EMPLOYMENT TRIBUNALS

Claimant: Ms L Jepson

Respondent: Corner House Guest House

Heard at: Manchester (remotely, by CVP) **On:** 7 April 2020

Before: Employment Judge Whittaker
Mr J Flynn
Mr A Wells

REPRESENTATION:

Claimant: In person
Respondent: Mr Graham (Director/Shareholder)

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's application for an adjournment of the final hearing of her claims of disability discrimination is refused.

2. The claims of the claimant of disability discrimination are dismissed.

REASONS

1. There had been two preliminary hearings in respect of the claims of the claimant. The first of these was chaired by Employment Judge Slater on 16 December 2020. The claimant did not participate. However, Employment Judge Slater recognised that the claimant would need to be able to show that she was disabled contrary to section 6 of the Equality Act 2010, and she made standard orders for the claimant to prepare and file an impact statement in accordance with the language of section 6 of the Equality Act 2010, and she ordered the claimant to provide and exchange her medical records to support her claim that she was disabled. The claimant was ordered to provide both those pieces of information by 28 January 2021. The claimant did not provide a section 6 impact statement and neither did she provide any of her relevant medical records.

2. There was then a second preliminary hearing before Employment Judge Horne on 12 July 2021. A lengthy and very comprehensive written summary of that hearing was then subsequently sent to the parties. Notably, in the final paragraph (paragraph 28) Employment Judge Horne made it clear that he was satisfied that all the orders which he had made had been **explained to the parties**, including the claimant, who had participated in the hearing. Furthermore, Employment Judge Horne confirmed that all the orders **<u>must</u>** be complied with.

3. The claimant was given a second opportunity to provide a section 6 impact statement and to provide relevant medical records. The time was extended to 6 September 2021. The claimant has never provided a section 6 impact statement and neither has she exchanged or supplied any of her medical records. That includes today's hearing, which was a final hearing of the claims of the claimant. Furthermore, the claimant had not provided a witness statement and but she participated today with a witness who clearly intended to give oral evidence. The claimant had been ordered to exchange witness statements by 22 November 2021, but she had not done so. The claimant has also been ordered to provide a bundle of documents and Employment Judge Horne had carefully explained what that should include. The claimant told the Tribunal that she had sent a bundle yesterday, 6 April 2022. However, when the Tribunal looked at the documents which had been sent it was completely inadequate and, to be frank, was utterly incomprehensible as to how it dealt with the claims and issues which the Tribunal was charged with dealing with.

4. The first and obvious primary issue which the Tribunal would need to consider at the final hearing today was whether or not the claimant was disabled at the date of her dismissal in January 2020. The Tribunal pointed out to the claimant that it had no evidence available to it today to show that the claimant was disabled. The claimant sought to persuade the Tribunal that they should simply accept that the claimant was disabled because of the comments of certain medical practitioners (which in any event were not in front of the Tribunal). The Tribunal explained that whether someone was disabled is a legal decision and not a decision to be decided by a medical practitioner. The Tribunal looked carefully at the written summary which had been sent out by Employment Judge Slater and within that written summary was a detailed description of the issues which the claimant should address when she was preparing and submitting her impact statement addressing all the wording of section 6 of the Equality Act 2010. The Tribunal was satisfied therefore that the claimant had been given detailed information and furthermore she had been sent a link to the statutory Guidance which would have assisted the claimant in clearly understanding the words which are used in section 6 of the Equality Act 2010 and assist her in understanding the written particulars which were required in her impact statement.

5. It weas clear therefore to the Tribunal that if the matter went ahead today as a final hearing the claims of the claimant would be dismissed because she would not be able to prove, in accordance with the burden of proof, that she was a disabled person at the material time. The claimant was therefore given an opportunity to apply for an adjournment. The claimant was warned that if she did so that the respondent may apply for a preparation time order. The claimant applied for an adjournment.

6. The claimant said that she had been struggling as a result of brain surgery but she presented to the Tribunal as someone who was capably and quickly understanding what was being said to her. Furthermore, there was no evidence whatsoever to suggest that the claimant had at any time contacted the Employment

Tribunal to ask for further clarification or explanations of the detailed and comprehensive written summary which had been prepared and sent out by Employment Judge Horne following the hearing in July 2021. Even if the claimant had not understood it, and there was no evidence that she had not, then the claimant appeared to have taken no steps whatsoever to ask friends or family to help her understand it. Furthermore, there was no evidence at all that she had sought any assistance from the Employment Tribunal. The claimant accepted that she must not have read the written summary sufficiently carefully and it now appeared to her that she had not properly understood it. However, the unanimous view of the Tribunal was that there was an obvious and overriding obligation on the claimant to comply with the Case Management Orders which had been made, not once but twice. The claimant had taken no steps to do so.

7. The respondent, Mr Graham, objected to the application for an adjournment. Quite understandably he said that after over two years since the claim was lodged he wanted the matters to be concluded today. He said that he was genuinely affected by the stress of it all. He said that every time there was a hearing that he had to take time off work and that in order to be fully paid he had had to use up his holidays on every single occasion. Clearly participating in Employment Tribunal proceedings is not a period of rest and relaxation. Holidays are defined as a period of rest and relaxation by the Working Time Directive.

8. The Tribunal retired to consider the application to adjourn the final hearing which was due to take place today. It was the unanimous decision of the Tribunal that the application should be refused. The claimant had, in the opinion of the Tribunal, been given every opportunity to comply with the detailed Case Management Orders which had been made at not one but two separate preliminary hearings. It was now well over two years since the claim of the claimant was lodged. If the case was adjourned then it would take up further valuable resources within the Employment Tribunal system. The Tribunal did not consider that it was appropriate that another case should be adjourned or postponed in order to allow the claimant a further opportunity to comply with orders which she had already been given a significant period of time to comply with in any event. Employment Judge Horne had specifically confirmed in his written summary of his preliminary hearing that all the orders which he had made had been explained to the parties, including the claimant, and that all orders must be complied with. In the opinion of the Tribunal it was an overwhelming obligation on the part of the claimant that if, as she suggested, she did not understand what had been said she should have sought further explanations and clarification. There was no evidence that she had done that at all.

9. Furthermore, the Tribunal was not satisfied that if the case was adjourned that there was any evidence to suggest that the claimant would now properly comply with Case Management Orders in any event. After all, Employment Judge Horne had carefully explained to the claimant what was required in July 2021 and yet by April 2022 those orders had still not been complied with. Indeed it appeared that insofar as the issue of disability was concerned that the claimant had made absolutely no effort to prepare even a draft of a section 6 impact statement, and neither had she made any attempt to exchange and provide copies of her relevant medical records.

10. The Tribunal carefully considered the provisions of the overriding objective. That included an obligation to consider the position of both parties, not just the position of the claimant. The Tribunal fully understood that the obvious impact of refusing the

adjournment would be that the claimant's claims would be dismissed in the absence of any evidence that she was disabled at the relevant material time. The Tribunal considered that impact. The Tribunal equally, however, considered the impact on the respondent who had been involved in these proceedings now for over two years. The Tribunal easily understood what the respondent said when he said that being involved in court proceedings was stressful. That was perfectly understood. The respondent did not have legal advice or legal assistance. He was attempting to deal with the claims of the claimant unrepresented, and of course he is fully entitled to do that.

11. The Tribunal therefore considered the obvious impact on the claimant but also the impact on the respondent. It took into account the fact that the claimant had been given significant periods of time in which to comply with Case Management Orders but had not done so. There was no evidence that she had sought clarification from anyone at any time. The case was now well over two years old. The Tribunal considered, therefore, the balance of prejudice in all the circumstances and decided in favour of the respondent, and that the application for adjournment should be refused.

12. The Tribunal therefore announced its decision to the parties. It then went on to announce to the parties that the claims of the claimant would now be dismissed because the Tribunal did not have in front of it any evidence at all to show that the claimant was disabled in accordance with the provisions of section 6 of the Equality Act 2010 when she was dismissed in January 2020. In the absence of any such evidence then the only available conclusion of the Tribunal was that the claims of the claimant must be dismissed because she could not show that she was disabled and was not therefore entitled to bring claims of disability discrimination.

13. The unanimous decision of the Tribunal therefore was that the claims of the claimant should be dismissed.

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Employment Judge Whittaker

Date: 14th April 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 April 2022

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