



# EMPLOYMENT TRIBUNALS

**Claimant:**

**Respondent:**

Mr G Boateng Afrani

v

West London NHS Trust

**Heard at:** Watford

**On:** 27 October 2021

**Before:** Employment Judge R Lewis

**Appearances**

For the claimant: Written representations

For the respondent: Written representations

## JUDGMENT

The Judgment of 15 February 2021 is revoked and the claim reinstated for hearing.

## REASONS

- 1 This was the application that I reconsider strike out of this claim. Solicitors on both sides had agreed that I could conduct this hearing on paper only, without attendance.
- 2 The tribunal file shows the following background chronology in outline. Day A and Day B were both 19 December 2019. The claim was presented on 29 January 2020. The claimant set out that his job was Staff Nurse, and that he had over ten years service, ending on 30 October 2019. The claimant acted in person. The claim was for constructive unfair dismissal only. The claimant wrote that he had been subject to a 'never ending investigation.'
- 3 The response set out that the claimant had been suspended as a result of a patient's allegation against him. It said that there had been an investigation, which was prolonged. However, it ended in June or July 2019. The claimant had been informed that there would be a disciplinary hearing on 31 October 2019. He resigned the day before the hearing with immediate effect.
- 4 On 5 July 2020 the tribunal sent the parties notice of a hearing for two days in April 2021, along with directions for case preparation.

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- 5 In the course of the autumn of 2020 Messrs Capsticks, solicitors for the respondent, wrote to the tribunal to report failure by the claimant to comply with the case management timetable. On 8 November 2020 the tribunal wrote to the claimant to warn that strike out for non-compliance was under consideration. He was told that he had 14 days within which to comment. The claimant replied on 16 November, copy to Capsticks:

‘I am writing acknowledge the receipt of this email and really stress out regarding the above subject. I haven’t been to such situation before however, I am still pursuing the case and will submit my report at the end of this month November 20. Thank you all for your patience.’

- 6 On 8 December the claimant’s present solicitors, AJ Reubens (‘AJR’), sent the tribunal and Capsticks Notice of Acting. On 14 December they wrote to oppose strike out. They wrote then and, have said since, that the claimant’s non-compliance was not wilful or deliberate, but was the result of lack of understanding; and gave assurances that there would be compliance in sufficient time for the then listed hearing to proceed.
- 7 The file was referred to me, and on 15 February I struck out the claim.
- 8 On 22 February AJR applied for reconsideration, stating that they had by then served a schedule of loss, completed disclosure and agreed a bundle, and that the only outstanding matter was exchange of statements. AJR wrote that the list of issues had been agreed, a point which Capsticks (30 March) disputed.
- 9 Written submissions amplified the area of dispute a little, although neither side gave specific dates when AJR had in fact complied with the direction of 5 July 2020. The respondent submitted that the claimant had given no ‘cogent’ reason for non-compliance, asserting that acting in person was a ‘flimsy excuse.’ The claimant had left it very late to obtain representation or free advice (if he could find it). It said that reinstating the claim would cause ‘severe prejudice’ due to fading memory of witnesses, and that the respondent had incurred ‘significant expense.’ AJR wrote that the claimant had apologised for his default, and had remedied it. They wrote that there would be ‘significant’ prejudice to the claimant if denied an adjudication. Both submissions acknowledged the breadth of the tribunal’s discretion.

## Discussion

- 10 This is a hearing in accordance with rules 70-72, to be decided as a matter of discretion in accordance with the interests of justice. That involves, in this as in many cases, a balance of diverse and competing interests.
- 11 The duty of the tribunal is to provide a forum for adjudication; and, while avoiding formality, to set a structure and discipline for the public to access that forum. In doing so, it is right to expect the public to co-operate (both with the tribunal and each other) to help ensure that the limited resource of the tribunal is well used: in that sense, it is no different from any other public service. Where a case management timetable is set, the tribunal expects that the public will act on it; and / or ask for help if it is not clear.

- 12 The claimant's material rights include those of an impartial adjudication of his complaint of unfair dismissal, and the right to act in person, even if ill equipped to do so. Strike out of his claim is perhaps the most extreme power of the tribunal, as it deprives the claimant of a right to be heard. It is therefore to be exercised proportionately.
- 13 The respondent has the same corresponding right as the claimant to fair process. It is entitled to expect an opponent to comply with directions, and is entitled to the assistance of the tribunal if that has not been done. In dealing with an unrepresented opponent, its representatives must strike a fair balance between representing their client, while not taking advantage of the vulnerability of an unrepresented opponent.
- 14 I agree with the respondent that the claimant's actions before instructing AJR are to be criticised: he had had nearly a year since Day A, and had had ample time to understand that the tribunal process was difficult for him, and to look for support. It appears (although I do not have details, and did not have details at time of strike out) that AJR set about prompt case preparation when they were instructed.
- 15 I do not agree with the respondent that delay has prejudiced it. First, this is a claim of constructive dismissal, where the burden rests heavily on a claimant; and secondly, it is very likely that the respondent's investigation and disciplinary preparation were well documented at the time. It follows that I consider that the case remains capable of fair trial.
- 16 I find that it is in the interests of justice to revoke the strike out, reinstate the case, and direct that it be listed for a 2 day hearing. A main reason is that I did not have up to date information at the time of strike out that AJR were in the course of active case preparation, so as to meet the original trial dates. The information available to me now indicates that strike out was a disproportionate step. While litigants in person are required to respect case management disciplines, I must understand that case management is a servant of justice, not its master, and that the everyday language and routines of the tribunal are alien and sometimes intimidating territory to members of the public, even those with professional education. As this conclusion is reached on procedural grounds, I have excluded from my consideration any question of the merits or prospects of success. The claimant should not understand this conclusion as implying that I have a view of that point in his favour.

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**Employment Judge R Lewis**

Date: 28 October 2021.....

Sent to the parties on:

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**Case Numbers: 3302036-2020**  
For the Tribunal:

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