



EMPLOYMENT TRIBUNALS

Claimant: Mr S Jegede

Respondent: Secretary of State for Business, Energy and Industrial Strategy

Heard via Cloud Video Platform (London Central) On: 25 October 2021

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: Mr M Paulin, Counsel

JUDGMENT FOLLOWING A PRELIMINARY HEARING

Issues

1. Today's hearing was to consider the respondent's application dated 22 July 2021 for the claimant's claim to be struck out under Rules 6 and 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 or, alternatively, for a wasted costs order in respect of the costs of the aborted final merits hearing on 23-25 June 2021.

Background

2. The background to the application is the claimant's request for a postponement of the full merits hearing which had been listed for 23-25 June 2021.
3. The claimant had made an earlier postponement request on 14 May 2021 on grounds of alleged disclosure failures by the respondent and his inability to get legal advice. He did not cite any medical reasons. This request was refused on 21 June 2021.
4. He then made a further request at 4.20pm on 22 June (the day before the hearing was due to start) on medical grounds. On 23 June 2021, the

tribunal directed the claimant to provide medical evidence to justify his postponement request. On 24 June, the claimant submitted a fit note which was marked 'duplicate', was unsigned and did not reference the claimant's ability to participate in a video hearing. The note identified 'lower abdominal pain/being investigated' as the medical condition.

5. The tribunal agreed to postpone the hearing (re-listing it for 24-26 November 2021) but ordered the claimant to provide medical evidence in the form of a signed letter from a doctor which addressed the claimant's ability to participate in a video hearing on the relevant dates (23-25 June 2021). The claimant was given until 9 July to comply and was told he could ask for more time if he needed. He was also warned that a failure to comply with the order may form the basis of a strike out application.
6. The claimant provided a letter from his GP surgery, signed by Dr Riley, confirming that there was no reason the claimant could not participate in a video hearing. The letter did not reference the hearing dates (23-25 June 2021).
7. The claimant disagreed with the doctor's assessment and asked the GP practice nurse if it could be changed and was told that it could not be. He therefore submitted that evidence and assumed the matter had been dealt with and his order had been regarded as complied with when the tribunal re-listed the hearing for November 2021.

Application

8. The respondent applies for a strike out or, alternatively, a wasted costs order on the grounds that the claimant has failed to provide evidence to support the medical grounds on which the postponement was granted on 24 June 2021. This was the basis on which the postponement had been granted and the claimant was aware that a failure to provide this evidence could lead to a strike out application. He is therefore in breach of the order and, in addition, has conducted the proceedings unreasonably.
9. The claimant resists on the basis that had been in pain over several months, including the time of the hearing, and the doctor's letter failed to reflect the true position. He did not provide any other evidence, such as another doctor's letter or hospital records as he considered he had complied with the order by sending in the GP letter. He believed that if the GP letter he provided was insufficient, he would be asked for something more. He also relied on the listing of the claim in November as confirmation that nothing more was required of him.

Decision

10. My decision is that the claimant's case should be struck out. The claimant is in breach of an order to provide medical evidence in support of his postponement application of 22 June 2021. The claimant has been on notice that this could lead a strike out application and had been aware since 22 July 2021 that such an application was being made. He has not brought any further medical evidence before the tribunal despite being aware that

this was in issue for several months. I reject his submission that he assumed nothing more was required of him because the tribunal listed the case for a hearing in November. That listing was made by EJ Glennie at the aborted hearing and was not an acceptance by the tribunal that the case was cleared to proceed.

11. In reaching this decision I must balance the interests of both parties. Clearly a strike out is a severe sanction. However, the claimant, through his conduct, has resulted in additional costs being incurred by the respondent and had failed to comply with a tribunal order in the knowledge that failure to comply could result in a strike out. He has had every opportunity to gather appropriate medical evidence to support his position yet the only medical evidence he has submitted is directly contrary to the representations he made. At today's hearing, the claimant was given an opportunity to put his position but failed to explain why he was not in breach or why strike out was not appropriate. In the circumstances, I consider it proportionate to strike out his claim pursuant to Rules 6 and 37(1)(c).

Employment Judge Davidson

Date 25 October 2021

JUDGMENT SENT TO THE PARTIES ON
26/10/2021.

FOR EMPLOYMENT TRIBUNALS

Notes

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions: 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.

CVP hearing

This has been a remote which has not been objected to by the parties. The form of remote hearing was video (Cloud Video Platform). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.