



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mrs Emily Darling

v

The Entertainment Department UK  
Limited

**Heard at:** Cambridge (by CVP)

**On:** 21 July 2021

**Before:** Employment Judge Ord

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr G Hine, Solicitor

## JUDGMENT on RECONSIDERATION

On Application by the Respondent, the Judgment dated 22 March 2021 and sent to the parties on 6 April 2021 is set aside and revoked.

## REASONS

1. This case has an unfortunate history and there is a catalogue of delay. All of which, on the evidence I have before me, is attributable to the Respondent. The Respondent has been represented throughout these proceedings, the Claimant appears today as she has throughout, as a litigant in person.
2. Following the issue of proceedings a Case Management Hearing was fixed and took place on 30 May 2019. That Ordered the exchange of witness statements to take place by 6 May 2020 and a Hearing was fixed for 15 – 17 June 2020.
3. Because of the Coronavirus pandemic, that Hearing could not take place and a further Telephone Case Management Hearing took place on 15 June 2020 which would otherwise have been the first day of the Hearing. By that date, the exchange of witness statements had not taken place and there is no record of any explanation as to why.

4. However, the issues were agreed to be those that had been set out on 30 May 2020. The Respondent accepted that the Claimant was at the material times a disabled person for the purposes of the Equality Act 2010, although denied knowledge of such disability and Orders were made for the Hearing to take place over three days commencing on 25 October 2021, witness statements to be exchanged on 2 October 2021.
5. On 30 September 2020, the Respondent asked for an extension to the date of exchange of witness statements to 5 November 2020. On 6 November 2020 no statements had been received and the Claimant contacted the Tribunal. At that stage she said that she had no witness statements to exchange, but the Tribunal, as well as inviting the Respondent to comment on the issue of exchange, reminded the Claimant that she would presumably have her own witness statement as part of these proceedings. Nothing more was heard from the Respondent.
6. On 30 November 2020, the Respondent was invited to comment by 7 December 2020 and they did not do so.
7. On 30 January 2021, Regional Employment Judge Foxwell sent a Strike Out Warning to the Respondent advising that their Response may be struck out because they had not complied with the Tribunal's Order of 30 November 2020 and had not actively pursued the Response. No comment was received from the Respondent at all.
8. On 22 March 2021, the Response was struck out and a Remedy Hearing was listed for today. The Judgment was sent on 6 April 2021 and the following day an Application for Reconsideration was made and listed to take place today.
9. The Claimant had sent to the Respondent as part of their preparation for the Hearing, her complete Witness Statement including her evidence as to merits, as well as to Remedy.
10. I am told, for the first time today, that the Respondent has Witness Statements prepared and they have been in a position to exchange witness statements since 9 November 2020. It is beyond any sensible explanation as to why no effort has been made by the Respondent to engage in exchange since that time and no cogent reason for this has been put forward. The Respondent itself had asked for an extension to 5 November 2020 and it was obviously unable, for whatever reason, to comply with that, but a mere four days later I am told the statements were ready for exchange. Yet the Respondent did nothing. I have reminded the Respondent of its obligations under Rule 2 of the Employment Tribunals Rules of Proceedings which are: to assist the Tribunal to further the overriding objective, which is to deal with cases fairly, justly and proportionately and in particular, shall co-operate generally with each other and with the Tribunal.

11. I am forced to the conclusion that just like the Orders of the Tribunal, the Rules of the Tribunal do not register with this Respondent.
12. Orders of the Tribunal have been ignored. The Respondent failed to reply to the Claimant's request for exchange and then again to the Tribunal's letter and Strike Out Warning.
13. I categorise that conduct as unreasonable and I am therefore minded to consider allowing the Judgment striking the Respondent's case out to stand. I am, however, on balance - and it is a fine balance - satisfied that as a fair trial of the case is still possible, the Respondent should be allowed to resist the claim on its merits. Further delay is avoided by the fact that the Hearing on 25 – 27 October 2021 can still take place and the case will be marked as a fixture for those dates and one which must be heard on those dates.
14. I am also making an Unless Order in relation to the disclosure of the Respondent's witness evidence. In relation to costs the Respondent accepts that the costs of today's Hearing should be paid by the Respondent to the Claimant.

## **JUDGMENT on COSTS**

15. The Respondent shall pay to the Claimant a Preparation Time Order in the sum of **£340.00** being the sum summarily assessed as being the Costs of today, including time spent by the Claimant preparing for today and attending today's Hearing – a total of 8.5 hours paid at the 'Litigant In Person' rate of £40 per hour.

23 July 2021

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Employment Judge Ord

Sent to the parties on: ..25 August 2021

THY.  
For the Tribunal Office