



EMPLOYMENT TRIBUNALS

Claimant: Ms Helen Pugh

Respondent: Gurjeevan Singh Shergill

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in private by telephone) On: **5 February 2020**

Before: Employment Judge R S Drake (sitting alone)

Appearances

For the Claimant: No attendance

For the Respondent: Mr C Wood (Solicitor)

JUDGMENT

The Claimant's claim of pregnancy/maternity discrimination is struck out on the Respondent's application on the grounds that it has no reasonable prospects of success, the Claimant has failed to comply with Case Management Orders, and she is not actively pursuing her claim. All her claims in these proceedings are therefore terminated as being dismissed.

Reasons

- (1) The Claimant lodged her claim form ET1 on 29 September 2020. The Respondents replied with their ET3 Response 3 November 2020. There was a preliminary hearing on 3 December 2020 at which time the Claimant's claim for unpaid wages was dismissed and she was ordered to provide further and better particulars of her discrimination claims and a Schedule of Loss by the 22 December 2020. She has not complied.

- (2) The Claimant did not attend the preliminary hearing on 3 December 2020 and she did not attend today. The Respondents had served notice of application 24 December 2020 to strike out the Claimant's remaining claim for pregnancy or pregnancy illness related discrimination. I conclude that she was aware that such an application was to be heard by me today but that she chose not to attend again. No explanation for her absence again has been forthcoming.
- (3) In summary, the Respondents argue that her claim has no reasonable prospect of success. I find that in her claim her references to pregnancy/maternity are limited and do not clearly plead that she was treated detrimentally because of pregnancy or pregnancy related illness. Her pleadings only go as far as the following: -
- (i) She says that during sickness absence she was only paid sick pay and was not put on furlough;
 - (ii) She ended up with sick pay as her employer refused anything else and that she was absent because of contracting COVID-19;
 - (iii) The Respondents refused to put her on furlough;
 - (iv) Her maternity leave started 11 Aug 2020 and she was not paid the full rate to which she was entitled
- (4) The hearing today was set to examine whether the claim had no reasonable prospect of success (a prospect originally touched upon by EJ Wedderspoon on 3 December 2020) but subject to the Tribunal taking account, at the behest of the Order of EJ Jones on 19 January 2021 (when he requested the Claimant's response to the Respondent's application to Strike Out) her need to show cause for not striking out. Her response dated 19 January 2021 says simply that she felt awful during her pregnancy and that she ended up catching Covid-19 but goes now way towards showing her claims or complaints are that she has been subjected to detriment because of pregnancy as opposed to simply during pregnancy (my emphasis as to the difference).
- (5) The relevant substantive law is to be found in Section 18 Equality Act 2010 ("EqA") which provides as follows: -
- "(2) - a person discriminates against a woman if, in the protected. In relation to a pregnancy of hers, it treats her unfavourably
 - (a) - because of the pregnancy, or
 - (b) - because of illness suffered by her as a result of it"

In this case, the Claimant complains simply that she was treated detrimentally during (my emphasis) pregnancy and during absence because of COVID-19, not because of (again my emphasis) pregnancy or pregnancy related illness. She was given an opportunity to clarify her claims by giving further and better particulars, but the best position expressed by her particulars is that she was subjected to what she believes to be detriment during pregnancy. This would not be enough to succeed

- (6) I took account of the relevant Rules of Procedure which are to be found in Rule 37 of Schedule 1 to the Employment Tribunals (Constitution and Rules) Regs 2013 which provide as follows: -
- (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds -
- (a) That it is scandalous or vexatious or has no reasonable prospect of success (my emphasis)
 - (b) ...
 - (c) For noncompliance with any of these rules or with an order of the tribunal
 - (d) that it is not been actively pursued ...
- (7) I find that given the way the claim is pleaded with regard to the allegation of detriment not being because of pregnancy or pregnancy related illness, I have to conclude that this claim has no reasonable prospect of success. I also have to conclude that the claimant has not complied with EJ Wedderspoon's orders and by her absence both at a past hearing and today's hearing, she has indicated that she is not actively pursuing her claim. Accordingly, I have no hesitation in concluding that it is appropriate to strike out her discrimination claim under rule 37 which therefore disposes of the balance of her proceedings and concludes these claims completely.

Employment Judge R S Drake

Date: 8 February 2021