



## EMPLOYMENT TRIBUNALS

### Claimant

Mr D Balmer

v

### Respondent

PeoplePlus Group Limited

## OPEN PRELIMINARY HEARING ORDER

Heard at: **By CVP (Croydon)**

On: **1/2/2022**

Before: **Employment Judge Wright**

### Appearances

**For the Claimant:** Did not attend and did not send representations

**For the Respondent:** Mr C MacNaughton - solicitor

## JUDGMENT

The claim is struck out under Rule 37 and is dismissed.

## REASONS

1. The claim form was presented on 8/9/2016 and it referred to events in 2015. There was a preliminary hearing on 11/11/2016. An open preliminary hearing took place on 12/1/2017. The result of that was the claim was not struck out, nor was it made the subject of a deposit order. It is relevant to note the claimant was legally represented between 20/12/2016 and 17/5/2021.
2. The three day final hearing was due to take place on 7/6/2017 and was postponed on 25/5/2017 at the claimant's request. The reason the claimant requested the postponement was his own health issues (an illness relating to his back and depression). In addition, via his solicitor, he said that his wife had recently been diagnosed with breast cancer, was receiving treatment in the Royal Marsden Hospital and that he was the primary carer for their children. Medical evidence in the form of a letter from the claimant's GP repeating the same information dated 18/5/2017 was provided.
3. In the circumstances, the respondent quite rightly did not object to the application and sympathetically, suggested a three month stay.

4. A further stay, for the same reasons, was granted, upon the claimant's application on 13/10/2017.
5. On 17/1/2018 the claimant's solicitors informed the Tribunal that the claimant's wife's cancer had spread and that she was undergoing a fresh course of chemotherapy. That resulted in a further stay of six months being granted.
6. A further application for a stay was made on the 17/7/2018 for the same reasons, stating that the claimant's circumstances has not improved. Again, the respondent did not object. The claim was stayed until 12/3/2018.
7. The parties were asked for an update on 29/5/2019 and on the 4/6/20219 the claimant's solicitors replied stating they had taken his instructions and his wife was in remission from cancer, although they were now separated. It was said the claimant had left the matrimonial home and this was now causing other difficulties, along with matrimonial proceedings. He asked for a further stay of three months.
8. Rather than continuing to grant a stay, the Tribunal listed a telephone preliminary hearing on 23/7/2020. That hearing took place before Employment Judge Morton. Her Order following the hearing, recorded:

'The case is largely prepared, with all of the case management orders save for exchange of witness statements having been complied with.'
9. The claimant was represented by Mr Kingham a solicitor at that hearing. It therefore has to be assumed that was the position and apart from witness statements, the case was ready to proceed. A final hearing was listed to commence on 1/6/2021.
10. In order to progress matters and in light of the excuses from the claimant, the respondent requested on 17/11/2020 that the claimant provide information in respect of the steps he had taken to mitigate his losses. The claimant's solicitor responded to that saying, in essence, that the claimant's health issues were continuing and he was struggling with the paperwork.
11. On 11/12/2020 the claimant was ordered to provide the paperwork the respondent had requested. The claimant did not comply with this order.
12. The respondent next wrote to the Tribunal on 2/3/2021. The respondent reported that the claimant's wife had contacted their solicitors. In short, she stated that she did not have and had never had cancer. There was a letter from her GP who stated that she had no history of breast cancer, had no other serious medical condition and had no psychiatric history. The respondent applied for the claim to be struck out.
13. The claimant's solicitor came off the record on 17/5/2021.
14. The final hearing listed for 1/6/2021 was postponed and the Regional Employment Judge made an Unless Order that the claimant: confirmed that he was pursuing his claim; provide reasons why he had not complied with the Tribunal's Order of

11/12/2020; and provide a full explanation why he had claimed his wife had cancer, when she said that was not the case. The claimant responded to the Unless Order on 11/6/2021 and it appears that it was accepted that he had complied with the Unless Order. The claimant's explanation in respect of stating his wife had cancer was that she: was manipulative and had controlled him; had manipulating him into believing her breast implants were not as expected and she had found a lump under her breast, had told him she would get it tested; and later informed him it could be cancer. He maintained that he had been his wife's carer as she would spend days in bed and he had to look after their children.

15. The respondent took issue with this explanation and pointed out what the claimant's wife and her GP had said about her health. As such, the respondent renewed its strike out application.
16. This hearing was then listed to determine whether or not the claim should be struck out.
17. The claimant did not attend the hearing. He authorised his sister to write on his behalf. The claimant's sister said that he did not have mental capacity to 'hold this case'. It was said he had had a mental breakdown, had been under psychiatric care since November 2021 and had been at a psychiatric hospital until late December 2021. The claimant's sister exhibited:

An email dated 14/1/2022 from St Mary's House in Eastbourne, the email read: 'The CRISES team are fully aware of the situation and will be contacting you regarding the emergency steps following on from the letter received today from The Priory'.

An undated letter from the claimant's GP which referred to his increasing depression, stress and him having suicidal thoughts.

A statement of fitness for work dated 7/1/2022 which certified the claimant as unfit for work from 1/1/2022 to 1/7/2022, due to 'generalised anxiety disorder with panic disorder, severe depression'.

18. It is difficult to understand why a professional would provide an undated letter. The letter is not addressed to the Tribunal (it is a 'to whom it may concern letter'). As such, that letter had been disregarded. It is noted that other letters from the same GP were dated.
19. The remaining documents were taken at face value. The letter from St Mary's House, without any context, does not assist.
20. The statement of fitness for work is relevant to the claimant's ability to work, not his ability to conduct a Tribunal hearing or to progress his case. That said, his representatives said in July 2020 that the case was 'largely prepared'.
21. The claimant has not provided any documentation which give a medical opinion regarding when he may improve. The first hearing due to commence on 7/6/2017 was postponed at the claimant's request due to his ill health. There is no evidence that his health has improved since then.

22. That aside, there is then the huge discrepancy between what the claimant has said about his wife's health and what she has reported. Neither the claimant nor his sister attended this hearing to explain the discrepancy. The statement the claimant made on 11/6/2021, still maintained that his wife had been ill. That information did not correlate with his wife's statement that she had never been seriously ill and had never had a cancer scare.
23. The only conclusion the Tribunal can reach is that the claimant has misled the Tribunal about his wife's condition, in order to avoid progressing his claim (for whatever reason) to a final hearing. This case concerns events in 2015 and it is now 2022. The claimant has mendaciously delayed the case for several years. That is unreasonable conduct. The claimant is also in breach of the Tribunal's Order of 11/12/2020.
24. In light of the claimant's unreasonable conduct, the Tribunal finds it is no longer possible to have a fair trial. The case is struck out under Rule 37 and is dismissed.

## Useful information

1. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
2. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:  
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
3. The Employment Tribunals Rules of Procedure are here:  
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
4. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:  
<https://www.gov.uk/appeal-employment-appeal-tribunal>

Employment Judge Wright

2/2/2022

**Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

**Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

### **Online publication of judgments and reasons**

The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and written reasons since February 2017 are now available online and therefore accessible to the public at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.