



## EMPLOYMENT TRIBUNALS

**Claimant**

Miss J Wilson

v

**Respondent**

Ministry of Justice

## PRELIMINARY HEARING

**Heard at:** Watford by CVP

**On:** 30 March 2021

**Before:** Employment Judge R Lewis (sitting alone)

**Appearances:**

**For the Claimant:** In person, assisted by Ms S Baker

**For the Respondent:** Ms L Robinson, Counsel

## REASONS

1. By letter of 12 April, the claimant applied for written reasons for the Judgment given on 30 March.
2. These reasons necessarily refer to my Reserved Judgment of 14 October 2020, which I refer to in this document as 'OJ' (October Judgment), so that 'OJ21' means paragraph 21 of the October reasons.
3. The Reserved Judgment (OJ) was sent to the parties on 4 November 2020. I do not paraphrase it. It speaks for itself. It set terms on which reinstatement of the claim was allowed. An accompanying case management order set a timetable for preparation for the hearing listed in June 2021.
4. In about February the tribunal received correspondence, which indicated that the discipline and structure which I had set for case preparation had not been complied with. The claimant sent a lengthy letter dated 25 February, in which she appeared to do exactly that which at OJ32 she had been advised not to do: instead of focusing on preparation for her hearing, she set out her grievances about past events. I listed this hearing, and reserved it to myself as a matter of continuity.

5. Ms Robinson's submission was in short that her prediction (OJ16) had been borne out. Instead of progressing her claim, the claimant had not complied with the clear case management structure which had been set. She had instead delayed, failed to comply with the timetable, focused on matters which were not issues, or which were not live issues, and, overall, failed to understand that a claimant whose claim has been reinstated (after strike out for non compliance) must thereafter be rigorous in being compliant.
6. The claimant's reply in part reiterated her previous reasons for previous non-compliance, and in art drew on the excuses which are regrettably the common currency of the tribunal: lack of understanding, absence of advice, IT failures, health issues and the practical problems cause by lockdowns. Making, again, allowance for her difficulties as a litigant in person, she appeared to have done little to focus on preparation.
7. I find, and I repeat, that the claimant's conduct of this case since October is the product of the traits which I identified at OJ 4-5, 16 and 32. She has compounded them with hostile rejection of the tribunal's analysis of her conduct. I fear that the effect of the language of OJ has therefore been to entrench the claimant in her difficult conduct, and in the misplaced self-assurance to which I have referred previously (OJ5).
8. I ask first has the claimant conducted the case unreasonably. With misgivings, I find that she has not. At OJ30 I referred to the commentary by Sedley LJ. I appreciate that that guidance may be misleading, if it implies a firm, discernible border between the difficult and the unreasonable. Certainly, I accept that if there is such a border, the claimant is straining at the very limits of the difficult side of it. I do not doubt that she has caused costs and burdens to those defending this claim. While I accept that her conduct of the claim is not intentionally challenging, intentionality is not the same as unreasonableness.
9. I find that a fair trial remains possible, on the footing that my further case management order (sent on 30 March) is rigorously adhered to; and that any further default is a matter for the hearing judge (which I will not be). The claimant should understand that it remains open to the hearing judge, at the listed hearing, to strike out or dismiss the claim without a hearing.
10. I remain of the views set out at OJ29 that strike out is not in the interests of justice, for the reasons which I have identified there.
11. The application for strike out is refused.
12. I add that if the claimant's request for reasons included a request for reasons for my refusal to recuse: the request for recusal was based on the claimant's objections to what I wrote in my October reasons. Taken as a whole, my Judgment was an exercise of discretion which reinstated the case so as to facilitate a fair hearing. I considered that a reasonable, objective observer, with full knowledge and understanding of the litigation history, would not form the view that I could not fairly conduct this hearing, and I declined to recuse.

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**Employment Judge R Lewis**

18 May 2021

Sent to the parties on:

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For the Tribunal:

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