



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr J Brinklow

v JKR Services Ltd t/a Soundcraft Ltd

## OPEN PRELIMINARY HEARING

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

On: **4/2/2022**

Before: **Employment Judge Wright**

### Appearances

**For the Claimant: Did not attend**

**For the Respondent: Ms J Charalambous - Peninsula**

## JUDGMENT

The claimant's claim is struck out and is dismissed.

## REASONS

1. This open preliminary hearing was listed on 3/8/2021 and the Order from that date was sent to the parties on 5/8/2021. The claimant had clearly received that Order as there was some partial compliance with it. Neither the claimant nor his representative attended this hearing. When the hearing resumed, Ms Charalambous informed the Tribunal that an email had been sent out shortly before 10am stating that the hearing had been converted to a telephone hearing. That email was sent in error and the hearing has not been converted and it remained a CVP hearing. The direction of the Regional Employment Judge was that the parties were to join the hearing and that if there were difficulties with CVP, *then* the hearing would be converted.
2. The parties were directed to and provided their written submissions and responses. They were considered.

3. The claimant's application to amend the claim for to include mental disability (it is not clear what the mental disability is) dated 25/2/2021 is refused. The claim form was presented on 26/4/2020 and the disability contended for was being left-handed. On the 10/10/2020 directions were given, including that the claimant provide his medical evidence and an impact statement. Even if not before then, that should have encouraged the claimant to direct his mind to the condition he relied upon as a disability. He did not at that point assert a mental disability.
4. At the preliminary hearing on 10/2/2021 the claimant was ordered to pay a deposit as a condition of continuing his claim, as it was considered the claim had little reasonable prospects of success.
5. What has happened, the Tribunal finds, is that the claimant has then realised the weakness of a claim based upon a claimed disability of left-handedness. He has then sought to amend his claim to include an alternative condition, with the hope that he will have more success.
6. It is not clear what 'new information' the claimant seeks to rely upon. If he obtained his medical records when he was directed to do so, that is the point at which any 'new information' should have come to light. Not after the preliminary hearing at which he was told his claim had little reasonable prospect of success.
7. There is no obligation upon the respondent to draw issues with the claim from to the claimant's attention. The respondent is however entitled to point out weaknesses with the claimant's case as pleaded and for example, to invite the claimant to withdraw his claim as a result.
8. The Tribunal finds the claimant has withdrawn being left-handed as a disability. As a result of that and as the amendment application fails, there is no extant disability and so the claim is struck out as it has no reasonable prospect of success.
9. In the alternative, the claim would have been struck out in any event for a failure to actively pursue it and for repeated non-compliance with Orders of the Tribunal.
10. The claimant/his representative did not attend the preliminary hearing on 3/8/2021. The claimant's representative said she was suffering ill health as a result of receiving a Covid vaccination. She was directed to provide proof of that vaccination within 14 days of receipt of the Order. She objected to providing personal medical information to the respondent. She was not directed to provide any personal medical information, merely proof of the vaccination. There is no evidence that the claimant's representative has provided that evidence to the Tribunal without copying the respondent or at all.
11. Tribunal cannot see that the claimant has complied with the Order to confirm by the 17/8/2021 whether the condition of being left-handed is relied upon by him.
12. In the further alternative, a deposit order was made at the preliminary hearing on 10/2/2021 for a payment of £10 within 28 days, sent to the parties on 19/2/2021. The deposit was therefore due to be paid on 19/3/2021. It was paid on 7/4/2021 and so the claim should have been struck out at that point.

13. It should be noted that allegations of a breach of the Equality Act 2010 and of disability discrimination are serious accusations to make. Employment Tribunal litigation is not a game. Deadlines are not aspirational; they are strict time-limits and are expected to be met. It seems that this case has been perused when it suited the claimant to progress it and has stalled when the claimant did not like or agree with what he was directed to do. To give one example, further to receipt of information from the Tribunal that this hearing would proceed by CVP, the claimant's representative replied by email on 31/1/2022 and 2/2/2022 (the second request was not copied to the respondent) requesting a telephone hearing. The Regional Employment Judge's reply to that application was to attend the CVP hearing and if that was not possible, it would be converted to a telephone hearing. The Judge was told that no attempt had been made by the claimant/his representative to join the CVP hearing.
14. The claim is stuck out and dismissed.

4/2/2022

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**Employment Judge Wright**