121 in respect of the claimant's travel expenses was made against the first respondent only rather than against the respondents jointly. I confirmed that I would refer this to Judge Camp for his consideration.

Employment Judge
4 December 2019
Judgment sent to Parties on

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.