EMPLOYMENT TRIBUNALS

Claimant: Ms N Mukoro

Respondents: 1 Independent Workers' Union of Great Britain
2 Jason Moyer-Lee
3 Catherine Morrissey
4 Maritza Calisto Calle

Heard at: London Central (by CVP) **On:** 28 January 2022

Before: Employment Judge H Grewal

Representation

Claimant: In person

Respondent: Mr J Galbraith-Marten, QC

JUDGMENT

The claim is struck out.

REASONS

1 This preliminary hearing was listed to determine:

a. The status of the deposit order made on 19 September 2018 in respect of the Claimant's complaint that her dismissal was an act of direct race discrimination (and, if the order was still in force and the complaint was not struck out, to consider the Claimant's application to revoke the order or to extend time for compliance with it);

b. The Respondent's application to strike out all of the complaints on the grounds that it was no longer possible to have a fair hearing;

c. In the alternative, to dismiss the claims against the individual respondents.

Procedural history

2 On 4 April 2017 the Claimant presented a claim form in which she complained of unfair and wrongful dismissal, race, sex and disability discrimination and claimed that she was owed notice pay and arrears of pay. She had been employed by the Respondent from 15 July 2015 to 6 November 2016. Early Conciliation ("EC") had commenced on 5 February 2017 and the EC certificate had been granted on 5 March 2017. The Claimant stated that she had a mental disability (depression and anxiety) and that the Respondent had been aware of it. She did not give any particulars of her complaints of discrimination or her complaint of automatic unfair dismissal (she had less than two years' service). She said that she was not able to provide details of her complaints as she lacked the capacity to do so because of her medical condition.

3 The Tribunal made an order for the Claimant to notify the Tribunal by 29 June 2017 as to when she would be able to provide particulars of her claim or medical evidence that she was not well enough to do so. The Claimant provided a report from her GP dated 30 June 2017 that she was unable at that time to participate in legal proceedings and to accurately recall and document events and that doing so exacerbated her depression and anxiety and triggered panic attacks.

4 A preliminary hearing listed for 25 August 2017 was postponed partly because the Claimant's poor mental health.

5 The first preliminary hearing took place before me on 9 October 2017. The Claimant had still not provided particulars of her complaints and did not attend the hearing. Her daughter attended on her behalf. She said that her mother was not well enough to give particulars of her complaints and that she had further problems in that she was engaging in substance abuse. I made an order for the Claimant to provide a medical report by 30 October 2017 setting out a diagnosis, what the Claimant could or could not do in terms of progressing the case and the prognosis as to when she would be able to do things that she was not able to do at that time.

6 The Claimant's doctor provided a report dated 30 October 2017. He said that he was not in a position to confidently confirm that she would be capable of progressing her case personally. The intense anxiety that she had experienced since it started had contributed to her limited engagement in the process. There was little evidence that the work that she had done with a psychological support service or the medication that she had taken had equipped her to deal with it any more effectively. However, the Claimant had told him on 24 October that she felt that in 2-3 weeks' time she would be able to provide the particulars of her complaints and that from January 2018 she would be able to represent herself and withstand the mental and emotional rigours of the tribunal.

7 On 1 December 2017 the Tribunal made an order for the Claimant to provide the particulars of her complaints of discrimination by 18 December 2017. The Claimant

did not do so. On 28 December the Tribunal extended the time for providing the particulars to 8 January 2018.

8 On 8 January 2018, nine months after the proceedings started, the Claimant provided further particulars of her complaints. The Claimant's complaints related to allegations that had been made against her by the Second and Fourth Respondents in April 2016 which had led to the disciplinary process being started against her and her dismissal by the Third Respondent on 6 November 2016. She said that the allegations were false, malicious and acts of race and disability discrimination. The Claimant had been off sick between 10 June and 6 November 2016.

9 The Claimant attended a preliminary hearing on 16 March 2018. At that hearing I discussed her particulars with her and we identified the claims that she was making and the issues that the Tribunal would have to determine. It was agreed that the complaints were that the Claimant's dismissal was unfair under sections 100(1)(d) and 103A of the Employment Rights Act 1996 and that it was an act of direct race, sex and disability discrimination. In addition the Claimant complained of two earlier acts of direct race discrimination and made a complaint of failure to make reasonable adjustments in relation to the disciplinary process. The Claimant said that she told Mr Moyer-Lee on 16 or 17 September 2016 that she suffered from depression. The wrongful dismissal complaint was identified as being dismissal without notice. The note of the preliminary hearing, which set out the agreed list of issues, was sent to the parties on 22 March 2018. The Claimant did not at any stage write to the Tribunal to assert that it did not accurately reflect her complaints.

10 At the same hearing I also made a deposit order in respect of the Claimant's complaint of sex discrimination. The Claimant was ordered to pay a deposit of £20 not later than 21 days from the date on which the order was sent to the parties. She failed to do so and the complaint of sex discrimination was struck out on 6 July 2018.

11 At the preliminary hearing on 16 March 2018 I listed the final hearing to take place on 20 - 26 September 2018 and made case management orders for that hearing.

12 On 2 May 2018 the Respondent applied to strike out the complaints of race discrimination on the grounds that the Tribunal had no jurisdiction to consider them and they had no reasonable prospects of success and, in the alternative, for a deposit order. That application was listed to be heard on 12 July 2018. It was heard by EJ Snelson. The Claimant attended the hearing and sought an adjournment on the ground that she was unwell. After some discussion, it was agreed that the Respondent's submissions (supported by a skeleton argument) would be heard and that the Claimant would be given until 27 July 2018 to set out her response in writing.

13 The Claimant did not provide her written submissions by that date. Witness statements were due to be exchanged on that date but the Claimant was unable to do so. In a report dated 27 July 2018 her doctor said that he had little expectation that the Claimant's health was going to improve or stay stable during the litigation process. He reiterated his opinion that the Claimant's cognitive functioning was impaired and that it would remain so. He said that as far as reasonable adjustments were concerned that was something that would need to be discussed with the Claimant . He said that if it helped the Claimant it might be a good idea to send printed documents to her rather than electronic documents. He also made the point

that a mentally impaired person needed time to process and deliver what was asked of them.

14 A telephone preliminary hearing was set up for 7 September and the Claimant's daughter appeared on behalf of her mother. The time for the Claimant to present her written submission was extended by EJ Snelson to 10 September 2018. The Respondent stated at that hearing that it intended to apply to strike out the entire claim on the grounds that a fair hearing was no longer possible. It was agreed that the final hearing could not proceed on 20 – 26 September and those dates were vacated and a preliminary hearing was listed to take place on 26 September 2018 to consider any application that the Respondent made to strike out the claim. EJ Snelson made an order that any such application should be made by 19 September.

15 On 10 September the Claimant delivered her written submissions.

16 On 19 September EJ Snelson sent the parties his decision on the application that he had heard on 12 July 2018. His judgment was that the Tribunal had no jurisdiction to consider the Claimant's complaints of direct race discrimination in respect of pre-dismissal detriments and those claims were dismissed. He concluded that her complaint that her dismissal was an act of direct race discrimination had little reasonable prospect of success and he made a deposit order in respect of that claim. The Claimant was ordered to pay a deposit of £50 not later than 28 days from the date of the order (19 September 2018) as a condition of being able to pursue that claim.

17 On 17 September the Respondent applied for all the remaining claims to be struck out.

18 Neither the Claimant nor her daughter attended the preliminary hearing on 26 September 2018. At 8.18 that morning her daughter sent the Tribunal an email in which she said,

> "*My mother has had to seek an emergency appointment with her Dentist due to developing an excruciatingly painful abscess. Therefore, due to unforeseen and unavoidable medical circumstances, the Claimant asks for an adjournment of today's hearing as she is in pain and too unwell to attend and has had to prioritise self-care and seek medical attention."*

No medical evidence was provided in support of the application. EJ Snelson put the matter back to 12 noon and gave instructions for an email to be sent to the Claimant's daughter asking her to explain her absence and to provide medical evidence or her own evidence about the Claimant's medical condition that morning. The Tribunal staff also called the Claimant's daughter. There was no response and they left a message for her. By 12 noon the Tribunal had not received any communication from the Claimant or her daughter.

18 EJ Snelson refused the Claimant's application to postpone the hearing and heard the Respondent's application to strike out the remaining claims. In a judgment (with reasons) sent to the parties on 28 September 2018 he struck out the entirety of the claim. He did so primarily because the medical evidence, which he said was compelling, persuaded him to a high standard that there was no reasonable prospect of the matter being brought to an effective final hearing within a reasonable period.

He noted that if the case were to be listed then, the hearing would take place more than three years after the earliest incident of which complaint was made. In the last paragraph of Reasons, he said,

> "*All claims having been struck out, the proceedings are at an end. The Tribunal will archive the file in the usual way."*

19 On 1 October 2018 the Claimant's daughter sent the Tribunal a letter from a dentist dated 26 September 2018. The dentist confirmed that he had seen the Claimant that day and that she had severe dental pain and that examination showed that she had developed dental abscesses on two of her teeth. In an email dated 2 October the Claimant's daughter said that she had spoken to a Tribunal employee at about 9.07 and had informed her of the position and had said that she was available to speak to EJ Snelson or the tribunal clerk until 10.30 when her mother had the dental appointment. On 12 October 2018 she applied for reconsideration of the Tribunal's decision of 26 September 2018. EJ Snelson refused the application for reconsideration on 24 October 2018.

20 The Claimant appealed to the EAT on 9 November 2018. The appeal was refused on paper on 27 January 2019 on the grounds that it disclosed no reasonable grounds for bringing the appeal. The Claimant requested an oral hearing to determine that issue. The hearing took place on 19 April 2019. At that hearing the Claimant represented by counsel under the ELAAS scheme (which provides free representation by counsel and solicitors for appellants at the EAT). The counsel had drafted amended grounds of appeal and on the basis of those the appeal was allowed to proceed. The appeal was originally listed for hearing on 8 January 2020 but the hearing did not place on that date. It was not entirely clear why it had been adjourned on that date.

21 The appeal was heard on 14 July 2020. In a judgment handed down on 24 March 2021 the EAT allowed the appeal. The EAT (Lavender J and members) concluded that the Tribunal had made an error of law in not allowing the adjournment. In their view, the consequence of that was that that the claim should not have been struck out at that hearing. In those circumstances, they did not consider it necessary to determine all the issues which arose on the appeal against the decision to strike out the claim. They did, however, consider that there had been an error of law because the Tribunal had taken into account an irrelevant factor, namely its view as to what was in the Claimant's best interest. The appeal was allowed and the EAT directed that there should be a fresh hearing of the Respondent's application to strike out the claim.

22 On 17 June 2021 the Respondent wrote to the Tribunal to request a judgment striking out the compliant of direct race discrimination in respect of dismissal on the grounds that the Claimant had failed to pay the deposit ordered on 19 September 2018. The Respondent said that more than 28 days had lapsed since the order was made or, in the alternative, since the date when the appeal had been allowed. That request was repeated in an email on 29 June 2021. Both emails were copied to the Claimant and to her daughter.

23 On 23 July 2021 the Tribunal sent the parties notice that there would be a case management preliminary hearing (2 hours) in the case on 4 August 2021. The notice was sent to the Claimant's daughter as she was recorded on the Tribunal's system

as being the Claimant's representative. On 2 August 2021 the Claimant applied for the hearing to be postponed. She said that she had just received notice of the hearing as her daughter had not been able to access her email correspondence until that day. She continued,

> "*Further, due to my disability (mental/physical), I would like to request that the tribunal give me reasonable time to seek out and put in place disability support/legal representation to allow me to adequately meet the requirements of the preliminary hearing and beyond ie the litigation process."*

24 The hearing was adjourned to 20 October 2021.

25 On 8 October solicitors acting for the Claimant under the Legal Help Scheme wrote to the Tribunal. They said that the Claimant had not paid the deposit order because her whole claim had been struck out before the time to pay the deposit had expired. After the decision of the EAT the Claimant had contacted the Tribunal to inquire about paying the deposit. She had received a response on 24 August 2021. She was informed that she had to post a postal order or a counter cheque to pay. She was bedridden and in pain at the time and unable to do that. Her solicitors applied for the deposit order to be revoked or for an extension of time to pay it. They asked for that to de dealt with at the forthcoming hearing on 20 October 2021.

26 When the notice of hearing was sent out it stated that the preliminary hearing would last the whole day. The Claimant applied for the hearing to be adjourned. She said that she had thought that it would be only for two hours and could not get the additional time off.

27 On 15 October 2021 the Tribunal wrote to the parties that the hearing had been adjourned to 1 November 20201 and that the hearing on that date would consider the list of issues, the status of the deposit order and the Respondent's application to strike out the claim. If the claim was not struck out, the Tribunal would list the final hearing and make case management orders for that.

28 On 15 October the solicitors advising the Claimant applied for that hearing to be adjourned. They said that given their client's "*disabilities and poor mental health"* they believed that it might be appropriate to apply for Exceptional Case Funding to cover representation at the preliminary hearing and any subsequent final hearing. However, they did not believe that any such application would be processed before 1 December 2021 and they asked that the preliminary hearing be relisted for the first open date in January 2022.

29 On 27 October 2021 the hearing was postponed to 28 January 2022.

30 The Claimant attended the hearing before me and represented herself. She has not obtained Exceptional Case Funding.

31 The only additional medical evidence that the Claimant produced at the hearing before me today was a letter dated 12 October from her GP. The letter said that she had been diagnosed with Fibromyalgia. She continued,

> "*This causes her experience severe lethargy and widespread chronic pain. Unfortunately, Mrs Mukoro's symptoms have been significant over the past year,*

and even more over the past few months and this may well impact on her ability to carry out even simple tasks."

The Claimant did not produce any medical evidence to indicate that here had been any changes in her mental health since Dr Gibson's report of 27 July 2018. She said in her submissions to me that her medical position had not changed since that date and what the doctor said in that report still applied.

32 The Second Respondent (Jason Moyer-Lee) left the Respondent in September 2020 and is currently in the USA. The Third Respondent (Catherine Morrissey) left the Respondent in September 2021.

The Law

33 Rule 37(1) of the Employment Tribunals Rules of Procedure 2013 ("ET Procedure Rules 2013") provides,

"*At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –*
…to

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out)."

34 Rule(2) of the ET Procedure Rules 2013 provides,

"*The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable –*
(a) ensuring that the parties are on equal footing;
(b) dealing with cases in ways which are proportionate to the complexity of the issues;
(c) avoiding unnecessary formality and seeking flexibility in the proceedings;
(d) avoiding delay, so far as compatible with proper consideration of the issues; and
(e) saving expense."

35 Article 6(1) of the European Convention of Human Rights provides,

"*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

36 In **Riley v CPS [2013] EWCA Civ 951** the Court of Appeal upheld the Employment Tribunal's decision to strike out a claim in circumstances where the claimant was not well enough to pursue her claim nearly two years after she had issued it and on the basis of the medical evidence before the Tribunal would not be fit enough to attend the hearing in 12 months and, on the balance of probabilities not before the expiry of two years. Giving judgment Longmore LJ said,

"*It is important to remember that the overriding objective in ordinary civil (and employment cases are in this respect ordinary civil cases) is to deal with cases justly and expeditiously without unreasonable expense. Article 6 Of the EHCR emphasises that every litigant is entitled to "a fair trial within a reasonable time." That is an entitlement of both parties to litigation. It is also an entitlement of other litigants that they should not be compelled to wait for justice more than a reasonable time…*

If doctors cannot give any realistic prognosis of sufficient improvement within a reasonable time and the case itself deals with matters that are already in the distant past, striking out must be an option available to a Tribunal"

37 Rule 39 of the ET Procedure Rules 2013 provides,

"*(1) Where at a preliminary hearing … the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

…

(4) if the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out."

Conclusions

Deposit Order

38 Seven days after the deposit order was made the entire claim was struck out and the deposit order ceased to have any validity as the claim to which it related no longer existed and the Claimant could not pursue it. The Claimant appealed against the decision to strike out the whole claim but not the decision to make the deposit order. When the EAT allowed the appeal against the Employment Tribunal's decision not to adjourn the hearing on 26 September, it concluded that that also meant that the claim should not have been struck out at that hearing. The effect of its decision was to put the claim back in the position that it was in before it was struck out. To my mind, that means that the claim that had been made the subject of the deposit order remains the subject of a deposit order. It would not be necessary if this claim proceeds for the Respondent to apply for that deposit order again. However, that would probably not have been clear to the Claimant. In any event, the date by which it had to paid on the original order could not longer apply and a fresh order should have been made to specify the date by which it had to be paid. It would not have been clear whether the seven days that had lapsed before the claim was struck out counted or whether time began to run from some date after the EAT remitted the case to the Employment Tribunal. The Tribunal should have sent to the Claimant a further copy of the order which clearly set out the date by which the deposit had to be paid. I accept that the Claimant has been aware for some time of the need to pay that order and has not taken any steps to do so. However, in the absence of an order making it clear that it still applied and the date but which it had to be paid, I do not accept that that claim has been struck out because the Claimant has not paid the deposit order. If I do not strike out the whole claim, I will make a fresh deposit order

in the same terms as the previous order specifying the date by which it has to be paid.

Strike out application

39 The complaints currently before the Tribunal are complaints of automatic unfair dismissal and that the dismissal was an act of direct race and disability discrimination and two complaints of failure to make reasonable adjustments between 1 June 2016 and the Claimant's dismissal on 6 November 2016. In considering whether it is possible to have a fair hearing of those claims I took into account the following factors.

40 There has already been a considerable delay in the hearing of this claim. If the claim was to proceed to a hearing, the earliest date at which the Tribunal could hear it would be in July 2022. That would be nearly six years after the events of which the Claimant complains took place. I accept that part of that delay (2 years 4 months) is attributable to the amount of time it took for the appeal to be determined by the EAT. I also accept that at that time it normally took between six and nine months to get a case to a hearing. That, however, does not explain the rest of the delay – a period of about 3 years. A large part of that is attributable to the inability of the Claimant to progress the case because of her mental health. The Claimant provided particulars of her claim 9 months after she presented her claim, the preliminary hearing on 12 July 2018 did not conclude until 19 September 2018 because the Claimant was unable to respond to the application until 10 September 2018, The Claimant did not provide her witness statement by 27 July in accordance with the order made by the Tribunal. Those two matters led to the final hearing listed for 20-26 September 2018 having to be adjourned. Following the matter being remitted to the Tribunal on 24 March 2021, the preliminary hearings listed on 4 August 2021, 20 October 2021 and 1 November 2021 were postponed at the Claimant's request. It was postponed on the last occasion to enable the Claimant to get representation. She attended the hearing before me without representation.

41 Furthermore, I am not at all confident that if the matter were to be listed for July 2022, the hearing would proceed and conclude in July 2022. I did not have any medical evidence before me to show that the position had changed since the report provided by the Claimant's doctor on 27 July 2018. In that report he stated that he had little expectation that the Claimant's health was going to improve or stay stable during the litigation process and that her cognitive functioning was impaired and would remain so. On the basis of the medical evidence before me, that remains the position today. The Claimant accepted that and did not claim otherwise. The difficulties faced by the Claimant are compounded by the fact that she now has a further medical condition which causes her to experience severe lethargy and widespread chronic pain and might well impact on her ability to carry out even simple tasks. All the medical evidence before me leads me to conclude that there would almost certainly be further delays before this case could be heard and concluded.

42 The Claimant made two points about that. Firstly, she said that, unlike the Claimant in **Riley v CPS** she had had some engagement in the process and the fact that she had pursued the appeal in the EAT showed that she was capable of proceeding with the hearing. The Claimant's engagement with the process in this Tribunal has been very limited and erratic. She did not attend the preliminary hearing on 9 October 2017, she attended the preliminary hearing on 16 March 2018, she

attended the preliminary hearing on 12 July 2018 but sought an adjournment on health grounds, she did not provide the written submissions and her witness statement by 27 July 2018, she did not attend the telephone preliminary hearing on 7 September 2018. I accept that the Claimant and/or her daughter submitted an appeal to the EAT and asked for an oral hearing when the appeal was originally rejected. Thereafter. matters were advanced in the EAT by counsel whose free services were provided under the ELAAS scheme. The legal arguments advanced by him would have required very little input from the Claimant. Since the matter has returned to the Employment Tribunal the preliminary hearing listed to advance this matter has been postponed on three occasions at the request of the Claimant. She attended the hearing before me and made brief submissions to oppose the application to strike out her claim. The level of engagement by the Claimant hitherto is very different from what will be required of her to bring the case to a conclusion. She will need to familiarise herself with the documents in the bundle and to draft a witness statement. She will then have to attend the hearing and be cross-examined on her witness statement. She will have to prepare and conduct cross examination of the Respondent's witnesses. She will have to prepare and make closing submissions. I am not at all confident that the Claimant will get funding that will enable her to get representation at the hearing. The medical evidence before me indicates very clearly that the Claimant will not be able to engage at the level that will be required for a full merits hearing. Her limited engagement so far does not in any way negate that evidence.

43 The second point made by the Claimant was that the Tribunal has a duty to make reasonable adjustments in order to make it possible for a disabled person to have a hearing. I accept that. The Tribunal has made adjustments to allow the Claimant to pursue her claim. The Tribunal did not reject the claim when it was first presented on 4 April 2017 on the grounds that it was in a form which could not sensible be responded to, nor did it make an order for the Claimant to provide the particulars within a short time frame. Taking into account what she said about her medical condition, the Tribunal made an order for her to notify the Tribunal by 29 June 2017 as to when she would be able to provide those particulars. The Tribunal did not make an order for the Claimant to provide the particulars until 1 December 2017. When the Claimant failed to comply with that order, the Tribunal extended the time for her to do so. The Tribunal did not require the Claimant to respond to the Respondent's application at the preliminary hearing on 12 July 2018 but gave her two weeks to make written representations. When she did not comply with that order, the time for making the representations was extended. The Tribunal adjourned the preliminary hearings listed on 4 August, 20 October and 1 November 2021 because the Claimant requested those adjournments. The main adjustment sought by the Claimant hitherto has been for more time to do things. It is very likely that she will continue to seek adjustments of that nature.

44 The Tribunal's duty is to make <u>reasonable</u> adjustments (my emphasis). It is questionable whether having further delays in a case that relates to matters that occurred nearly six years ago would be a reasonable adjustment.

45 I considered the impact of the delay to date on the hearing of this case. Two of the Respondent's main witnesses are no longer employed by it and one of them is no longer in the country. That in itself is not an insuperable difficulty but experience has shown that the longer the time gap between the employment ending and the hearing take place, the harder it is for the party concerned to ensure their attendance. That is

compounded when the witness is no longer in the jurisdiction. In addition the Respondent will be obliged to satisfy the Tribunal that the country where he is does not object to him giving evidence to the Tribunal in the UK from that country. If the matter is heard in July 2022, that will be nearly two years after Mr Moyer-Lee left the Respondent.

46 The witnesses giving evidence in the case will have to give evidence about matters that happened about six years ago. The Claimant said that that does not pose any problem because the Respondent has known what her case is since she provided her further particulars in January 2018 and the issues were clarified in March 2018. I do not accept that. Her complaints of race and disability discrimination in respect of her dismissal are far from clear. In her particulars she appear to be saying that the dismissal was an act of race and disability discrimination because the allegations that led to the disciplinary process being initiated and her ultimate dismissal were false and made because of her disability and race. As EJ Snelson noted when he made the deposit order in respect of the race discrimination claim, the Claimant will have some difficulty in establishing that in light of the Court of Appeal decision in **Reynolds v CLFIS (UK) Ltd [2015] ICR 1010**. There does not appear to be any suggestion that Ms Morrissey made the decision to dismiss on the grounds of her disability and race. On the other hand, she is a named Respondent and can only be a named respondent in respect of the discrimination claims. The Respondent does not know on what basis it will be said that she discriminated on the grounds of disability or race. If the Claimant pursues her case on the basis that the allegations made about her behaviour in April 2016 were false and made because of her disability and race, witnesses will be asked to recall what was said and done six years ago and the context and the manner in which things were said and done. It is also not clear on what basis the Claimant alleges that the Respondent knew or could have known that she was disabled before 16 September 2016, when she claims she told Mr Moyer-Lee that she suffered from depression. The Respondent knows the bare bones of the Claimant's case. The details will only emerge in the witness statements. It is also very likely from a number of things that the Claimant said in the hearing before me that she will seek to amend or alter the basis on which she is putting her case.

47 The named Respondents (employees and former employees of the First Respondent) have had this matter hanging over them for six years. Accusations of race and disability discrimination are serious. They are serious for those who make them and for those against whom they are made. They are serious for a trade union like the First Respondent which holds itself out as fighting against discrimination. Everyone is entitled to a fair hearing within a reasonable time. Prolonged hearings, adjourning hearings, failure to comply with the Tribunals' orders are all things that lead to the costs of the Respondent escalating.

48 In conclusion, there has already been a considerable delay in this case and I consider that it is not possible to have a fair hearing even if the matter could be heard in July 2022. However, on the basis of the medical evidence before me and the history of this case, I consider it very likely that the matter will not be heard and concluded in July 2022. I do not consider that a further delay in a case that is already so old to be a "reasonable" adjustment. I accept that striking out a claim is serious because it deprives the Claimant of a hearing in this case. However, both parties have a right to a fair hearing within a reasonable time. Having taken into account all the above factors, I consider that it is no longer possible to have a fair hearing.

49 If I had not come to that conclusion, I would have struck out the claims against the named Respondents. They can only be liable in respect of the race and disability discrimination claims and the complaint of failure to make reasonable adjustments. The complaints against Mr Moyer-Lee and Ms Castillo Calle are made on the basis that the allegations that they made were false and acts of race and disability discrimination. There is, however, no complaint before the Tribunal about the making of the allegations. The only complaints of discrimination are about the dismissal. The decision to dismiss was made by Ms Morrissey, but it is not at all clear on what basis it is being said that she discriminated against the Claimant. In the absence of clear complaints (which are live complaints) of race and disability discrimination against the named Respondents, I would have struck out the complaints against them.

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Employment Judge Grewal

_____

Date 14 February 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

15 February 2022

FOR THE TRIBUNAL OFFICE