



EMPLOYMENT TRIBUNALS

Claimant: Dr R J Heal

Respondents: University of Bristol (claim 1403294/2019)
Ministry of Defence (claim 2200485/2019)
Oxford University Hospitals NHS Foundation Trust
(claim 3334298/2018)

Date: 9 August 2021

Before: Employment Judge A James

Tribunal: London Central

JUDGMENT

Employment Tribunals Rules of Procedure 2013 Rule 38

- (1) The claimant having failed to comply with the Unless Order made by the tribunal on 6 May 2021, the claimant's claims are dismissed in their entirety.

REASONS

1. Following the further case management hearing in relation to these claims, and others, which took place on 5 February 2021, an order was made on 15 February 2021, relating to these particular claims, as follows:

By 4pm on 19 March 2021 the Claimant is to send a disability impact statement to those same respondents' solicitors together with any other documents he wishes to rely on in relation to the disability issue. The disability

impact statement should:

- a. *Describe the impairments the claimant relied on as disabilities (see paragraph 13 above).*
 - b. *Provide a chronology of when they arose and when the various respondents were told about them.*
 - c. *Describe their effect on day to day activities, with detailed examples, particularly if the effect has varied over time. This is particularly important, given the timescales over which the alleged discrimination took place against the various respondents. The claimant must provide sufficient detail to enable the tribunal to determine the issue in relation to all relevant dates.*
 - d. *Describe the effect of any medication in suppressing the symptoms.*
 - e. *Attach any helpful relevant evidence.*
2. The claimant did not comply with that order, particularly in relation to b, c and d above. An Unless Order was therefore made on 6 May 2021, under Rule 38 of the Employment Tribunal Rules of Procedure 2013. The Order states:

Unless by 4pm on 1 June 2021 the claimant send to the tribunal and to the respondent's solicitors a disability impact statement which:

- a. *Confirms that the impairments the claimant relies on as disabilities are dyslexia/dyspraxia, and irritable bowel syndrome.*
- b. *Provides a chronology of when each arose and when each of the respondents were told about them.*
- c. *Describes the effect of each impairment on day to day activities, with detailed examples, particularly if the effect has varied over time. (Note, this is particularly important, given the timescales over which the alleged discrimination took place against the various respondents. The claimant must provide sufficient detail to enable the tribunal to determine the issue in relation to all relevant dates.)*
- d. *Describes the effect of any medication in suppressing the symptoms.*

the claims will stand dismissed without further order.

3. The written reasons to the Order explained why it had been determined that claimant had not complied with the 15 February 2021 order. The reasons state, at paragraph (11):

It is up to the claimant to decide whether or not to continue to rely solely on the two medical reports referred to above and not to disclose any further relevant medical records, such as GP records. That may impact on the overall likelihood of the claimant being able to prove that he has the disabilities relied on but it does not make the argument unsustainable.

4. In response to the Unless Order, the claimant sent an email on 1 June 2021, which states:

The British Dyslexia Association has (18.05.2021) informed the Claimant that an assessment SpLD is the same regardless whether the assessment was performed while the disabled person was attending university or employed or seeking employment; contrary to the recent Judgement issued by EJ A James in which he stated that education SpLD assessments were (somehow - not defined) different from workplace SpLD assessments. The BDA has declared that there is not difference; an SpLD assessment conducted by a Chartered Educational Psychologists (as in the Claimant's case) applies to both education and workplace SpLD impact.

The British Dyslexia Association has informed the Claimant that it is not possible to conduct a 'workplace assessment' of disability needs without the specific employment duties and responsibilities being known; contrary to the recent Judgement issued by EJ A James. Contrary to the recent Judgement issued by EJ A James, it is in fact not possible to assess workplace needs for prospective jobs where those prospective employers have failed to declare what the specific workplace will be.

5. The claimant's representations in that respect are misplaced, in that, as paragraph (11) of the reasons set out in the unless order makes clear, it is up to the claimant to decide whether to rely solely on the reports already disclosed. The unless order does not require him to provide any further medical evidence.
6. The claimant also continues to assert that the disability impact statement provided by him is sufficient and refers to the same arguments as set out in his email of 26 March 2021. The reasons contained in the Unless Order explained why those arguments had been rejected. They still apply.
7. Rule 38 provides:

(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.

8. This judgement and reasons constitute the written notice to the parties that the claim has been dismissed. My reasons for determining that the unless order has not been complied with are as follows.
9. In relation to Order a above, although the claimant has not specifically responded, I am willing to assume from the other information in the claimant's email of 1 June that he relies on the two disabilities referred to.
10. As for Order b above, the requirement to provide a chronology as to when each disability arose and when each of the respondents were told about them, the

claimant's response does not provide any such chronology. That part of the order has not therefore been complied with.

11. As for Order c above, the requirement on the claimant to set out the effect of the disabilities relied on, on his day to day activities, the claimant's response does not set out those effects at all, let alone in the form of a disability impact statement, as ordered. That part of the order has not therefore been complied with.
12. As for Order d above, the requirement to describe the effect of any medication in suppressing the symptoms, the claimant says:

Contrary to the recent Judgement issued by EJ A James, the fact of the Claimant being prescribed medication for the effects of Chronic Medical Disabilities does not make those Chronic Medical Disabilities or the adverse effects disappear with no further adverse effects.

13. That response does not comply with that part of the order. For the record, such a requirement is set out for the benefit of claimants, to assist the tribunal to determine the possible deduced effects of any disability, if the effects of any ongoing medical treatment are discounted. The claimant's response suggests that he does not appreciate that. Even so, he should have complied with the terms of that part of the order. He has failed to do so.
14. Since the claimant is in breach of orders b, c and d, his claims are dismissed.
15. The claimant is reminded of the terms of Rule 38(2). If he intends to apply to have this order set aside, he should do so within 14 days of the date that the order is sent to him.

Other matters

16. In an email dated 14 July 2021, the claimant made an application for disclosure to the solicitors acting the Ministry of Defence in claim 2200485/2019. It is not necessary to deal with that application in light of the dismissal of these claims.
17. In the same email of 14 July, the claimant refers to having submitted an appeal to the EAT:

regarding EJ A James Direction to the Respondents that the Claimant is not a disabled person and has not submitted a Disability Impact Statement; both assertions being plainly wrong.

18. Contrary to the claimant's apparent assumption in that regard, an appeal to the EAT does not stop the terms of the Unless Order taking effect. In the light of the appeal, I have considered whether the terms of the Unless Order were appropriate and have concluded, for the reasons previously given in that Order, that they are. If the Unless Order is successfully appealed, this judgment will need to be reconsidered. Unless and until that happens, these claims remain dismissed.

19. Finally, on 18 July 2021, the claimant sent an email to the tribunal requesting the addition of a further respondent, North Bristol NHS Foundation Trust, in claim 1403294/2019; as well as the transfer of the claim to Bristol ET. Again, it is not necessary to deal with those applications in light of the dismissal of the claims.

Employment Judge A James

9 August 2021

Sent to the parties on:

10/08/2021

For the Tribunal: