



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Ms N

**Respondent:** TC

**Heard at:** Newcastle Hearing Centre      **On:** Thursday 4<sup>th</sup> March 2021

**Before:** Employment Judge Johnson

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The claimant's application for a reconsideration of the judgment striking out her claims, which was promulgated on 11<sup>th</sup> February 2021 is refused. It is not in the interests of justice for there to be a reconsideration.

## REASONS

1. By a claim form presented on 27<sup>th</sup> July 2020, the claimant brought complaints of unlawful race discrimination and unlawful sex discrimination. The respondent defended the claims. Following a detailed preliminary hearing before Employment Judge Garnon on 5<sup>th</sup> October 2020, the claimant informed the tribunal in writing by letter dated 24<sup>th</sup> October 2020, that she accepted that her claims of race discrimination were out of time and she no longer wished to pursue those. She indicated that she did wish to pursue a complaint of victimisation contrary to Section 27 of the Equality Act 2010, but did not state whether that was on the grounds of sex or race. By letter dated 3<sup>rd</sup> November 2020, the respondent's solicitor informed the tribunal that he believed the claimant had withdrawn her complaints of race and sex discrimination. On 18<sup>th</sup> November 2020, the respondent's solicitors made a formal application to strike out the victimisation claim on the grounds that it had no reasonable prospect of success or, alternatively, for a deposit order on the grounds that it had little prospect of success.
2. On 27<sup>th</sup> November 2020 the tribunal wrote to the claimant asking her to clarify whether she was withdrawing her complaints of race and sex discrimination. The

claimant did not reply. By letter dated 1<sup>st</sup> December 2020, the tribunal wrote to the parties stating that there would be a preliminary hearing on Monday 8<sup>th</sup> March 2021 to determine the following issues:-

- (i) to identify the claimant's claims;
- (ii) to consider the strike out request;
- (iii) to consider the deposit order request;
- (iv) to consider any consequential case management orders.

3. On 27<sup>th</sup> November the tribunal had written to the claimant asking her to clarify whether she was withdrawing her claims of race and sex discrimination. The claimant failed to reply. A reminder was sent on 22<sup>nd</sup> December 2020 asking the claimant to reply by return. The claimant again failed to reply.

4. On 18<sup>th</sup> January 2021 the tribunal sent to the claimant an "Unless Order" in the following terms:

"On the tribunal's own initiative and having considered any representations made by the parties, Employment Judge Johnson orders that unless by the 2<sup>nd</sup> of February 2021 the claimant replies to the employment tribunal's letter of the 27<sup>th</sup> November 2020 then the claims of unlawful race discrimination and sex discrimination shall be struck out."

That order was posted to the parties on 18<sup>th</sup> January 2021.

5. The claimant failed to respond to the unless order. On 11<sup>th</sup> February 2021 the tribunal issued a judgment striking out the claims due to the claimant's failure to comply with the unless order dated 18<sup>th</sup> January 2021 and on the basis that the claim had not been actively pursued.

6. By letter dated 11<sup>th</sup> February, the claimant wrote to the employment tribunal in the following terms:

"I have not responded to these e-mails as I was informed by my ACAS conciliator that I no longer had to do anything because I am pursuing a settlement with the respondent. I have yet to hear back from the respondent regarding this so wish to appeal this decision as I do not wish for my claim to be struck out based on incorrect information I've been given by ACAS."

7. By letter dated 16<sup>th</sup> February, the tribunal wrote to the claimant in the following terms:-

"The case has been referred to Employment Judge Johnson who directs me to inform you that the tribunal may consider an application for reconsideration of the judgment dated 11<sup>th</sup> February 2021, but first you must answer the tribunal's letter of 27<sup>th</sup> November 2020 and Order of the 18<sup>th</sup> January 2021."

8. By letter dated 17<sup>th</sup> February, the claimant replied in the following terms:-

“Regarding the letter of 27<sup>th</sup> November 2020 and the Unless Order dated 18<sup>th</sup> January 2021 I confirm that I wish for the claim of unlawful sex discrimination to be struck out. I do wish to continue the claim for:-

1. unlawful race discrimination – in part but not limited to the Respondent treating the claimant less favourably than other employees.
2. harassment – in part but not limited to the Respondent visiting my home unannounced once tribunal proceedings had begun;
3. victimisation – in relation to supporting another employee’s harassment claim - in part but not limited to the respondent creating a hostile environment by questioning me in a public place, unnecessarily questioning me about my sexual history, internal e-mail where the respondent is diminishing the impact of my assault – causing the Claimant to be diagnosed with Post-Traumatic Stress Disorder.”

9. The claimant’s correspondence was copied to the respondent’s solicitor, who replied by letter dated 25<sup>th</sup> February 2021, opposing the claimant’s application for a reconsideration. The respondent’s solicitors submitted that the claimant’s sole explanation for her failure to comply with the orders is “clear and unambiguous”. The respondent said that this explanation should be treated with “some scepticism” on the basis that it was highly unlikely that an ACAS conciliation officer would have put it in the way now alleged by the claimant. Furthermore, the respondent’s solicitors say that it is difficult to understand how the claim of victimisation on the grounds of race could succeed and was indeed the subject of an application to strike out on the grounds that it had no reasonable prospect of success.

10. Having considered all those representations, I am satisfied that the claimant is in breach of the unless order and has failed to satisfactorily explain that breach. The explanation given, namely that the ACAS conciliation officer informed her that there was no need for her to respond, is highly unlikely.

11. I am not satisfied that it is in the interests of justice for there to be a reconsideration of the judgment. That judgment is confirmed.

**Authorised by EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 18 March 2021**

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