



EMPLOYMENT TRIBUNALS

Claimant: Mr Holland

Respondent: A&A Coach Travel Limited

JUDGMENT

1. The Tribunal (on its own initiative) decided that it would consider whether or not to strike out the respondent's response at the preliminary hearing on 12 May 2022, on the grounds that the respondent had failed to comply with the Tribunal's orders regarding submission of an amended response (as set out in Employment Judge Cox's letter of 8 April 2022).
2. The Tribunal concluded at the preliminary hearing on 12 May 2022 (having considered representations from both parties) that it would not be appropriate to strike out the respondent's response. The Tribunal has instead issued an Unless Order relating to the respondent's amended response (please refer to the separate documents containing the Unless Order and the Case Management summary from the preliminary hearing on 12 May 2022).

REASONS

3. The Tribunal must consider a number of factors in relation to a strike out application. In particular:
 - 3.1. strike out is an order given only in exceptional circumstances;
 - 3.2. the Tribunal should consider whether other case management directions would be appropriate instead of striking out the response.
4. The Tribunal concluded that it is not appropriate to strike out the response to this claim. The key reasons for that decision included:
 - 4.1. Employment Judge Jones at a preliminary hearing on 5 November 2021 ordered that the respondent must provide its amended response containing full details of the respondent's defence to the claimant's factual allegations by 3 December 2021. The respondent failed to provide its amended

response, stating that it had not received sufficient medical information regarding the claimant's disability status;

- 4.2. Employment Judge Cox at a preliminary hearing on 11 March 2022 extended the time limit for the respondent to provide its amended response to 4 April 2022. The respondent again failed to provide its amended response before that deadline;
- 4.3. Mr Fairchild (respondent's representative) wrote to the Tribunal on 7 April 2022 (i.e. after the extended deadline), stating that the respondent had paid the deposit ordered by Judge Cox to continue to dispute whether the claimant was disabled (for Equality Act purposes) and was awaiting further medical information regarding the claimant's disability status;
- 4.4. the claimant applied to the Tribunal for an unless order relating to the respondent's failure to submit an amended response, via his solicitor's email of 8 April 2022;
- 4.5. Employment Judge Cox wrote to the parties on 8 April 2022, stating that:
 - 4.5.1. the respondent had not paid the deposit that she had ordered to continue with its contention that the claimant was not disabled at the relevant time, which meant that the claimant's disability status was no longer an issue; and
 - 4.5.2. the claimant's application for an Unless Order (along with the potential strike out of the respondent's response) would be considered at the preliminary hearing which had already been arranged for 12 May 2022 to deal with other matters;
- 4.6. Mr Fairchild informed the Tribunal that he had prepared an amended response and sent it to the respondent for their review. However, he was unable to explain why the respondent had not submitted its amended response to the Tribunal by the time of the preliminary hearing on 12 May 2022. He said that there may have been some confusion because he thought that the respondent was still awaiting medical documents regarding the claimant's disability;
- 4.7. Employment Judge Deeley asked Mr Fairchild when the respondent would be able to submit its amended response and he confirmed that he would be able to submit it shortly after the hearing;
- 4.8. Mr Naughton (claimant's Counsel) stated that the claimant had been prejudiced by the respondent's failure to submit an amended response and highlighted the respondent's continued non-compliance with orders, as set out in details in his skeleton argument.

- 4.9. Employment Judge Deeley concluded that it was not appropriate to strike out the respondent's response because:
- 4.9.1. the preliminary hearing was arranged today to consider other issues relating to the claim and to make further case management orders;
 - 4.9.2. the additional delay suffered by the claimant was therefore limited. The Judge noted that disclosure of documents had not yet taken place and the parties were still at an early stage in their preparations for hearing; and
 - 4.9.3. the Judge concluded that an Unless Order would be an appropriate direction in these circumstances.

Employment Judge Deeley

Date: 12 May 2022