



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 4/8/2022

Claimant: MS S DUHLOW

Respondent: IMPERIAL COLLEGE HEALTHCARE NHS TRUST

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Mr O'Keefe (Counsel)

JUDGMENT

Paragraphs 12.3 to 12.6 inclusive and paragraphs 13.1 to 13.6 inclusive of the Particulars of Claim and the whole of the direct religious discrimination claim and the relevant part of the victimisation claim are struck out, so that only claims going forward to trial will be (i) the unfair dismissal claim and (ii) the victimisation claim (limited to the allegation that the Claimant was dismissed because she had brought the ET proceedings 2202409/2019 and/or because the Respondent's managers believed she may appeal the judgment sent to the parties on 24 May 2021 in those proceedings).

REASONS

1. The Claimant presented an ET1 on 20/10/21 with POC containing vague allegations of victimisation and direct religion/belief discrimination.
2. The Respondent in its GOR dated 3/3/22 in paragraphs 26, 27, 32, 36, 37 and 39 complained about this and asked for further particulars ("FPs") from the Claimant, which she ignored.
3. In preparation for a PH on 16/6/22 the Respondent prepared and served on the Claimant an agenda and a draft list of issues, again flagging and requesting the FPs which were required.
4. The Claimant did not provide the FPs nor did she attend the PH on 16/6/22 nor did she respond to attempts by the E Judge and Tribunal staff to contact her on the day.
5. I find on a balance of probabilities that, as she claims, the Claimant was suffering from a temporary stomach-ache on 16/6/22 and that she ran out of electricity in her home and that there was a delay until later that day in her recharging her home's electric key and her mobile phone.
6. However, while I regard these factors as some mitigation, they are inadequate excuses for her not attending the CVP hearing on 16/6/22 and for her failing to contact the Tribunal to provide an explanation. The illness was obviously a temporary and minor matter as no professional medical help was sought on the day or afterwards. A stomach-ache should not prevent a short video appearance. Furthermore, having issued substantial litigation and knowing that she had a hearing on 16/6/22, at which the Respondent was represented by Counsel, the Claimant should have ensured in advance that she had a charged electricity supply and working mobile phone or other means so she could communicate with the Tribunal.
7. EJ Joffe on 16/6/22 was concerned that the Claimant was not pursuing her claims and issued a CMO which was emailed to the Claimant on 16/6/22 and received by her later the same day.
8. The CMO reads in part as follows: "*Strike out warning: Employment Judge Joffe is considering striking out the claimant's claims on the basis that they have not been actively pursued. If the claimant wishes to object to this proposal she must write to the Tribunal and the respondent by 4 pm on 24 June 2022, giving her reasons in writing or asking for a hearing at which she*

can make representations. If the claims are not struck out, the claimant must write to the Tribunal and the other side by 4 pm on 7 July 2022 with the following information: answers to the questions posed in the attached draft list of issues prepared by the respondent.If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules”.

9. On 21/6/22 the Claimant emailed the Tribunal referring to ill health (but not to a lack of electricity) as the reason for non-attendance on 16/6 and asking whether she could provide the further particulars by “*including them in her ET1*”.
10. On 22/6/22 Judge Joffe replied as follows “*The Claimant has explained that her absence from the Case Management Hearing was due to ill health. She has not explained why she did not make contact with the Tribunal or the respondent to explain that she would not be attending or why her condition prevented her attendance. The Claimant is invited to provide a fuller explanation and put forward any evidence in support of that explanation by 28 June 2022 so that I can make a reasoned decision about whether the claims should be struck out. ...It would be easier to understand the Claimant’s further information if it is provided in the form of responses to the questions which have been asked and the Claimant is directed to provide the further information in that form.*”
11. On 28/6/22 the Claimant replied with a fuller explanation of her non-attendance on 16/6/22 and referred for the first time to her uncharged electricity and mobile phone that day.
12. The Respondent sent in criticism of the Claimant’s excuses and pointing out the prejudice and costs caused to the Respondent by the Claimant’s failure to attend.
13. Judge Joffe then listed the matter for an OPH today to consider strike-out.
14. Even today, 4/8/22, the Claimant has failed to provide the FPs which were requested for the first time in early March 2022 by the Respondent and which the Claimant was ordered/directed to provide by 7/7/22 by EJ Joffe’s Order of 16/6/22 and specific direction of 22/6/22.
15. The Claimant told me that she thought that she did not have to provide FPs until after the strike out application had been determined. I do not accept that as a reasonable or true explanation. EJ Joffe’s Order and Direction are clear and the Claimant’s own email dated 21/6/22, which she sent after she knew that strike-out was on the agenda, asked for permission to provide the FPs in her preferred format, which request she would not have made had she not been aware that she was obliged to provide them.
16. In summary, the Claimant has to some extent conducted her claims unreasonably and has failed to pursue her claim by not attending an important PH and by not contacting the Tribunal on the day without an adequate excuse and by not providing FPs necessary for her claims to progress, and she has also failed to comply with EJ Joffe’s Order and Direction that FPs be supplied by 7/7/22, matters which is aggravated by the failure to provide them even now nearly a month later.
17. I have a discretion as to whether and if so what sanction or response should be applied to the Claimant as a consequence. I have considered whether (i) the claims as a whole should be struck out, or (ii) I should simply make an Unless Order to give the Claimant yet further time to provide the FPs or (iii) I should take a middle course of striking out just those claims which the Claimant has failed to particularise and allow the others to proceed.
18. Having considered all relevant factors including the magnitude of non-compliance, length of delay, extent of responsibility of the Claimant personally, the disruption and expense already caused to the other party, whether a fair hearing is still possible, and the range of responses open to me, I have decided that the middle course - ie (iii) above is the correct and proportionate one.

J S Burns Employment Judge
London Central
4/8/2022
For Secretary of the Tribunals
Date sent to parties: 04/08/2022
