



EMPLOYMENT TRIBUNALS

Claimant

Ms R Foster

Respondent

Capita Blackburn

v

Heard at: Manchester (by Cloud Video Platform ('CVP'))

On: 12 January 2021

Before: Employment Judge Johnson

Appearances

For the Claimant: did not attend

For the Respondent: Ms H Marsland (solicitor)
Ms K Dennis (solicitor)

JUDGMENT

Upon hearing submissions from the respondent's solicitor and upon the claimant not attending (and giving no explanation for her non-attendance), the Tribunal finds as follows:

1. The claim is struck out because:
 - a. the claimant has not complied with the Order 4.1 (witness evidence) of Tribunal dated 12 August 2020 which varied the original case management orders of Employment Judge Sherratt dated 12 March 2020 contrary to Rule 37(1)(c); and,
 - b. the case has not been actively pursued contrary to Rule 37(1)(d).
2. The full merits hearing listed to take place on 27, 28 and 29 January 2021 is postponed.

REASONS

1. The case was the subject of case management before Employment Judge Sherratt at a preliminary hearing on 12 March 2020, when the case was listed for a full-merits hearing on 27, 28 and 29 January 2021, with appropriate case management orders being made.

2. It is understood that the respondent believed that the claimant failed to comply with these case management orders and had argued that the claim should be struck out. On 12 August 2020, the Tribunal noted that the claimant had provided the further information ordered by Employment Judge Sherratt, but had only provided a copy to the Tribunal. It was decided not to strike out her claim and the outstanding case management orders were varied with revised times for compliance.
3. There has been very little engagement from the claimant since this date and no attempt has been by her to progress her claim, ensure that the remaining case management orders have been completed and that the case is ready for a final hearing. Additionally, it was noted that while the claimant had produced further information concerning her claim, a list of issues had not been identified and the respondent believed it could not understand what claim it would face at the final hearing. It was therefore essential that the claimant continue to participate actively in these proceedings.
4. The respondent made an application on 16 September 2020, seeking an order for strike out the claimant's claim because of her failure to comply with case management orders and to provide adequate further information contrary to Rule 37(1)(c). In the alternative, an application for an unless order under Rule 38(1) was made in respect of the order for further information.
5. The claimant was informed of this application by the respondent and no reply was received explaining why the orders sought by the respondent in their application should not be made.
6. Employment Judge Holmes on 11 November 2020 determined that the application should be considered at a preliminary hearing today.
7. The respondent made a further application on 25 November 2020, seeking an order for strike because the claimant's failure to provide the further information requested, meant that her claim had no reasonable prospects of success contrary to Rule 37(1)(a). Moreover, an application for a deposit order was made in the alternative and also for postponement. The latter application was because the full merits hearing was fast approaching and without the necessary further information, the respondent could not properly prepare an amended response or identify the witnesses whom they would need to call and/or the evidence that they would need to give.
8. The claimant was informed of this application by the respondent and no reply was received explaining why the orders sought by the respondent in their application should not be made.
9. The Tribunal confirmed on 4 January 2021 that the respondent's second application would be heard at the preliminary hearing today.

10. The respondent provided the claimant with a copy of the hearing bundle used today on 4 January 2021.
11. The Tribunal has not heard anything further from the claimant and she was not present at the preliminary hearing today. Nor did she provide the Tribunal with any explanation as to why she could not attend.
12. I considered the overriding objective under Rule 2 and in particular, that the claimant remained unrepresented. However, I also had to consider her earlier engagement in the proceedings and her ability to attend the original preliminary hearing before Employment Judge Sherratt and to produce a document containing what she believed amounted to further information. I was therefore satisfied that she could have complied with the case management orders which were revised on 12 August 2020 and engaged with the respondent with regards to ensuring that adequate information was available. I was also satisfied that in the absence of any explanation, the claimant could have participated in the CVP hearing today.
13. Had the claimant appeared before me today, there clearly would have been further case management required with regards to the further information provided by the claimant so that sufficient particulars could have been identified for a list of issues to be prepared. It is likely that further case management orders would have been required, with an order for an amended response, further disclosure and witnesses identified and orders for exchange of statements to be made. It would have necessary for the full merits hearing to be postponed and for deposit order/unless orders to be made in respect of the claimant, to ensure no further delays could take place, had the respondent's application for strike out not been allowed.
14. However, the claimant failed to attend and despite having been given several opportunities by the Tribunal to identify her case and comply with case management orders, her failure to engage with the respondent or in a meaningful way with the Tribunal demonstrates a failure to actively pursue this matter.
15. While the respondent did not make an application under Rule 37(1)(d), I am satisfied that it would be in the interests of justice and entirely within the overriding objective to make this order. The claimant was aware of the two applications outstanding in relation to strike out and had made no submissions in writing to the Tribunal or attended the hearing today, despite having notice of it. She knew, or could reasonably have been expected to know that her claim was at risk of being struck out and that this was primarily caused by her failure to progress her claim and the case management orders which she had been expected to comply with. This was also effectively relating to her failure to actively pursue and in simple terms, the claimant has been aware of these applications to strike out since the first one was made in September 2020 and has done nothing further to demonstrate any commitment to her case.

16. I decided that while the claimant's further information that she had not provided required further clarification, there was enough information available within it to show that she potentially had claims of age and race discrimination against the respondent. I was therefore not satisfied that her claim had no reasonable prospects of success and the respondent's application under Rule 37(1)(a) was not allowed. However, in relation to Rule 37(1)(c), the claimant had clearly failed to comply with case management order 4.1 (as revised by the Tribunal's letter dated 12 August 2020). However, the primary reason for strike out remains the claimant's failure to actively pursue under Rule 37(1)(d).

17. Taking into account my order made in relation to strike out, it is not necessary to consider the applications for a deposit order and/or an unless order. However, it is of course necessary to postpone the full merits hearing on 27, 28 and 29 January 2021.

Employment Judge Johnson

Date: 12 January 2021

Sent to the parties on:

25 January 2021

For the Tribunal Office

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.