



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

Case No: 4120629/2018

5

Held in Glasgow on 7 February 2019

Employment Judge: Mr J D Young (sitting alone)

10 Miss S Miller

Claimant  
No appearance and  
Not represented

15

Erskine Hospital Limited

Respondent  
Represented by:  
Mr L Entwistle -  
Solicitor

20

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

25

The Judgment of the Employment Tribunal is that the claimant's claim that she was discriminated by reason of disability is struck out because it has not been actively pursued and she has had a reasonable opportunity to make representations against strikeout.

**REASONS**

30

1. In this case, the claimant presented a claim to the Employment Tribunal complaining that she had been unfairly dismissed and discriminated against on the grounds of disability. The respondent admitted dismissal but denied it was unfair or that the claimant had been discriminated against on grounds of disability.

35

2. A short account of the procedural history is:-

a. On initial consideration of the claim, the claimant's solicitors were advised that by 4pm on 23 November 2018, the claimant should send

**E.T. Z4 (WR)**

to the respondent a concise statement summarising the effect of her depression (her stated disability) on normal day to day activities with examples; and any relevant evidence dealing with her depression. She was also required to provide a schedule of loss. On receipt of that information, the respondent was to advise whether disability remained in dispute and on what basis.

5

b. By email of 23 November 2018, the claimant's solicitors sought an extension of time to deal with these matters which after some correspondence was granted to the effect that the proposed information was to be submitted by the claimant by 7 December 2018; with appropriate response from the respondent by 12 December 2018. At that time, a case management preliminary hearing of 30 November 2018 was discharged.

10

15

c. By letter dated 28 November 2018, the parties were advised that the preliminary hearing on case management issues would be heard on 7 February 2019 at 10am.

20

d. No information was provided by the claimant and by letter of 12 December and subsequent email of 19 December 2018, the respondent's solicitors made application that "that part of the claimants' claim which relates to disability be struck out in accordance with rule 37(c)" of the Tribunal Rules of Procedure 2013.

25

e. By letter of 21 December 2018, the parties were advised that the application for strikeout would be considered and as no request for a hearing had been made, submissions should be in the hands of the Tribunal by 14 January 2019. Then each party would have until 21 January 2019 to comment on these submissions. The matter would then be considered in chambers.

30

f. By email of 27 November 2018, the solicitors for the claimant advised that they were withdrawing from acting for the claimant and any future

correspondence should be directed to the claimant who was "most responsive to correspondence by email rather than by post" with an email address being given.

5 g. By email of 14 January 2019, submissions were received from the respondent supporting its application for strikeout of the claimant's case in relation to disability discrimination with a copy being sent to the claimant's email address.

10 h. By email of 24 January 2019, the claimant was reminded by the Tribunal that written submissions from her were requested by 21 December 2018 in respect of the application for strikeout and that the request should be complied with by 31 January 2019. Parties were also advised that the strikeout application would be discussed at the  
15 Preliminary Hearing fixed for 7 February 2019.

i. At the Preliminary Hearing of 7 February 2019, no appearance was made for or on behalf of the claimant. Appearance was made for the respondent.

20 3. At the hearing, Mr Entwistle indicated that in light of the procedural history the application for strikeout should be granted.

4. In light of the absence of communication from the claimant when represented  
25 and thereafter to directions by the Tribunal, I considered that this was a claim which had not been actively pursued and that there had been a failure to comply with Orders of the Tribunal by the claimant.

5. Rule 37 of the Tribunal Rules of Procedure 2013 advise that a Tribunal may 'at any stage of the proceedings... strike out all or part of a claim or response' because there has been non compliance with an Order of the Tribunal or that the claim was not being actively pursued. That test has been met in the circumstances described. The application for strikeout was limited to the claim of disability discrimination made by the claimant and so the strikeout relates to that part of the claim only.

to Employment Judge: Jim Young  
Date of Judgment: 13 February 2019  
Entered in register: 14 February 2019  
and copied to parties

15