Case Number: 3322788/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss S Messi	v	(1) Takeda UK Limited (2) Ms Miroslawa Kucinska

Heard at: Watford, by video (Cloud Video Platform) **On**: 13 July 2022

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant: Not present or represented
For the respondent: Mr P Halliday, of counsel

JUDGMENT

The claimant's claims made in these proceedings are dismissed.

REASONS

The claims made in these proceedings

1 In these proceedings, the claimant claimed (by ticking the relevant boxes for these things in box 8.1 on page 6 of the ET1 claim form) that she was discriminated against because of race, disability and sex, and that she had been dismissed unfairly. She also ticked the box on the same page to show that she was "making another type of claim which the Employment Tribunal can deal with", and stated below it on the same page that this was because she "Raised concerns of discrimination in the workplace and was later dismissed".

2 The details of the claim were stated in box 8.2 of the claim form, and were these (and these only; there was no additional document sent with the claim form, so the following words were a complete statement of the claimant's claims):

> "I am making a claim for race discrimination. I am a black African and I was treated unfairly because of my race and disability.
> In comparison to others colleagues who are white and polish and permanent I was not provided extra support and reasonable adjustments after telling my manager I need extra support and reasonable adjustments to my disability.
> My employer Nicholas Howard who placed me there are also viciously liable for the discrimination, victimisation and harassment I was subjected to.
> I was denied training in comparison to another colleague who is white.
> I also got paid less for doing the same job as my comparator who is white.
> I was unfairly dismissed due to poor performance after just being in the job for 3 weeks, refused to place me into another team, denied me extra support when I raised concerns I needed help. She constantly micro managed me on a daily basis in comparison to others and I was not provided a laptop like others in the team".

3 The claim form was presented on 10 November 2021. The date for the ending of the claimant's employment was stated on it to be 9 November 2021. The start date of the claimant's employment was given by the claimant as 11 October 2021. Paragraph 3 of the grounds of resistance (which were filed on behalf of both respondents) showed that the respondents agreed that those were the dates of the claimant's employment. The grounds of resistance were dated 14 February 2022. I noted in particular paragraph 13, which was in these terms:

> "Takeda Poland engaged the Claimant's services as a temporary Accounts Payable Administrator through Nicholas Howard Limited in order to assist Takeda Poland with a backlog of work. This involved posting purchase invoices in accordance with accounting standards, monitoring payment deadlines and controlling the execution of payments and dealing with internal and external queries in accordance with agreed levels of service. Takeda Poland agreed with the Claimant that she would work remotely from her home at all times and would use her own laptop. It is common practice for contractors to use their own laptops during an assignment and the Claimant did not raise this issue with the Second Respondent at any stage."

4 The respondents denied the factual assertions in the claim form, and pointed out that the claimant's own account was (and the respondents accepted this) employed by neither respondent: rather, she was employed by an agency called (by the claimant) "Nicholas Howard". It appeared from the documents which were in the bundle for the hearing of 13 July 2022 as well as from the paragraph from the grounds of resistance which I have set out in the preceding paragraph above that that was a reference to a company by the name of Nicholas Howard Limited.

5 That did not preclude the claimant from making a claim here, as a contract worker, but it did preclude the claimant from claiming against either of the respondents that she had been dismissed as an employee.

6 On 17 January 2022, the tribunal sent the claimant a letter stating that an Employment Judge was proposing to strike out the claim of unfair dismissal made (implicitly) under section 108 of the Employment Rights Act 1996 ("ERA 1996") because the claimant had been employed by the respondents for less than 2 years, and giving the claimant until 24 January 2022 to say why that claim should not be struck out.

7 On 19 January 2022, in an email that was not sent to the respondents and was not at any time subsequently copied to them by the tribunal, the claimant wrote this:

> "Good Evening ET
> I am asking for the tribunal to reconsider its decision because
>
> 1. this is an interim relief application and was unfairly dismissed for making protected disclosure
> 2. The ET and judge need to examine the particulars of my claims and need to identify which protected disclosures I made and when and to whom and as such striking out my claim without hearing it first will deny me of [sic] natural justice
> 3. So I am asking for a reconsideration of its decision
>
> I am hoping to hear from you soon
> S"

8 On 10 March 2022 the tribunal sent the parties a notice of a preliminary hearing by video on 30 May 2022 at 10:00. The notice started (i.e. before stating that date and the details of the hearing) with these words:

> "Employment Judge Quill directs that I write as follows:
>
> *The claimant's email of 19th January 2022 is noted. There will be a hearing which considers her objections to striking out the unfair dismissal claim. That hearing will be used to decide whether the claimants original claim form did contain a complaint that the dismissal was because she made a protected disclosure and, if necessary, will consider any request to amend the claim to add such a complaint. In the meantime, the respondent must proceed as per the letter of 17th January and file a response.*
>
> *The claim form did not include an application for interim relief. By 24th March 2022, the claimant must write to the Tribunal and the respondent*

with full details of the alleged protected disclosures including all the information she mentions in paragraph 2 of her 19th January email."

9 In an email of 16 May 2022, sent to the tribunal at 12:26, the respondents' solicitors (DAC Beachcroft LLP) among other things said this:

"Information required for Preliminary Hearing

The Claimant was ordered in the notice of hearing dated 10 March 2022 to provide details of the alleged protected disclosures upon which she relies by 24 March 2022. Neither the Tribunal or DAC Beachcroft LLP have received any such information from the Claimant. For the avoidance of doubt, the information which the Claimant sent to us and to the Tribunal on 6 May 2022 appears to relate to the Respondents' strike out applications and does not identify or set out any alleged protected disclosures. We have previously written to the Tribunal about this issue (8 April, 20 April and 28 April 2022) but have not received any response and are very concerned about the prejudice that the Respondents are now suffering in relation to their ability to prepare for the PH on 30 May 2022. We therefore reiterate our request for the following:

1. an order that the Claimant provide details of her alleged protected disclosures to DAC Beachcroft LLP and the Tribunal by return; and

2. that the Tribunal send us copies of the correspondence between the Claimant and the Tribunal about her alleged claim for automatic unfair dismissal which is referred to in the notice of hearing dated 10 March 2022. In particular, we need to see the email of 19 January 2022 which is referred to in the notice of hearing. (We originally requested this information from the Tribunal in our letter of 18 March 2022)."

10 The latter email was never copied and sent to the respondents. I have set out its terms in paragraph 7 above. The claimant's information of 6 May 2022 was in two emails, the first of which was in these terms (all spelling errors being in the original; the same is true of any other quotation in this document):

'Good morning ET
As I mentioned to the ET and the respondents I have already disclosed all evidence in regards to my claims against the respondents.
This was when Miroslawa called me to get rid of me with no procedure followed "alledging poor performance."
I also provided my comparator name who is white who was not terminated when she admitted that instead they transfer her to another team. (also already disclosed this)

> As I mentioned my claims owed to be heard for the sake of the public interest and it is a human right to be given a fair hearing and a judge owed to examine all evidence and know the claims before saying it has no prospect of winning.
> I am also applying for an unless order for disclosure because the respondents and their representatives are deliberately ommitting evidence to disadvantage myself of getting justice.
> I hope to hear from you soon
> S'

11 The second email of 6 May 2022 from the claimant containing the information to which DAC Beachcroft LLP responded on 16 May 2022 in their email set out in part in paragraph 9 above was in these terms (with the name blanked out and the capitals "VP" inserted; there was in fact no justification for that name to be blanked out, since the General Data Protection Regulations do not apply to the conduct of litigation):

> "See also from my comparator VP who was treated different because she is white and move to a different team with more training. Also see my contract of employment that was breached when I was terminated with no procedure or policies followed as per acas code.
> S"

12 The claimant responded with alacrity to the email from DAC Beachcroft LLP sent at 12:26 on 16 May 2022 which I have set out in part in paragraph 9 above: at 12:53 on that day, the claimant wrote this by email:

> "Good Aternoon ET
> As I mentioned on several occasions I sent everything to the respondent representative (Reza) in cc who was looking in to this already and if this was not disclosed this is not my fault.
> As I also mentioned I will robustly defend all applications to strike out my claims expecially because the judge owed to determine the claims first and all evidence before striked out in the interest of the public interest.
> S"

13 DAC Beachcroft LLP responded to that email at 14:01 on the same day:

> "We do not wish to take up the time of the Tribunal with unnecessary correspondence but must reiterate that no information has been received from the Claimant in compliance with the order made on 10 March 2022 by either the Tribunal or DAC Beachcroft LLP. The Claimant previously stated that she had sent this information directly to the Second Respondent but, as we have already confirmed in previous correspondence on 28 April 2022, no such information was received by the Second Respondent. The Claimant has now stated that she sent the information to Reza Tavassoli. However, Mr Tavassoli left the First

> Respondent on 31 December 2021 over two months before the Tribunal made the order for the Claimant to provide the information about her alleged protected disclosures. Further, DAC Beachcroft LLP has been on the record as the Respondents' representatives since 14 February 2022.
>
> To the extent the Claimant is suggesting that she has previously sent information directly to Mr Tavassoli that would fully satisfy the Tribunal's order (including setting out the alleged protected disclosures upon which she relies), she should send that information to us and the Tribunal by return email so that it can be considered. However, at the current time, it remains the case that neither the Tribunal, DAC Beachcroft LLP or the Respondents have seen this information so we still consider that it is necessary for this matter to be passed to an Employment Judge as a matter of urgency given that the date of the PH is fast approaching."

14 Three minutes later (i.e. at 14:04 on 16 May 2022), the claimant responded by email thus:

> "Dear ET
> I have already responded to this and I will again do so at the hearing on 30th may
> S"

15 On 23 May 2022, the tribunal sent the claimant a letter in the following terms:

> "EJ Quill has noted the correspondence including the Claimant's emails of 16 May 2022 at 14:04 and 12:53. The judge's orders and comments are as follows:
>
> There is no evidence on the tribunal file that the Claimant has complied with the orders of 10 March 2022 by sending the relevant information to the tribunal either by 24 March 2022 or at all. The Respondent's representative is stating that they also have no such evidence. The Claimant is reminded that (a) she must comply with all orders of the tribunal and (b) the tribunal rules require her to act reasonably and to co-operate with the respondent in connection with the progress of the litigation. See Rule 2 in particular.
> https://www.gov.uk/government/publications/employment-tribunal-procedure-rules
>
> Failure to comply with orders and/or with the rules may lead to the claim being struck out. See Rule 37.
>
> If the Claimant believes she has already complied with the orders of 10 March, then she must send a copy of her original email/letter to the tribunal and the Respondent's representative immediately. If she has not complied with those orders, she will be be required to provide a full

> explanation of her reasons at the hearing on 30 May 2022. As the Claimant is aware, the Respondent is asking the tribunal to strike out the claim at that hearing."

16 That letter was sent by email at 10:24 on 23 May 2022. Six minutes later, the claimant responded in an email which had no text in its body, but had this in its subject line:

> "3322788/2021- messi v others- will deal with this accordingly on 30.5.3022 as set out attached and demonstrate that I am not vexatious and I have acted reasonable to date and will provide reasons why these claims shouldn't be strike out".

17 On the following day, 24 May 2022, DAC Beachcroft LLP asked the claimant for "further and better particulars of your claim", setting out the requests in a table which had six sections, one for each of the claimant's heads of claim. The table contained some clear and apt questions to which the claimant could, if she was serious about her case, have given answers. The email enclosing the table was at page 68A of the bundle created for the hearing of 13 July 2022 and the table itself was at pages 68B-68D. The table asked the claimant to "confirm" (the word should have been "state", in fact, since the claimant had not so far stated anything so there was nothing to "confirm") a series of things which it was plainly reasonable to ask the claimant to state. By way of example the first section of the table concerned the claimant's claim of disability discrimination, and it was the respondents' case that the claimant had at no time told the respondent that she had a disability. The questions which were asked DAC Beachcroft LLP at page 68B in that regard were to say:

> "• what disability (or disabilities) you rely upon for the purposes of your claim under the Equality Act 2010;
> • when and how you allege the Respondents were made aware (or should reasonably have been aware) that you had this disability (or disabilities);
> • what acts of less favourable treatment you allege you have been subjected to;
> • when these acts of alleged less favourable treatment took place;
> • who treated you less favourably."

18 The claimant did not reply in any way to the requests in the table at pages 68B-68D.

19 On 27 May 2022, the tribunal wrote to the parties, informing them that the hearing of 30 May 2022 was not going to go ahead because there were too many cases in the list and it was likely that the case would not have been heard on that day. The parties were asked to give their dates to avoid by 10 June 2022. The respondent did that, but the claimant did not. The case was then relisted with commendable speed by a notice in a letter dated 15 June 2022.

The hearing was stated in that letter to be taking place now on 13 July 2022. The letter was sent by email to the parties. It ended with these words.

> "Unless there are exceptional circumstances, no application for a postponement will be granted. Any such application must be in writing.
>
> You must comply with any case management order(s) issued in relation to this case.
>
> No further notice of hearing will be issued."

20 The letter also included these words (all bold and underlining being in the original; the reference to "CVP" is to the Cloud Video Platform, which is the current platform for video hearings in the South East Region):

> "**You must do a test as soon as possible to ensure that you can access CVP without problems. You can do this now. Please do not wait until the day of the hearing.**
>
> If you have a computer it is strongly advised that you use Edge Chromium, Google Chrome or Firefox as your browser to access CVP. If you use another browser, it may not work properly.
>
> **Use the following CVP Test link – (use "test_call" as conference alias)**
> https://join.meet.video.justice.gov.uk/default/#/?conference=test_call
> (Please note that this test link will **not** work if you are using the 'Pexip Infinity Connect' app)
>
> **If you are unable to complete the test connection, call the helpline on 0330 8089405 without delay**."

21 On 5 July 2022, at 15:47, the claimant sent the tribunal an email in the following terms:

> "Good Afternoon ET
> Sorry for the late reply.
> Dates to advoid are
> 11.07.22-31.08.2022
> Free from September 2022, October 2022 and November 2022
> 19.12.2022-05.1.2023
> S

22 The solicitor at DAC Beachcroft LLP acting for the respondents (Ms Kate Galloway) then at 09:13 on the next day, 6 July 2022, wrote to the claimant, copying the email to the tribunal:

> "Dear Miss Messi
>
> The Tribunal has re-listed the PH for 10 am on 13 July 2022. I attach a further copy of the email from the Tribunal with the notice of the PH that was sent to the parties on 15 June 2022.
>
> Kind regards [etc]".

23 Seven minutes later, the claimant wrote this to the tribunal:

> "Good morning ET
> I am requesting permission to have someone attend the hearing and to Also confirm they will be an interpreter as I requested
> Kind Regards
> Sandra Messi".

24 At 13:10 on that day, Ms Galloway responded:

> "Dear Miss Messi
>
> We are not entirely clear what your email means but we understand you to be saying that you will attend the PH on 13 July provided that you can also have a friend present to take notes. We do not think there is any issue with you asking a friend to attend (via CVP) to take notes especially given that it is a substantive (open) Preliminary Hearing. We therefore assume that you will be attending the PH."

25 I pause to say that there was no indication in the tribunal's file that the claimant had asked for an interpreter. In any event, the claimant simply replied to Ms Galloway's email set out in the preceding paragraph above in an email sent two minutes later:

> "Dear ET
> Kindly update me on this
> S"

26 The tribunal then on 12 July 2022 at 15:11 sent the parties an email giving them a link by means of which the hearing of the following day was to be joined.

27 At 9:30 am on 13 July 2022 the hearing clerk informed me that she had checked the tribunal's inbox to see whether there were any emails which had been sent to the tribunal that morning, and she said that none had been received.

28 The claimant was not present at the time when the hearing should have started. At 10:02 I started the hearing. Mr Halliday attended for the respondents, and the second respondent was present in person.

29 After discussing the case and the case law with Mr Halliday for 20 minutes, I adjourned the hearing for 10 minutes to read a case to which he referred me concerning the application of what is now rule 47 of the Employment Tribunals Rules of Procedure 2013 ("the 2013 Rules"). That case was *Roberts v Skelmersdale College* [2003] ICR 1127. Rule 47 provides:

> "If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

30 Having read the material part of the judgment of Mummery LJ (with whose judgment Jonathan Parker and Scott Baker LJJ agreed), I resumed the hearing. The claimant was still not present. After discussing the matter further with Mr Halliday, and referring myself and him to paragraphs PI[774]-[782] of *Harvey on Industrial Relations and Employment Law*, I considered whether to ask the clerk to call the claimant on the telephone, as *Nyathi v Secretary of State for Justice* UKEAT/0229/17/JOJ required me to (i.e. to consider whether to ask the clerk to call the claimant on the telephone).

31 However, I concluded that there would be no point in doing so, as the claimant had had ample opportunity to attend via CVP and she had (as far as I was aware) not contacted the tribunal in any way to say that she would not be able to do so.

32 In addition, the claimant had said that she would not be able to attend the hearing of 13 July 2022 but that she would procure the attendance of someone else to attend on her behalf. In fact, I doubted that she would be unable to attend, as the hearing was taking place by CVP and the claimant would be able to attend from most places in the world. In addition, as can be seen from what I say in paragraphs 2 and 3 above, it was evident that the claimant had her own laptop computer via which she should have been able to attend the hearing.

33 In all of the above circumstances, I concluded that

33.1 the claimant was not in reality pressing her claims;

33.2 she had been warned about the possibility of them being struck out because she had failed to comply with the tribunal's order of 10 March 2022 which I have set out in paragraph 8 above; and

33.3 it would be in the interests of justice for all of the claimant's claims to be dismissed, with scope for her to apply for a reconsideration of my judgment dismissing her claims if she had good reason to do so.

34 I announced my decision to dismiss the claims and ended the hearing at 11:02.

35 At 13:41 on that day, I was forwarded an email from the claimant to the tribunal in response to the email of 12 July 2022 to which I refer in paragraph 26 above. That email from the claimant was sent at 09:53 that morning, i.e. 13 July 2022 and before the start of the hearing of that day. It was not copied to the respondent. It was in these terms (alone):

> "Hi
> Not able to join on my phone".

36 If the claimant had been serious about attending the hearing, then she could, and would, have called the tribunal's staff, using the telephone that she plainly was using, to do so. She would have then ensured that the staff were made aware that she was having trouble joining and needed assistance to do so. I would then also have been informed about her inability to attend the hearing.

37 I therefore concluded that I should not reconsider my decision to dismiss the claims and to let my decision made at 11:02 stand, on the basis that if the claimant had had genuinely good reason for not attending the hearing of 13 July 2022, then she could apply under rule 71 of the 2013 Rules for a reconsideration of my above judgment.

38 I also concluded that the questions asked by DAC Beachcroft LLP in the table on pages 68B-68D of the bundle for that hearing included those which the order of EJ Quill of 10 March 2022 set out in paragraph 8 above asked and asked a series of further apt ones, all of which I concluded should be answered by the claimant.

39 Therefore, if the claimant wishes to press her claims then she can apply for a reconsideration of my judgment dismissing those claims. However, unless she

39.1 explains in the application for reconsideration (1) what kind of efforts she made to attend the hearing of 13 July 2022, and (2) why she had on 6 July 2022 said that she could not attend the hearing but then on 13 July 2022 was able (subject to her claimed technical difficulties) to attend the hearing, and

39.2 provides answers to the respondents to the questions asked in the table at pages 68B-68D of the bundle put before me on 13 July 2022,

her application for reconsideration will be likely to have no chance of success and therefore will be liable to be dismissed.

40 If, however, the claimant does those things then I will be minded to revoke my above judgment and therefore to permit the claims to continue. I will, however, comply with the requirements of rule 72 of the 2013 Rules if and when the claimant applies for a reconsideration of my above judgment.

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Employment Judge Hyams

Date: 14 July 2022

JUDGMENT SENT TO THE PARTIES ON

25 July 2022

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FOR THE TRIBUNAL OFFICE