



EMPLOYMENT TRIBUNALS

Claimant

Dr V Isorna

v

Respondent

Frimley Health NHS Foundation
Trust

Heard at: Watford, via CVP

On: 18 February 2022

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant: Not present or represented

For the respondent: Mr S Sudra, of counsel

JUDGMENT

The claimants' claims are dismissed.

REASONS

- 1 The claim with the above case number (3314120/2020) was mostly a repetition of a claim made previously, with case number 3328125/2019. The latter claim ("the first claim") was struck out by Employment Judge Gumbiti-Zimuto on 1 October 2020 on the basis that the claims made in the claim form were out of time so that the tribunal had no jurisdiction to consider them.
- 2 The claims which were the subject of the hearing of 18 February 2022 (i.e. case number 3314120/2020) were in addition about the manner in which the first claim had been responded to in the grounds of resistance to the first claim. That was the only new aspect of the claim which was the subject of the hearing of 18 February 2022, i.e. case number 3314120/2020.
- 3 On 24 February 2021, in a letter written on behalf of the tribunal office, this was said:

“On the Tribunal’s own initiative and having considered any representations made by the parties, Employment Judge Gumbiti-Zimuto is considering striking out the claim because ... it has no reasonable prospect of success.

If you wish to object to this proposal, you should give your reasons in writing or request a hearing at which you can make them by 10 March 2021.”

- 4 The claimant responded to that letter by sending an email to the tribunal on 2 March 2021 in the following terms:

“I am writing with regard to the letter dated 24 February concerning Strike out Warning. In the interests of Justice I would like my claim to proceed. I want justice and feel that the only way I will get that is through the courts. All the lies said about me damaged my reputation and I want my reputation restored. The lies need to be exposed and it is only in court that it can be done, in order for my reputation to be restored. I want Justice.”

- 5 On 26 June 2021, a notice of the hearing of 18 February 2022 was sent to the parties. It started with these words:

“Employment Judge Gumbiti-Zimuto has directed that there will be a Preliminary Hearing to determine the following issue:

Whether the claim should be struck out on the grounds it has no reasonable prospect of success

Case management orders may be made at the conclusion of the preliminary hearing.”

- 6 I conducted that hearing. At 23:49 on the day before the hearing, so at 23:49 on 17 February 2022, the claimant sent this email to the tribunal, copying it to the respondent’s solicitors:

“Dear Sir/Madam,
With regards to hearing tomorrow 2pm
I am unable to attend hearing tomorrow as tested positive for COVID.
Please see attached written representation and list of management orders
Thankyou for your attention in this matter
Kind Regards
Veronica Isorna”

- 7 The claimant did not attend the hearing of 18 February 2022. In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 (“the 2013 Rules”) applied. That provides:

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that

party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

- 8 It appeared clear to me from the claimant's email sent at 23:49 on 17 February 2022 that the claimant was not asking for the hearing of 18 February 2022 to be postponed to a later date, and in any event it appeared to me to be very much in the interests of justice for me to dismiss the claim. That was for the following reasons.
- 9 In so far as this claim was a repeat of the first claim, it was an abuse of process to press this claim. That was because of the doctrine of res judicata: the matter had already been determined finally by a decision of the tribunal.
- 10 In so far as this claim concerned the content of the grounds of resistance to the first claim, this claim was covered by judicial proceedings immunity. That was the clear effect of the decision of Underhill P in *Parmar v East Leicester Medical Practice* [2011] IRLR 641, which so far as relevant was confirmed by HHJ Auerbach in paragraph 107 of his judgment in *Aston v The Martlet Group Ltd* [2019] ICR 1417.
- 11 In the circumstances, the claimant having been given a reasonable opportunity to make representations in response to the proposal to strike out the claim, I could have struck it out under rule 37 of the 2013 Rules.
- 12 In all of the above circumstances, I decided that the claim should be dismissed.

Employment Judge Hyams

Date: 21 February 2022

JUDGMENT SENT TO THE PARTIES ON

....3 March 2022.....

....GDJ.....

FOR THE TRIBUNAL OFFICE