



EMPLOYMENT TRIBUNALS

Claimant

Ms N Raymond-Williamson

v

Respondent

North Middlesex University
Hospital NHS Trust

Heard at: Norwich (by CVP)

On: 04 June 2021

Before: Employment Judge Postle

Appearances

For the Claimant: Did not attend and was not represented.

For the Respondent: Mr Sudra (Counsel).

JUDGMENT

1. Under rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 all the claimant's claims are:-
 - a. Struck out as they are not being actively pursued.
 - b. The claims have no reasonable prospects of success.
2. The claims are in any event out of time, do not form part of a continuing act and the Tribunal does not exercise its discretion to extend time under the just and equitable principals.

REASONS

1. The claimant issued a claim on 5 March 2020 following early conciliation with ACAS commencing on 21 January 2020 and concluding on 5 February 2020 which would result in any claims prior to the 22 October 2019 being out of time having allowed for the extension provided by ACAS conciliation.

2. The claimant in the claim form cited claims for ordinary unfair dismissal under the Employment Rights Act 1996, a claim for the protected characteristic of disability under the Equality Act 2010 and claims for Notice Pay, Holiday Pay and Wrongful Dismissal. Unfortunately the claims were vague and unparticularised.
3. As a result Employment Judge Manley by order of 10 August 2020 that the claimant provide the following:-
 - a. The claimant is to state in writing to the respondent and the Employment Tribunal what the alleged disability is.
 - b. Send copies of relevant existing medical reports/letters to the respondent by 21 September 2020.
4. On 15 September 2020 notice of the preliminary hearing for case management was sent out listed for Thursday 11 February originally to take place at the tribunal at Watford. There was a further order that the parties should seek to agree a draft list of legal and factual issues and send to the Employment Tribunal by 4 February 2021.
5. The claimant did not respond at all to Judge Manley's order. On 12 November 2020 the respondent made an application for a strike out/Unless Order as a result of the claimant's failure to state in writing what the alleged disability is and further the failure to provide medical reports/letters to the respondent by 21 September 2020. The respondent was also concerned that the claimant was no longer actively pursuing the claims.
6. On 2 January 2021 Judge Lewis notified the claimant in writing that he was considering striking out the claim as it was not being actively pursued. He pointed out to the claimant she had not answered or complied with the Employment Tribunal's order of 10 August 2020, a further copy was enclosed. The claimant was informed if she wished to object she should write to the Tribunal with her reasons by 15 January.
7. The claimant responded on 7 January indicating that she had not received a copy of the Tribunal's order dated 10 August and she requested that the respondent's solicitors send a further copy. This was odd given the fact that the address on the claim form was the address where the previous orders had been sent.
8. The respondent spoke to the Tribunal on 8 January advising that the claimant's assertion simply was not correct. The reason being was that on Friday 20 November the claimant had written to the respondent to request a copy of the Tribunal's order. On Wednesday 25 November the respondent sent a copy of the Tribunal order to the claimant, the email address is also correct as had been previously used by the Tribunal.

9. On 11 January 2021 the claimant emailed the respondent's solicitors with a copy to the Tribunal enclosing a letter dated 9 August 2019 from the Department of Neurology which suggested a diagnosis of functional vision or loss, anxiety, depression, arthritis and previous pulmonary embolism. A further document dated 11 November 2018 from Lewisham Medical Centre, a further letter from North Middlesex University Hospital dated 24 May 2018 suggesting a possible right sided stroke currently under investigation and a further letter to the claimant's GP again from the North Middlesex University Hospital citing diagnosis as left tibialis posterior deficiency with tendonitis, left knee pain with arthritis, morbid obesity, vitamin D deficiency and lower back pain in right sacroiliac joint and buttock area with mild sciatica. The claimant did not specify still what disability/disabilities she was relying upon.
10. The parties were notified by letter of 8 February that the case management preliminary hearing listed for 11 February was now to take place via the telephone.
11. The matter came before Judge Skehan in which the claimant did not attend. She was apparently in New York and was represented by a friend, Mr Carroll. Mr Sudra represented the respondent (Counsel). At that hearing for the reasons set out a further preliminary hearing was listed for 4 June 2021 for half a day commencing at 10.00 am to consider:-
 - a. Whether or not any or part of the claims should be struck out/subject to a Deposit Order.
 - b. An application is made in accordance with the below directions.
 - c. Any case management required to ensure the matter is ready for a final hearing.
12. The Tribunal were informed at the telephone hearing the claimant was employed by the respondent as a Ward Clerk between 16 February 2004 until her dismissal on 24 October 2019. The respondent advanced the reason for dismissal as capability. As previously mentioned the claimant by her ET1 form submitted on 5 March 2020 made claims for unfair dismissal, disability discrimination, notice pay, holiday pay and wrongful dismissal. All those claims are defended. Mr Carroll the claimant's friend was unable to assist the Tribunal in setting out precisely how the claims were advanced.
13. There was also some dispute the respondent had ever received the documentation referred to above (medical letters) that the claimant asserts she had sent to them and the Tribunal consisting of various correspondence from her consultants. At that hearing an Unless Order was made that the claimant should state in writing her specific

disability and forward medical reports/letters to the respondent within 14 days from that hearing failing which the claim for disability discrimination would be struck out without further order. It would appear that order has not been complied with although the respondent has prepared a draft list of issues. The claimant has not provided the detail to assist the respondent in providing a proper list of issues to enable the Tribunal also to understand exactly how the claim is being advanced. This is a most unsatisfactory state of affairs.

14. It is clear the claimant was aware of the Tribunal orders as she wrote to the respondent with a copy to the Tribunal on 29 April agreeing to the respondent's application for a variation of the case management orders.
15. The preliminary hearing given the current pandemic was converted to a Cloud Video Platform hearing and the joining details were submitted to the parties in accordance with the standard directions in relation to Cloud Video Hearings.
16. On 4 June 2021 the claimant emails the Tribunal with a copy to the respondent's solicitors timed at 08:50 on 4 June requesting that the hearing be postponed as her friend who represented her at the last hearing, Mr Carroll (is not in London South East at this time) and "I will be unable to do so myself". The claimant was asking for a postponement citing a number of reasons, none of which the Tribunal accepted as a valid reason to postpone and therefore the hearing proceeded in the claimant's absence.
17. Mr Sudra Counsel for the respondent pursued his application for a strike out on the grounds the claim has not been actively pursued and reciting the chequered history which is repeated above.
18. Mr Sudra also argued that the claims were out of time given the date the claim was filed namely 5 March 2020 allowing for ACAS early conciliation matters prior to 22 October 2019 are out of time as the claims do form part of a continuing act the Tribunal should not exercise its discretion to allow an extension of time under the just and equitable test in s.123 of the Equality Act 2010.
19. Finally, given the way the matter has been advanced there is simply no reasonable prospect of success as the claim currently stands.
20. The Tribunal's conclusion is clear that the claimant is not engaging in the process, there does appear to be a wilful and contumelious failure by the claimant to comply properly with the Tribunal's orders which leads to the further conclusion after some 15 months following which the claim was issued the matter has not been progressed by the claimant at all. On that basis under rule 37 the claim should be struck out as no longer actively pursued.

21. Furthermore if the Tribunal were wrong there the claimant has not advanced any reason why the Tribunal should exercise its discretion to allow an extension of time under the just and equitable test. The Tribunal reminds itself that exercise of the discretion is not a foregone conclusion. Indeed the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 CA:-

“That when Employment Tribunals consider exercising the discretion under what is now s.123(1)(b) of the Equality Act there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule. The onus is therefore on the claimant to convince the Tribunal that it is just and equitable to extend time limits.”

22. The claimant has simply not advanced any reason why the Tribunal should exercise its discretion and therefore the claims should be struck out on the grounds that they are out of time.
23. Finally under rule 37 a Tribunal may strike out all or part of a claim or response on any of the following grounds; that it is scandalous, vexatious or has no reasonable prospect of success.
24. In the case of Chandhok & Anor v Tirkey [2015] IRLR 527 Mr Justice Langstaff highlighted that there may be occasions when discrimination claims can properly be struck out. One such category is those cases which only indicate the possibility of discrimination and without more evidence are insufficient for a Tribunal to conclude that discrimination has taken place.
25. Indeed Mr Justice Langstaff emphasised the importance of the ET1 and how the pleading is to be treated by the parties and the Tribunal:-

“The claim, as set out in the ET1 is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead it serves not only as a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond ...

In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective.”

26. Clearly the claim as advanced is vague, unparticularised and in 15 months the claimant has patently failed to set out what her case is. That is clearly prejudicial to the respondent who are being put to a great deal of trouble and expense in engaging in these proceedings in circumstances where the claimant is not. The claim

therefore should be struck out, all of them on the grounds that the claimant has patently failed to set out what it is she wants the Tribunal to determine.

Employment Judge Postle

Date: 21 June 21

Sent to the parties on: 29 June 21

For the Tribunal Office