



EMPLOYMENT TRIBUNALS

Claimant: Ms. M. Kennedy

Respondents: Premier Christian Communications Ltd

Heard at: London Central remote hearing
Before: Employment Judge Goodman

On: 16 September 2020

Representation

Claimant: Mr Bobby Supiya volunteer advocate

Respondent: Mr M. Jones, HR director and solicitor

PRELIMINARY HEARING

JUDGMENT

- 1. The unless order sent to the parties on 4 February 2020 is set aside as it is in the interests of justice. The claim is reinstated.**
- 2. The disability issue will be decided at a further open preliminary hearing at 12 noon on 2 October 2020, by CVP.**
- 3. Case management directions made are set out in the reasons below. Further case management and listing a final hearing will take place at the 2 October hearing.**

REASONS

1. This preliminary hearing was listed to consider: (1) reconsideration of the unless order sent to the parties on 4 February 2020 which had not been complied with and so had led to the case being struck out, and (2) whether the claimant was disabled within the meaning of the Equality Act 2010.
2. In an order sent to the parties on 10 September I considered the application under rule 72 and expressed a preliminary view that it should be set aside. The respondent has not expressed a view on that, so there must be reconsideration at an open hearing.

Postponement Application

3. Late yesterday the claimant had applied for postponement of today's hearing., producing a sick note of 15 September that she was unfit for *work* because of surgery on 13 August 2020 which had not been copied to the respondent. I ruled that as this was a CVP hearing, there was no concern about possible Covid infection while the claimant was post-surgical, in any case the documents sent indicated that she had suffered no complication from laparoscopic surgery and was fit to give evidence from her home. The application was refused.

Reconsideration of Unless Order 4 February 2020

4. The respondent agreed that as the claimant's representative's message saying he was abroad had been missed and the unless order not sent to the parties until after the deadline had expired, it would be just to reconsider it. He was however concerned that the claimant and her representative had referred to other emails of 6 and 8 December which he had not seen – nor had the tribunal. It called the claimant's veracity into question. Mr Supiya for the claimant said he would forward the sent emails to Mr Jones.
5. The tribunal held the strike out should be set aside as in the interests of justice. The concern was what should happen when the underlying order had still not been complied with. The claimant was asked to list when he said he had sent the hospital and GP notes to the respondent and why he had not replied to a November 2019 email listing what the respondent had received, if he said there was other material sent in that envelope. Mr Jones also said the claimant had emailed him "2-300" pages of GP notes late on 14 September, but he had not had time to read them as he works part-time. I asked Mr Supiya twice why they had been sent then, and I did not understand his answer. I also asked the claimant the dates she had asked the GP surgery for her records. She said she had requested them on 8 October 2019, had attended with ID on 22 October, requested them again on 11 February 2020 and then on 11 September 2020. It is not clear from this what Mr Supiya disclosed and when, but it does seem that he only disclosed 2-3 sheets, some redacted, in October, that they were not added to after that, despite complaint from Judge Stout and Judge Palca, and the letter of 28 February shows that he did not accept the unless order was justified, meaning he did not accept the whole GP file had not been disclosed. It looks as if the only attempt to comply was two days ago.
6. I decided it was not possible to hold a fair hearing on the disability issue today because of the claimant's late disclosure of her records. The respondent has not had an opportunity to read them. The tribunal has not even seen them. It would not be fair to the respondent to have a hearing.
7. The claimant asked for all issues to be decided at a final liability hearing on all issues, but I decline to do so because if not she is found not disabled the final hearing will deal with race, sex discrimination and equal pay issues only and will be shorter. Further, if the claimant cannot travel during the pandemic, it is best to hear this by judge alone remotely. An in-person hearing with lay members lasting several days is unlikely to take place now before September 2021.

Case Management

8. I considered striking out the disability claim for want of compliance with orders, but it is better to try the issue on its merits now that the records have at last been disclosed.

Preliminary Hearing on Disability

9. I relisted the open preliminary hearing on the disability issue for **12 noon on 2 October 2020, by CVP** remote technology.
10. Today Mr Supiya was unable to join because his internet appeared to have frozen, and the hearing was conducted with Mr Supiya on the telephone. Where audibility was difficult, the judge repeated the other party's replies. It is hoped he will try to find out what the fault was. It is recommended that on 2 October he joins the call 20-30 minutes before the start so that he is able to advise the clerk of any difficulty and seek IT help in good time. Today he did not do so until after the start time and when the claimant had been asked to telephone him, as he had not supplied his number to the tribunal. The hearing start was delayed by 30 minutes.

Witness Statements

11. I have given the claimant permission to file other witness evidence if she wishes, provided she does so no later than Friday **25 September 2020**.

Hearing Bundles

12. The respondent is to prepare an electronic bundle containing the medical records, witness statement(s), pleadings and orders, and send it to the claimant and file it at tribunal, with the hearing date in the subject line, by **1 pm on Monday 29 September**.
13. If the claimant believes records have been omitted from the bundle, Mr Supiya must say so, and must also file a claimant's bundle of the material which he says has been omitted from the main bundle, by **5 pm on Tuesday 29 September**.

Costs Application

14. Mr Jones having indicated that if this hearing had to be postponed he would seek the costs of the postponement, he is to send a written application and list of costs incurred to the tribunal and the claimant by **5 pm on Wednesday 30 September**. Any application will be considered at that hearing.

Further Information

15. The claimant must provide the further information indicated in the list of issues under Harassment related to Disability, (xvi)(b) and (c) – dates – no later than **25 September 2020**. (Mr Supiya said other than those omissions the list was agreed)

Disclosure

16. The claimant must by Friday 25 September provide all documents to date on which she relies showing she has attempted to mitigate her loss since dismissal.

Strike out Warning

17. The history of this case shows the claimant and her representative have not always complied with orders in time or at all. They should understand that if there is further default the tribunal might conclude they have acted unreasonably and strike the claim out. Any decision on that will be subject to their representations on why any

default occurred, but it is hoped the orders made today will be complied with properly and on time.

Employment Judge Goodman

Date 16th Sept 2020

ORDER SENT TO THE PARTIES ON
18/09/2020.

FOR THE TRIBUNAL OFFICE