



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Morgridge

**Respondent:** Nottingham University Hospitals NHS Trust

**Heard at:** Nottingham by CVP      **On:** Thursday 4 February 2021

**Before:** Employment Judge Hutchinson (sitting alone)

## Representatives

**Claimant:** In person

**Respondent:** Ms H Badger, Solicitor

# JUDGMENT

The Employment Tribunal Judge gave judgment as follows: -

The application made by the Claimant to strike out the response under Rule 37 of the Employment Tribunal Rules of Procedure 2013 fails and is dismissed.

# REASONS

## Background to this hearing

1. This hearing is to consider the application made by the Claimant on 14 November 2020 to strike out the response of the Respondents. It was listed by me at the last hearing conducted by me on 8 January 2021.

2. The grounds for the application are as follows: -

2.1 That the Respondent's conduct has been scandalous, unreasonable and vexatious.

2.2 The Respondents had not complied with a Tribunal order.

2.3 The Respondent's response has no reasonable prospect of success.

2.4 It is no longer possible to have a fair hearing.

### **The hearing today**

3. At the hearing today I considered the following: -
  - 3.1 The Claimant's written submissions (53 pages).
  - 3.2 The Respondent's written submissions (24 pages).
  - 3.3 The Claimant's bundle of documents (2 lever arch files).
  - 3.4 The Respondent's oral submissions.
  - 3.5 The Claimant's oral submissions.
4. It is clear from the extensive submissions made by the Claimant that her main issues surround the way in which the Respondent has conducted the proceedings with their representatives. Mrs Morgridge says that the behaviour is so serious that it justifies a strike out of the response and is also so serious that it is no longer possible to have a fair hearing.
5. In considering the application as the Claimant herself says I need to consider the fact that she is unrepresented and the Respondents are. She says she has because of the behaviour issues with trust in the Respondents and their solicitors and that the Respondents are trying to hide the truth about what happened to her.
6. She makes very serious allegations that the Respondent's have tampered with evidence and that false statements have been obtained.
7. The Claimant rightly refers me to Rule 37 of the Employment Tribunals which sets out the basis for striking out a claim. She also refers me to the overriding objective which is in Rule 2.

### **The Claimant's concern**

8. In this decision I am not going to recount all the concerns that the Claimant raises but they fall into a number of categories which are: -
  - 8.1 The impact of Jackie Wilbourne's involvement in the case in respect of Mrs Morgridge's subject access request.
  - 8.2 The Respondent's conduct in regard to Employment Judges Swann, Britton and Ahmed and the detailed description of events.
  - 8.3 The wilful disregard of orders and rules of the Tribunal.
  - 8.4 The Respondent's behaviour regarding the Claimant's Scott Schedule.
  - 8.5 The Claimant says she no longer finds it possible to have a fair hearing.

8.6 That the unreasonable behaviour of the Respondents amounts to an abuse of the Court process.

8.7 Her most serious allegation is the tampering of documents and what she describes as the forgery of others.

9. In the Respondent's submission I was reminded that a strike out in a discrimination claim of either party's case is a draconian step only taken in the most serious of circumstances. Cases are fact sensitive and as a matter of public policy should be heard and determined.

10. Ms Badger referred me to a number of cases namely: -

- **Bolch v Chipman** UK EAT/1149/02
- **Weir Valves and Control (UK) Limited v Armitage** [2004] ICR 311
- **Anyanwu v Southbank Students Union** [2001] WLR 638

11. The Claimant referred me to: -

- **Fariba v Pfizer** UK EAT/0605/10
- **Ossonaya v Queen Mary University of London** UK EAT/1207/12
- **Sud v The Mayor and Burgess of London Borough of Hounslow** UK EAT/0156/14

### **My conclusions**

12. I am satisfied that: -

12.1 The Respondent's conduct was not scandalous, unreasonable or vexatious. It is true that in this case there have been failings by the Respondent. In particular they were not able to meet the date for disclosure ordered by Employment Judge Clark. I could also criticise them for not asking for an extension of time before it expired. I have heard the explanation made by Ms Badger and accept the difficulties they had in completing the preparation of the bundle. This does not amount to scandalous, unreasonable or vexatious behaviour.

12.2 At this stage I am not satisfied that the Respondents have tried to stop documents being added to the bundle. There have been disputes between the parties about the relevance of certain documents and these matters need to be resolved at some stage which I will do once I have finalised the issues in the case.

12.3 The Claimant also complains that the Respondents acted unreasonably in seeking to set aside the consolidation that I had ordered earlier. There was nothing unreasonable about them doing that. At the time of that application the case was listed for hearing in respect of the matters claimed under case number 2601158/2019 in January 2021. If the matter remained consolidated it would have affected the ability to proceed with that matter.

12.4 As it was we had to postpone the hearing in January and then it was agreed by all parties that the matters would be consolidated. That does not amount to unreasonable behaviour by the Respondent.

12.5 I have also not heard sufficient evidence to satisfy me that documents have been tampered with or indeed are forgeries. I would need to hear evidence to determine that and that is a matter that will be considered at a final hearing. It is, at this stage hotly disputed by the Respondents that any such behaviour has taken place.

13. I agree that there has been some non-compliance with Tribunal orders. I would only strike out a case for non-compliance with orders though if I am satisfied that the non-compliance affects the ability of the Tribunal to have a fair hearing. In this case there was a good explanation for the non-compliance and in any event the hearing is not due to take place until November. The failures in this case have not amounted to wilful disobedience of the orders but simply an inability to comply.

14. I am not satisfied that the Respondent's response has no reasonable prospect of success. There are clear factual disputes in this case between the parties and they can only be resolved by a hearing. The Tribunal will need to consider all the evidence in the case and determine whether the Claimant has suffered discrimination as she alleges.

15. I am satisfied that a fair hearing is still possible. The case is not listed now until November and there is plenty of time for the parties to prepare their respective cases. The serious allegations made by the Claimant will be considered.

16. In all the circumstances I am satisfied that it is not in the interests of justice to strike out the response. It is wholly inappropriate to do so in this case.

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Employment Judge Hutchinson

Date 16 February 2021

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