



EMPLOYMENT TRIBUNALS

Claimant: Miss A Miller

Respondent: Kingston Hospital NHS Foundation Trust

Heard at: London South **On:** 12 November 2019

Before: Employment Judge Khalil (sitting alone)

Appearances

For the claimant: no appearance

For the respondent: Ms C Ibbotson, Counsel

JUDGMENT

Decision

The Tribunal orders the claim to be struck out because of the claimant's failure to comply with the Tribunal's orders of 16 October 2018, alternatively because of her failure to actively pursue her claim.

Chronologyz

1. This is a claim presented on 31st of December 2017 for alleged disability discrimination. The claimant relies on dissociative convulsions. A case management order was issued on 6 April 2018 sent to the parties on 13th of April 2018.
2. A case management hearing was scheduled to take place on 16 October 2018 to deal with the respondent's application to strike out the claims, alternatively for a deposit order on the basis that the claimant claims under section 15 and section 20 of the Equality Act 2010 had no reasonable prospects of success.
3. The hearing was postponed owing to the claimant's non-attendance on medical grounds. The respondent was in attendance. The case was relisted for 2 April 2019.

4. The claimant was also ordered to provide medical evidence for her non-attendance on that day, to provide a valid telephone number to contact her, to provide evidence to support her claim that working full-time substantially disadvantaged her and to respond to the respondents written skeleton provided for the hearing on 16 October 2018.
5. A further application to strike out the claim was made by the respondent on 7 January 2019 for non-compliance with the Tribunal's order of 16 October 2018, alternatively for an unless order.
6. The Tribunal wrote to the claimant on 18 March 2019 indicating it was considering striking out the claim for non-compliance with the Tribunal's orders of 16 October 2018, alternatively because she had not actively pursued her claim.
7. The respondent applied to have the hearing of 2 April 2019 postponed pending determination of its application to strike out the claim without a hearing.
8. The claimant emailed the Tribunal on 21st of March 2019 explaining the personal difficulties in her life including some medical information. She also applied for the hearing to be postponed.
9. The hearing was postponed by the Tribunal. The Tribunal also asked the claimant to provide a contact telephone number.
10. A further notice of a preliminary hearing was set out by the Tribunal on 6 September 2019 listing the case for today (12 November 2019).
11. The claimant has not appeared today. The respondent is in attendance.
12. The Tribunal has attempted to contact the claimant on the only number it has without success. There has been no other communication received from the claimant by the Tribunal. Upon enquiries of the respondent, there has been no further communication with the respondent too.

Applicable law

13. Under Rule 47 of the Employment Tribunals Regulations 2013 schedule one, a Tribunal can dismiss a claim in the absence of the non-attendance of a party or proceed to hear the case in that party's absence. The Tribunal can have regard to all the information available.
14. Under Rule 37 the Tribunal can strike out a claim for non-compliance with Tribunal's orders or for the failure by the claimant to actively pursue her claim or if it considers the claim to have no reasonable prospect of success. There are other grounds under which the Tribunal can strike out a claim which are either not relevant or not advanced by the respondent in this case.

Conclusions

15. The respondent asks the Tribunal to proceed to dismiss the claim under rule 47 because of the claimant's non-attendance. Alternatively, the respondent relies on its updated skeleton argument seeking a strike out on the grounds identified above alternatively requesting an unless order and/or a deposit order.
16. Having regard to the Tribunal's overriding objective in rule 2, and in particular having regard to proportionality and to saving expense, the Tribunal orders the claim to be struck out because of the claimant's failure to comply with the Tribunal's orders 16th of October 2018 alternatively because of the claimant's failure to actively pursue her case.
17. This is the third listing of a preliminary hearing; the claimant has been asked to comply with the orders since they were made and has been warned the claimant could be struck out. There has been no contact from the claimant since her email of 21st of March 2019 and no attendance today and no opportunity for the Tribunal to contact the claimant today by telephone.

NOTE:

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Khalil

Dated: 12 November 2019