



EMPLOYMENT TRIBUNALS

BETWEEN
AND

Claimant
Mr D George

Respondent
University Hospitals
Coventry &
Warwickshire NHS Trust

ORDER OF THE EMPLOYMENT TRIBUNAL ON A PRELIMINARY HEARING

HELD AT Birmingham ON 10 August 2020

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant: Ms N Mallick (Counsel)
For the Respondent: Mr T Sheppard (Counsel)

MINUTE OF HEARING

1 There was a Closed Preliminary Hearing in this case conducted by Employment Judge Cookson on 6 October 2019. After receiving correspondence from the parties following that Hearing, Judge Cookson listed today's Open Preliminary Hearing to consider three matters: -

- (a) Whether or not by reason of five of his ten medical conditions, the claimant was at the material time a disabled person as defined in the Equality Act 2010.
- (b) Whether some part or all of the claimant's claims should be struck out for want of jurisdiction having been presented outside the relevant time limit.
- (c) Whether the claimant's claim for unpaid holiday pay should be struck out as having no reasonable prospect of success.

Disability

2 The claimant suffers from ten medical conditions by reason of which it is his case that he is a disabled person. At the time when Judge Cookson listed today's Hearing, the respondent had conceded disability in respect of five of those conditions but not in respect of the other five. By the time of today's Hearing, following further disclosure of medical evidence, the concession had been extended to eight of the medical conditions namely: -

Crohn's Disease

Diverticular Bowel Disease
Osteoarthritis
Asthma
Sleep Apnoea
Hiatus Hernia
Depression
Reduced Visual Function

The two medical conditions for which disability remains in dispute are Angina and reduced Auditory Function.

3 In view of the extent of the respondent's concession the parties were agreed that it was unnecessary for there to be a determination today of the issue of disability in respect of those two remaining conditions. If it remains of importance, that issue will be determined by the tribunal at the Final Hearing.

Time Points

4 The respondent's primary contention with regard to time related jurisdiction issues related to the timing of the presentation of the ET1 compared with the date of the ACAS EC Certificate. The claimant has now produced a later EC Certificate with the result that the respondents time point falls away. It remains the respondent's case that some of the individual allegations made by the claimant are out of time by reference to either EC Certificate. But these time points cannot be decided by the tribunal without first hearing the evidence - again they fall to be determined at the Final Hearing.

Unpaid Holiday Pay

5 This morning the claimant has withdrawn the claim for unpaid holiday pay which is accordingly dismissed.

6 The case is listed for Final Hearing with a time allocation of 11 days from 21 September 2020 - 5 October 2020. There has been some slippage in the timetable set out by Judge Cookson and I have amended this today. I have also made Case Management Orders with regard to that Hearing which will be a Hybrid Hearing with the advocates present in the tribunal and some witnesses appearing in person and other witnesses giving evidence remotely.

CASE MANAGEMENT ORDERS

7 The claimant's claim for unpaid holiday pay is dismissed upon being withdrawn by the claimant.

8 The respondent shall finalise the bundle of documents for use by the tribunal at the Final Hearing. The bundle should be bound, indexed and

paginated and should contain copies of all documents to which either party intends to refer at the final Hearing unless some specific legal objection is taken. One copy of the bundle should be available to the claimant by no later than 4.00pm on **31 August 2020**. Five copies of the bundle shall be filed with the tribunal not earlier than **14 September 2021** and not later than 4.00pm on **17 September 2021** for use by the tribunal. At the Final Hearing each witness should have their own personal paper copy of the bundle.

9 By 4.00pm on **14 September 2020**, each of the parties shall prepare and exchange with the other witness statements for all witnesses upon whose evidence that party intends to rely at the Final Hearing. The witness statements shall be sufficiently comprehensive to stand as the witness's evidence in chief at the final Hearing. Any witness whose statement is served should nevertheless attend the Final Hearing to give oral evidence and to be cross-examined. Five copies of each witness statement shall be filed with the tribunal not earlier than **14 September 2020** and not later than 4.00pm on **17 September 2021** for use by the tribunal. At the Final Hearing each witness should have their own personal paper copy of their own witness statement.

10 The case remains listed for Final Hearing by a full panel sitting in Birmingham on **21 – 25 September 2020; 28 September – 2 October 2020 & 5 October 2020** with a time allocation of 11 days commencing at 9:45am each day. This will be a hybrid hearing: the parties' representatives will be in attendance and the parties shall notify each other and the tribunal office by no later than 4.00pm on **Friday 18 September 2021** which of their witnesses will attend in person and which will give evidence remotely by video link. **Monday 21 September 2020** will be a reading day: the parties and their representatives need not attend; but the representatives must be available to address the tribunal remotely on preliminary and housekeeping issues if required.

Employment Judge Gaskell
12 August 2020

Note:

1. Failure to comply with this order may result in the striking out before or at the hearing, if you are the claimant, of the whole or part of your Claim or, if you are the respondent, of the whole or part of your Response.
2. Failure to comply with this order may also result in a fine being imposed upon you under the provisions of S. 7(4) Employment Tribunals Act 1996.