



EMPLOYMENT TRIBUNALS

Claimant: Mr J Wells

Respondent: Oakdene Care Home Ltd

Heard at: Liverpool **On: 14 June 2022**

Before: Employment Judge Liz Ord

Representatives:

Claimant: Nobody in attendance

Respondent: Louise Davies (PA to director of respondent company)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The decision of the tribunal dated 8 February 2022 to strike out the claimant's complaints is confirmed.

REASONS

Background

1. At a Preliminary Hearing on 8 February 2022, the tribunal struck out the claimant's complaint on the basis he had not complied with an order of the tribunal and had not actively pursued his case.
2. The claimant, who has special educational needs and is represented by his father, Ivor Wells, presented his claim in September 2020, which appeared to be a complaint of unfair dismissal. Thereafter, he failed to comply with case management orders and to co-operated with the respondent.
3. This led the tribunal, on the direction of Employment Judge Allen, to write to the parties on 29 July 2021 saying he was considering striking out the claim due to non-compliance with the tribunal order of 5 March 2021 and because the claim had not been actively pursued. The claimant was given an opportunity to respond in writing or request a hearing, by 5 August 2021. The tribunal wrote again in similar terms on 13 August 2021, giving the claimant until 20 August 2021 to respond. Ivor Wells requested a hearing on the

claimant's behalf.

4. The parties were notified of the hearing date to consider strike out, which was 13 September 2021, and which was to be held by remote video platform. However, the hearing was postponed at the request of Ivor Wells, who said it clashed with another hearing he was involved in.
5. The hearing was re-listed for 10.00am on 15 December 2021, again by remote video platform. Nobody connected on behalf of the claimant. The tribunal clerk attempted unsuccessfully to speak to Ivor Wells by telephone. She e-mailed him at 10.05am to ask whether he would be joining the hearing. At 10.07am he e-mailed the tribunal saying he had Covid symptoms and was self isolating, adding "I am an OAP with no PC at my home." There was no explanation of what, if any, efforts he had made to log on with the device he was using to send e-mails. Nonetheless, the tribunal adjourned the hearing and sent Ivor Wells a "Sources of Advice" leaflet with details of place where he might get legal assistance.
6. The adjourned hearing came before me on 8 February 2022, and was once again by remote video platform. Nobody attended on behalf of the claimant. However, the claimant's sister dialled in to simply pass on a message from Ivor Wells that he had a hospital appointment for a knee infection and would not be attending the hearing. There was no medical documentation to support this. As there had been no progression of the case, and due to there having already been a postponement and a subsequent adjournment of the Preliminary Hearing, I struck out the claim.
7. On 10 February 2022 Ivor Wells wrote to the tribunal asking for a reconsideration. The reasons given were that he was in hospital on 8 February 2022 with an inflamed and swollen left knee due to suspected infected arthritis. He said he was 71 years old and had been in hospital twice with pneumonia. It was not clear when he had had pneumonia and it was possible from the reading of his e-mail that it may have been earlier on in the proceedings.
8. Considering Ivor Well's age and health issues, and the claimant's vulnerability, I considered that there was a reasonable prospect that I would vary or revoke my original decision. Therefore, I sent notice to the parties giving them an opportunity to make representations.
9. At my request, Ivor Wells sent the tribunal proof of his hospital attendance on the day of the last hearing. He also made various irrelevant comments about matters seemingly related to other cases/problems he had with various individuals/institutions, but nothing else of relevance to this case.
10. The respondent sent in representations essentially saying:
 - 10.1. Since the claim was brought to the tribunal, there had been no compliance with directions.
 - 10.2. At every hearing, Mr Ivor Wells had a reason not to attend.
 - 10.3. There was no reason why the claimant could not have pursued his own claim. During his employment with the respondent, he demonstrated that

he could make decisions, complete written tasks, understand instructions provided, and follow instructions.

- 10.4. The respondent tried to follow the dispute resolution pathway, but this was truncated by ACAS due to lack of involvement and/or instructions from the claimant/Ivor Wells.
- 10.5. Ivor Wells repeatedly inundated both the respondent and the tribunal with conflicting e-mails about unrelated matters that had no bearing on this case, and in one instance stated “my reasons for this Review do not involve Oak Dean”. It appeared that Ivor Wells was pursuing some kind of crusade against tribunals that the respondent was bearing the brunt of.
- 10.6. The respondent felt at this time it was no longer possible to have a fair hearing in respect of this claim.
11. On the basis of the representations, the matter was listed for hearing by remote video platform for 10.00am today. Nobody attended on behalf of the claimant. The tribunal clerk attempted to contact Ivor Wells by telephone, but it went straight to voicemail, and so she e-mailed him. In the meantime, the hearing was opened and adjourned for 15 minutes.
12. At 10.16am the tribunal received an e-mail from Amy Wells, Ivor Well’s daughter, saying:

“My dad, Ivor Wells, has a meeting with some one there today. He has asked me to inform you he will be unable to attend. He is currently broken down on the M6 awaiting recovery. He sends his apologies.”
13. I considered this email and decided to proceed with the hearing in his absence. The reasons were :1) this was the fourth attempt to hold a hearing, and on each occasion Mr Wells had failed to attend; and 2) he had clearly been notified of the date and time of the hearing and that it was to be remote, and had not objected to this. No reason was given as to why he was driving on the M6.
14. After the hearing at concluded, the tribunal received an e-mail at 10.51am from Ivor Wells’ brother, John Wells. The most pertinent part read:
15. “Ivor has told me that the ETS phone lines are not being answered, and has asked me to send you this email as soon as I can. He is currently on his way back to Manchester from the North West, and is experiencing trouble with his motor vehicle. His engine keeps cutting out, and he has placed a Roadside Breakdown call-out to the RAC, at about 7.20 this morning.”

Law

16. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides a single ground for reconsideration, namely where it is necessary in the interests of justice. On reconsideration, the original decision may be confirmed, varied or revoked and if revoked, it may be taken again.
17. The “interests of justice” ground relates to the interests of both sides. In

Outasight VB Ltd v Brown 2015 ICR D11, EAT, Her Honour Judge Eady QC referred to exercising the discretion judicially, 'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'.

18. Reconsiderations are therefore best seen as limited exceptions to the general rule that employment tribunal decisions should not be reopened and relitigated. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation.
19. The procedure for reconsideration under rule 72(1) is for the Employment Judge who heard the case to consider any application made and decide whether there are reasonable prospects of the original decision being varied or revoked. If the judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise rules 72(1) and (2) set out the procedure for determining the application on notice to the parties.

Conclusion

20. I have considered the difficulties the claimant might have had in progressing the case himself, given his special needs. I have taken account of the problems Ivor Wells might have encountered due to his health and age, and that he might have had limited access to a computer. Nonetheless, there has been no objection to hearings proceeding by remote video platform and Ivor Wells has sent many e-mails from an electronic device of some sort.
21. The tribunal has given the claimant/Ivor Wells many chances to progress this case and has sent information on where to possibly get help. Yet time and time again there has been a failure to comply with the tribunal's directions and to attend hearings. Whilst Ivor Wells has explained his absences from the various hearings, he has given no good reason for not dealing with the tribunal's case management orders.
22. There is a limit to the level of delay the tribunal should tolerate, and that limit has been reached. The interests of the respondent must also be considered as well as those of the claimant. It has now been 21 months since the claim was presented and it is still at its early stages because of the claimant's/Ivor Well's lack of progress.
23. Taking account of both the respondent's and claimant's representations, and the overriding objective to deal with cases justly and fairly, I conclude that the interests of justice dictate that this claim should remain struck out. Therefore, in accordance with rule 70, the original decision is confirmed.

Employment Judge Liz Ord
Date 14 June 2022

JUDGMENT SENT TO THE PARTIES ON
17 June 2022

FOR THE TRIBUNAL OFFICE