



EMPLOYMENT TRIBUNALS

Claimant: Ms C Mensah

Respondent: Axis Cleaning & Support Services Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (by telephone) **On:** 21 May 2021 at 10am

Before: Employment Judge Daniels (sitting alone)

Appearances:

For the claimant: Mr P Apraku (Solicitor)

For the respondent: Mr P Paget (Solicitor)

JUDGMENT ON STRIKE OUT

1 The claims for disability discrimination are struck out with immediate effect due to the claimant's failure to comply with the case management order dated 8 December 2020 and Unless Order dated 30 March 2021.

2 Provided that further and better particulars of the disability discrimination claim are provided to the respondent in writing and to the Employment Tribunal **within 14 days** of this Order (such that the prior Order for further particulars is substantially complied with) the strike out order above shall be set aside and the claims may proceed as if the disability claim was never struck out. This is because it would be in the interests of justice and in accordance with the overriding objective to do so.

CASE MANAGEMENT SUMMARY

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by telephone. A face to face hearing was not

held because it was not practicable and all issues could be determined in a remote hearing.

Final hearing

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, from Bury St Edmunds **by CVP**, starting on **9 February 2022**, starting at 10 am or as soon as possible afterwards. The time estimate for the hearing is **3 days**, to include deliberation and remedy if appropriate.

The claim

2. The claim is helpfully summarised in the case management order of Judge Lang dated 8 December 2021. Various orders were made on that date but have not been fully complied with by the claimant. The respondent applied to strike out the claims for breach of a Tribunal Order and the Unless Order dated 30 March 2021.

The issues

3. The issues between the parties are summarised in the prior case management order and will need to be updated and agreed following the provision of the further particulars referred to in this Order.

Other matters

4. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
5. The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
6. The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
7. The following case management orders were made reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Amended response

The respondent shall have leave to file an amended response should it wish to do so **by 15 July 2021**.

2. List of issues

The parties shall agree and produce an amended List of Issues **by 15 August 2021**.

3. Judicial mediation

- 3.1 The parties are referred to the “*Judicial Mediation*” section of the Presidential Guidance on ‘General Case Management’, which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.
- 3.2 They must inform each other and the tribunal in writing **within 21 days** whether or not they are in principle interested in judicial mediation and if not, why not. If they are, the case will be listed for a 1 day judicial mediation by CBVP (video platform) as soon as practicable.
- 3.3 If they change their minds, they must inform each other/the other party and the tribunal of this as soon as possible.

4. Complaints and issues

- 4.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

5. Statement of remedy / schedule of loss

- 5.1 The claimant must provide to the respondent by **25 June 2021** a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.
- 5.2 If any part of the claimant’s claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.

6. Disability issue

- 6.1 The respondent must by **15 July 2021** inform the Tribunal and the claimant of the extent to which the disability issue is conceded, and if it isn't conceded in full, the reasons why.

7. Documents

- 7.1 On or before **30 September 2021** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

8. Final hearing bundle

- 8.1 By **16 October 2021**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files ("bundle"), and provide the claimant with a 'hard' and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case that won't be in the remedy bundle referred to below and should only include the following documents:
 - the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
 - documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

9. Remedy bundle

- 9.1 The claimant must prepare a paginated file of documents ("remedy bundle") relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the respondent with a 'hard' and electronic copy of it by **16 October 2021**.
- 9.2 The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

10. Witness statements

- 10.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **31 November 2021**.
- 10.2 No additional witness evidence will be allowed at the final hearing without the Tribunal's permission.
- 10.3 The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

11. Final hearing preparation

- 11.1 On the working day immediately before the first day of the final hearing (but not before that day), the following parties must lodge the following with the Tribunal:
 - 11.1.1 An electronic copy of the bundle(s), by the respondent;
 - 11.1.2 Electronic copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 11.1.3 Electronic copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
 - 11.1.4 Electronic copies of the following, agreed if possible, by the respondent – a neutral chronology, a 'cast list', a key reading list.

12. Other matters

- 12.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 12.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 12.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 12.4 **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

- 12.5 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.
- 12.6 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

Employment Judge Daniels

8 June 2021

Sent to the parties on:

29 June 21

For the Tribunal: