



EMPLOYMENT TRIBUNALS

Claimant: Ms U Romanowska

Respondent: G4S Secure Solutions (UK) Ltd

Heard at London Central via CVP **On: 8 March 2022**

Before: Employment Judge Davidson

Representation

Claimant: did not attend

Respondents: Mr N Sheppard Solicitor

JUDGMENT

The claimant's claim is struck out pursuant to Rule 37 of the Employment Tribunal Rules of Procedure.

REASONS

Issue for the hearing

1. This hearing was listed by EJ Walker in October 2021 to consider the respondent's application for a strike out of the claimant's claim under Rule 37 of the Employment Tribunals Rules of Procedure on the following grounds:
 - 1.1. the manner in which the proceedings have been conducted by or on behalf of a party has been scandalous, unreasonable or vexatious;
 - 1.2. non-compliance with tribunal rules or orders by a party;
 - 1.3. a fair hearing is no longer possible.

Background

2. This claim was lodged in January 2019 and relates to incidents between 2014 and 2018.

3. The history of these proceedings is set out in detail in the Case Management Order of EJ Walker dated 18 October 2021.
4. There have been three previous listings for a full merits hearing: in October/November 2019, June 2020 and October 2021. On each case the hearing was unable to proceed due to the claimant's failure to comply with directions or ill-health.
5. This case has now been before five different Employment Judges and appears still not to be ready for a hearing.
6. The claimant was on notice from 18 October 2021 that this hearing was taking place today and it was listed for this date to allow the claimant to recover from the medical problems she was experiencing at the time and still have time to prepare her witness evidence for today's hearing.

Today's hearing

7. Shortly before the start of the hearing, the claimant sent a 'To whom it may concern' letter from her GP practice to the respondent's representative and to the tribunal with the covering message 'FYI'. She did not make an application for this hearing to be adjourned. I decided that the strike out application could be heard in the claimant's absence. She will have the opportunity to request a reconsideration if she considers it appropriate.
8. I note that the GP's letter is dated 1 March 2022 and recites the various symptoms reported to the GP by the claimant. It is not a 'fit note'. The letter does not indicate when the claimant is likely to be fit to appear at a hearing to give evidence.
9. Although the GP's letter is dated 1 March 2022, it was only sent to the respondent and the tribunal on 8 March 2022. On 3 March 2022, the claimant was engaging with the respondent and asking for a paper copy of the bundle to be couriered to her.
10. The claimant has been aware of this hearing and was able to put any representations she wanted to make in writing if she was not able to attend in person due to her ill-health.
11. With the claimant's knowledge, the tribunal arranged for a Polish interpreter to be present at the hearing to assist the claimant. Given that the claimant did not indicate that she would not attend until the morning of the hearing, the interpreter booking could not be cancelled prior to the hearing.

Discussion

Proceedings conducted unreasonably

12. Without hearing from the claimant with an explanation for the manner in which the proceedings have been conducted, I do not feel able to impose the draconian sanction of strike out on these grounds.

13. The claimant has been aware since October 2019 that the respondent was seeking a strike out of her claims. The application on that occasion was not successful but the prospect of the claim being struck out has been part of the conversation relating to these proceedings since then, both between the parties and with the tribunal.

Non-compliance with tribunal orders

14. The history of these proceedings contains numerous instances of non-compliance by the claimant with orders. As things stand, the respondent confirms she has now complied with all orders other than exchange of witness statements.

15. In the circumstances, while I emphasise the importance of compliance with orders, these have now largely been complied with and I do not consider it would be in accordance with the Overriding Objective to strike out the claim at this stage for that reason alone. However, I take into account the impact of the earlier repeated non—compliance with orders, which has caused delays and impacted on the ability to hold a fair hearing.

A fair hearing is no longer possible

16. It is now three years since the claim was lodged. Some of the allegations in the claim form date back to 2014, The respondent has indicated that it considers these to be out of time but it will be necessary for the parties to adduce evidence to determine whether any such allegations form part of conduct extending over a period and/or whether it would be just and equitable to extend time.

17. The claimant has made allegations against a total of 22 individuals, most of whom no longer work for the respondent. The respondent has made enquiries of those who have left and has received no response in some cases and, in other cases, witnesses cannot recall or cannot assist.

18. The respondent argues that there will be significant prejudice to it if the claims are heard so long after the events when it will not be able to adduce evidence to answer all the allegations. Due to the statutory framework for discrimination claims, if the claimant can show facts from which a tribunal could decide, in the absence of any other explanation, that the respondent contravened the Equality Act, it must hold that the contravention occurred unless the respondent can show that it did not contravene the provision. If the respondent is unable to adduce the relevant evidence due to the passage of time and in the inability to contact witnesses or for those witnesses to give cogent evidence on matters taking place several years earlier, the claimant will succeed. In the circumstances, the respondent contends that this would be an unjust outcome.

19. As regards the constructive dismissal claim, many of the same considerations apply. The claimant will give her narrative of the events which led to her resignation and the respondent will find it difficult to counter much of that evidence without the relevant witnesses.

Decision

20. I have balanced the prejudice to the claimant in striking out her claims with the prejudice to the respondent in allowing the claims to proceed. I am aware that the claimant was unable to attend the hearing due to ill health but I am concerned that there is no information from the claimant regarding the likelihood of her being able to participate in these proceedings in the future. The respondent is facing a situation of more delay and more time going by without being able to prepare its defence.
21. Taking all these circumstances into account, I conclude that it is no longer possible to have a fair trial due to the effluxion of time. I am being asked to assess this as at today's date. I find that the delays until this point are sufficiently long, particularly as the allegations go back several years before the ET1 was submitted, for there to be a fair hearing.
22. This is my view at today's date but, given that the claimant has not indicated when she might be able to attend a hearing, the prejudice to the respondent continues to grow.
23. I therefore strike out the claimant's claims.

Employment Judge Davidson
8th March 2022

JUDGMENT SENT TO THE PARTIES ON
.09/03/2022..

FOR THE TRIBUNAL OFFICE