

Case Numbers: 2300965/2018
2302560/2018
2303997/2018
2304574/2018
2302967/2019



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Itulu

Respondent: London Fire Commissioner

JUDGMENT

The claims are struck out.

REASONS

1. The claimant's reconsideration application of 29/3/2021 was only referred to EJ Wright on 10/1/2022. It is not clear why there was a delay in making the referral, however it may be due to a complaint which was referred to REJ Freer of 24/3/2021. The reconsideration application runs to 31 paragraphs over 7 pages. The complaint (which seeks to recuse EJ Wright from the proceedings) covers three pages.
2. The claimant appealed the case management order made on 3/2/2021 (alongside two other appeals) and the EAT determined the appeal had no reasonable prospect of success under Rule 3(7) of the Employment Appeal Tribunal Rules 1993. It is not clear what the current position in the EAT is and whether or not, an appeal hearing has been listed under Rule 3(10).
3. Notwithstanding that, the claimant has not applied for a stay of these proceedings, pending the outcome of that appeal. The claimant has not applied for relief from sanctions. It appears the respondent has assumed that a reconsideration application will stay the case management order. That is not the case. Otherwise, any Unless Order could be immediately

undermined by the party to whom it applies by applying for a reconsideration.

4. It is of note that the last correspondence on this claim the Tribunal has received from the claimant was 29/3/2021. The 20-day final hearing was listed to commence on 28/2/2022. The respondent has recounted its attempts to progress matters and to reach agreement in respect of the bundle/file. The respondent has produced a bundle of six lever-arch files. The respondent asked the claimant to provide a date and time it could courier the files to her on 13/9/2021. The claimant did not respond. The respondent emailed the claimant on 18/11/2021 and on 25/11/2021 sent her a link to the electronic version of the bundle. The link was valid for seven days. The claimant was also asked to provide a date and time she would be available to accept delivery of the files. There has been no response from the claimant and she has not provided any documents to the respondent.
5. The Unless Order provided that by the 16/4/2021 (paragraph 6) the claimant was to provide the further particulars requested in appendix A of the Order and as set out in the footnotes. If she did not do so, the claims will stand dismissed without further order.
6. Paragraph 14 of the Order, noted:

These claims need to be properly prepared for the final hearing so that Tribunal time can be used effectively and in accordance with the overriding objective. In the previous proceedings, there were 11 preliminary hearings. That is an unacceptable use of the Tribunal's scarce resources. These cases need to be managed effectively to move towards the final hearing and as such, it is considered reasonable to make the initial stages of case management subject to Unless Orders.

7. The information which the claimant was to provide was not complex. To take the first three examples, the claimant was asked:

Claim A paragraph 1 (c) (i) – shortfall in sickness pay paid on [date?]. The footnote asked if the date was the 30/3/2018? All the claimant had to do was to confirm that was the correct date and if not, to provide it.

Claim B paragraph 5 (c) – the claimant is asked which sub-paragraph of s.39(4) EQA does she rely upon in respect of her victimisation claim? It was suggested it was s.39(4)(b)?

Claim B paragraph 5 (d) (i) under a Working Time claim, the claimant was asked under s. 45A(1)(a) to identify the requirement imposed. The

claimant did not require information from the respondent to provide the detail.

8. It is clear therefore, that where it was possible to identify or to suggest the missing information, a proposal was submitted. If the information was completely absent, the claimant was asked to provide it.
9. There were other matters contained in the Order, for example, it was held that no direct discrimination under s. 13 EQA was pleaded in claim A and so it was recorded that there was no s.13 EQA claim. If the claimant disagreed with that, all she had to do was to say where in the pleadings a direct discrimination claim was to be found.
10. The requirements of the claimant were not particularly onerous. There can be no one more familiar with the case than the claimant. It must surely be a simple matter for her to confirm the date there was a shortfall in sickness pay. The Tribunal has not been taken to any attempt by the claimant, to provide the missing information in order to comply with the Unless Order. The Unless Order provided that unless the requested information was provided, the relevant claims would stand as dismissed without further Order.
11. Due to the claimant's failure to provide further particulars of her claim, the respondent was unable to comply with the second Unless Order (paragraph 8). It applied for relief from sanctions on 14/5/2021. This was the correct course of action in the circumstances.
12. A further Unless Order in respect of providing a schedule of loss by the 28/5/2021 was imposed. The claimant has not provided this document and accordingly, the claims stand as dismissed without further Order. There has been a calculated disregard by the claimant of the Tribunal's case management orders.
13. In the alternative, the Tribunal has considered whether or not the claimant has actively pursued her claims. In the absence of any correspondence from the claimant regarding the progress of her reconsideration application, or in the alternative, to respond to the respondent, the Tribunal considers the claimant has failed to actively pursue her claim. There are struck out in their entirety under Rule 37 (1)(d).
14. Clear warnings were given in the Order of 3/2/2021 regarding the progress expected in respect of the five outstanding claims. Reference was made to the previous nine previous unsuccessful claims and the conduct of the litigation.

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15. It is accepted the claimant appealed the Order and other matters, as she is entitled to do. Those appeals however, should not allow the claimant to be distracted from these outstanding claims if she intended to pursue them.
16. The timetable allowed time for compliance. For example the Order was sent to the parties on the 15/3/2021 and the claimant was Ordered to provide the outstanding information by the 16/4/2021, she had a month therefore to do so. The timetable did need to be complied with in order for the hearing listed for 28/2/2022 to be effective.
17. In accordance with the overriding objective and taking into account the Tribunal does not have unlimited resources, it is not considered proportionate, in these particular circumstances, for the claimant to now pursue these claims and they are struck out.
18. The 20-day hearing listed to begin on 28/2/2022 is therefore vacated.

Employment Judge Wright

11/1/2022