EMPLOYMENT TRIBUNALS

Claimant: Mrs P Darroux

Respondent: Sunridge Housing Association

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (in public) **On:** 3 February 2020

Before: Employment Judge R Lewis
Members: Mr R Leslie
Mr P Miller

Appearances
For the claimant: In person (assisted by Mr R Dixon)
For the respondent: No attendance or representation

JUDGMENT

1. The respondent's application for a postponement is refused.

2. The respondent's application for an order for costs is dismissed.

REASONS

1. These reasons are given in the interests of justice as the respondent was neither present nor represented at this hearing. This judgment should be read in sequence with (1) the tribunal's order of 17 July 2019, sent on 21 July 2019; and (2) its strike out judgment and (3) case management order ('CMO'), both sent at 16:43 on 5 December 2019.

2. The first lines of each December document confirm the listing of the present costs hearing for 3 February 2020. In adopting that drafting, the present Judge had in particular in mind the claimant's alleged difficulty in understanding written information (see paragraph 30 of the strike out judgment).

3. On 23 December Mr S Hoyle of Croner, on behalf of the respondent, emailed the tribunal. He started, "We are writing to apply for an extension of time to complete the costs schedule." He applied for an extension of time to 6 January 2020.

Regrettably, due to administrative error, the substance of that email was not answered.

4. Mr Hoyle's email is important. Paragraph 4 of the December CMO had stated that the respondent was, by 20 December, "to send the claimant its written submission on costs, with a schedule showing the basis of its calculations". Mr Hoyle's email was plainly written with reference to the same CMO.

5. There was no further correspondence from either side. On the morning of the last working day before this hearing, Friday 31 January 2020, a member of listing staff, following the tribunal's standard procedure, notified both parties that this hearing was confirmed to proceed. The claimant confirmed her attendance.

6. We understand that Mr Hoyle spoke to listing staff, and he then sent a number of emails in which he applied for postponement. He said that the case had been struck out, then wrote that no notice of hearing had been received, and that he was unaware of this hearing.

7. That assertion, made repeatedly, was plainly wrong, for the reasons set out below at paragraph 12. Mr Hoyle also referred to being listed to conduct a long case in the Nottingham tribunal, due to start on the same date. There was time for Croner to make another arrangement, eg by instructing counsel to attend this hearing. In light of all these points, the present Judge refused the application to postpone.

8. On the evening of Sunday 2 February, Mr Hoyle sent the tribunal and the claimant a written submission requesting a postponement. The application made a number of points:

    8.1 No notice of hearing had been given. It is correct that no letter headed "notice of hearing" had been sent. As stated above, notice of this listing had been given in three separate documents (confirming what had been agreed in the presence of the parties).

    8.2 There had been double booking of Mr Hoyle's time. That was a matter for Croner.

    8.3 Croner had failed to produce any of the documentation ordered in the CMO of 5 December 2019. That was a matter for Croner: it had had nearly two months to prepare.

    8.4 Mr Hoyle submitted that this hearing could not be conclusive in any event, as he wanted to ask the tribunal to interrogate the claimant about her means, and order significant disclosure relating to her ownership of the property where she lived. That application logically follows in reply to the respondent's application for costs, which was in any event not ready to proceed. If granted, it would have converted the costs hearing into two days, a matter which the tribunal had not been asked or agreed. The request was made so late as to appear in context merely opportunistic.

8.5 The tribunal had, on 15 and 16 July, shown latitude to the claimant and should extend latitude to the respondent.

9. The claimant attended the hearing accompanied by Mr Dixon. We were grateful for his contribution. She opposed the application to adjourn, and invited us to dispose of the costs application on the basis that there was no evidence, submission or documentation to support it.

10. We adjourned briefly, and refused the application to adjourn. As there was no material in support of the costs application, the application was dismissed.

11. In reaching our conclusions, it seemed to us clear that there had been, at least, maladministration on the part of Croner. Mr Hoyle's emails and written submission, taken together, presented in context as no more than blame shifting.

12. We noted that this hearing date was originally fixed to accommodate the diaries of all present, including Mr Hoyle, on 17 July 2019; confirmed by order sent by email sent on 21 July; confirmed by judgment sent on 5 December 2019; and confirmed again in the CMO of the same date. There could be no doubt whatsoever that Mr Hoyle had received those orders. His application for strike out (5 November) relied on the order sent on 21 July; if he knew that the claim had been struck out, it can only have been with reference to the judgment of 5 December; his application on 23 December for an extension of time followed the wording of the December CMO.

13. The respondent had produced nothing in compliance with the December CMO. We attached no weight, in context, to the application for detailed disclosure about the claimant's means. The respondent did not need that material to formulate its own application for costs. Its disclosure application could have been made at any time.

14. We note that Croner is an experienced representative, operating nationwide. There was no evidence of it having sought to make the obvious alternative arrangement of instructing counsel.

15. We accept that on the face of it, the tribunal showed generosity to the point of indulgence to the claimant in July 2019, and that the respondent may perceive a sense of grievance that we did not show it the same. If the respondent perceives the matter in that light, it is, in our view, wrong to do so.

16. We refer to paragraphs 13-31 inclusive of the strike out judgment, explaining why we could not proceed on each of 15, 16 or 17 July 2019. We attach some weight to the fact that throughout these proceedings the claimant has acted in person and the respondent has been represented.

17. Finally, it did not seem to us in the interests of justice to protract this case longer. It seemed to us to demand finality. It seemed to us therefore, taking the matter in the round, in the interests of justice, to decline to adjourn; and in the absence of any material in support of the costs application, the application was dismissed.

18. We conclude for the sake of completeness with recording that the claimant repeated that she had not received the order sent on 21 July; that although Mr Dixon asked for a copy of the covering email on the tribunal file, the judge declined to release a copy, but read out what it shows; and that the claimant has said that she has appealed against the strike out judgment.

19. The tribunal directs that a copy of this judgment is to be sent in hard and email copies to both parties; and directly to the respondent, for the attention of Mrs R Jones (Ms Barkoff), who was its senior employee present at the July hearing.

___10/02/2020

Employment Judge R Lewis

Sent to the parties on:

18/02/2020

For the Tribunal:

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