



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms. K. Murfin

v

Costa Limited

Heard at: Birmingham via CVP On: 22 April 2022

Before: Employment Judge Wedderspoon

Representation:

Claimant: No attendance

Respondents: Mr. Ashwood, Solicitor

RECONSIDERATION

1. The claimant did not attend the hearing and the Tribunal determined to hear the reconsideration application in her absence.
2. The respondent's application to reconsider the re-instatement of the claimant's claim on 21 October 2021 is allowed.
3. The claimant's claim stands struck out for failure to actively pursue her claim.
4. Further the claimant is in breach of the unless order to provide further particulars of her discrimination claim by 4 November 2021.

REASONS

5. A notice of hearing for the respondent's reconsideration application was sent to the parties on 11 November 2021. The respondent sent its submissions to the Tribunal and the claimant prior to today's hearing. The claimant failed to attend. The Tribunal attempted to contact the claimant by telephone using the number on her claim form but this number did not in fact exist. The Tribunal determined that the claimant was aware of the hearing today; had failed to provide any explanation as to why she had not attended; failed to respond to the respondent's written submission document and in all the circumstances including the fact that the case was now 2 years of age, it was in the interests of justice to hear the reconsideration application in the absence of the claimant.
6. The background to this matter is set out in the Tribunal's judgment dated 4 October 2021 (page 26-31). Following the strike out of the claimant's claim by order 4 October 2021 the claimant wrote to the Tribunal to state she was unable to attend the preliminary hearing listed for 4 October 2021 by reason of the fact she was attending hospital with her daughter. The Tribunal took this correspondence as an application for a reconsideration of the strike out application. The respondent was invited by email dated 8 October 2021 to provide a response to the reconsideration application. By 21 October 2021

there was no response from the respondent and it was determined that the claim by re-instated.

7. Regrettably the request inviting the respondent to provide observations as to the claimant's reconsideration application was non-compliant with rule 72 (1) of the 2013 Rules which requires a time limit to be provided for any response to the reconsideration application. Although the Tribunal considered the period was reasonable to receive a response, technically the request was flawed by failing to expressly set out a time limit for a response.
8. In fact, the respondent's solicitor with conduct of the case was out of the office until 25 October 2021 and his email out of office was active for this period. By the time the matter was re-instated on 21 October 2021 the respondent's solicitor had still not returned to the office. Once the respondent's solicitor did return, the respondent provided a detailed response (pages 37 to 45). In the circumstances a further reconsideration application was listed for today's date. The claimant failed to attend the hearing and has not provided any response to the respondent's letter dated 25 October 2021 or the written submission provided to her.
9. The Tribunal also made an unless order on 21 October 2021 requiring the claimant to provide details of her amended claim by 4 November 2021 to include the nature of the disability discrimination claim. The information was outstanding since 4 February 2021. The claimant has failed to comply with this order too.
10. The respondent has referred the Tribunal to the case of **TW White & Sons v White (UKEAT/0022/21)**. HHJ Talyer held that there is a mandatory requirement pursuant to rule 72 (1) of the 2013 Rules for an employment judge to determine whether there are reasonable prospects of a judgment being varied or revoked before seeking the other party's response and the views of the parties as to whether the matter can be determined without a hearing potentially giving any provisional view and deciding how the reconsideration application will be determined for the purposes of rule 72(2).
11. In the case of **Governing Body of St. Albans Girls School v Neary (2010) IRLR 124** where a claim had been struck out for failure to provide particulars of a claim, the Tribunal should apply the interests of justice test when considering to set aside an order. Further there should be consideration of the impact of the default upon the prospect of having a fair trial. In the case of **Denton (2014) EWCA Civ 906** a relief from sanctions case the Court of Appeal directed that the court should consider the seriousness and significance of the failure; why did the default occur; the efficient conduct of litigation and the efficient conduct of litigation.
Conclusions
12. The Tribunal's failure to provide a time limit to the respondent to respond to the claimant's application to reconsider the strike out of her claim was an error. In the circumstances the order re-instating the claim on this basis can not stand.
13. The present position is that the further information requested from the claimant about her claim remains outstanding since 4 February 2021. The claimant was given a further opportunity to provide this information in compliance with an

unless order by 4 November 2021. The claimant has failed to so comply. The claimant failed to attend today's hearing despite notice of the same and despite being provided with the written submission of the respondent and has failed to provide the Tribunal with any reason.

- 14.** The must be respect and adherence to the orders and rules of the Tribunal. Due to the lack of active pursuance of this claim, the Tribunal reasonably reaches the conclusion that the default by the claimant has been deliberate and the respondent is significantly disadvantaged since two years post issue of the claim, it is still unclear as to the claims ran by the claimant. It does not know what case it has to meet at trial. The claimant has less than 2 years service to bring an ordinary dismissal claim. The claimant has consistently failed to provide any basis for her discrimination claim. Discrimination claims are fact sensitive and it is imperative they are brought and pursued in a timely fashion. There is a significant lack of efficiency in the manner in which the claimant conducts this litigation.
- 15.** In all the circumstances and in the interests of justice the claimant's claim remains struck out. She has failed to actively pursue this claim and is in breach of the orders dated 4 February 2021 and 21 October 2021. There can be no prospect of this respondent having a fair trial if it is still unclear some two years after issue of claim, the case it has to meet at trial.

Employment Judge Wedderspoon

Sent to the parties on: 22nd April 2022