



EMPLOYMENT TRIBUNALS

Claimant: Miss Ganiat Lawal

Respondents: (1) Financial Conduct Authority
(2) Rob Muskett

Heard at: East London Hearing Centre

On: 31 August 2022

Before: Employment Judge Housego

Representation

For the Claimant: Did not appear and was not represented

For the Respondent: Safia Tharoo, of Counsel, instructed by Catherine Turpin of Bevan Brittan LLP

JUDGMENT

The claims are struck out.

REASONS

1. Today was an open case management hearing, to consider, first, applications to strike out the claims for failure to comply with case management orders made by me at an earlier case management hearing, on 16 May 2022. If not struck out other matters were to be considered.

2. The Claimant did not attend the hearing. She had applied for an adjournment. She emailed the Tribunal on 25 August 2022, using the email address she has used throughout these claims.

3. She wrote:

"I have been in hospital since the first week in August 2022 and unable to respond or access email.

Please can I ask for a rearrangement of this preliminary hearing on 31AUG2022 to the first week in October when I would be best able to make it?"

4. By email response from the Tribunal on 26 August 2022, this request was refused. That letter stated:

"The Claimant must provide medical evidence of her hospitalisation. Then the postponement request will be reconsidered. As matters stand the postponement request is refused."

5. The Respondent was copied into an email sent by the Claimant yesterday to POhWER, a charity which provides advocacy help to those who find difficulty in self-expression. There was nothing from that charity before me.

6. I considered whether to telephone the Claimant using the numbers on her claim forms. I decided not to do so. There have been mental health issues in the past, and it would be inappropriate to do so if the Claimant is hospitalised for mental health reasons.

7. As the Claimant was able to send out emails, I decided that I would continue with the hearing in the absence of the Claimant. However, if the Claimant produces medical evidence of hospitalisation, and an explanation as to why the directions made by me on 16 May 2022 were not complied with then she may make application for me to reconsider the decision I made to strike out the claims.

8. I decided to strike out the claims for failure to comply with the order I made on 16 May 2022.

9. In making that order I noted that in the record of a previous case management hearing held on 24 March 2022 EJ Elgot had stated:

"[the Claimant's claims were] unspecific, difficult to understand, not stated chronologically or in any logical order and are in parts incoherent"

10. That Order also required the Claimant to provide further and better particulars of her claims. That Order signposted the Claimant to specified paragraphs of the Grounds of Resistance filed by the Respondent to guide her as to what details were needed.

11. The Claimant did not file any further and better particulars, as ordered.

12. The case management order I made on 16 May 2022 required the Claimant to give details of her claims, by 16 July 2022. In paragraphs 9-17 I set out exactly what the Claimant needed to do. I spent some time with her making sure that she knew what she had to do and set the time frame for compliance after asking her when she expected to be able to complete this task.

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13. I organised this hearing in case there were any other problems, and specifically to consider strike out applications made by the Respondent.

14. On 11 and 13 July 2022 the Claimant emailed the Tribunal and the Respondent, purporting to comply with the directions I had made. The directions are absolutely specific about what information was needed. The documentation supplied by the Claimant on 11 and 13 July 2022 did not follow those directions and consisted of generalised assertion and personal information not dealing with the points set out in the case management order.

15. On 27 July 2022 EJ Russell caused a letter to be written to the Claimant. This stated that the documents provided did not comply with my detailed order. That letter set out why this was so. It also converted this hearing to an open hearing (which was how it should have been listed originally).

16. Counsel for the Respondent provided a written submission, which accurately sets out the situation, which I append to this judgment.

17. The Claimant has failed to comply with two orders to give further and better particulars. I can see no reason why the Claimant could not have complied with my order of 16 May 2022, as it is a simple checklist of questions to answer. No attempt has been made to follow the format I set out.

18. Accordingly, I decided to strike out the claims for failure to comply with my Order of 16 May 2022.

19. I note that the Claimant has suffered severe mental health problems in the past. It is possible that a recurrence may explain the failure to comply with the Order of 16 May 2022, and the absence of the Claimant today.

20. The Claimant is at liberty to apply for this judgment to be reconsidered. If she wishes me to reconsider my decision to strike out her claims for failure to comply with the Order of 16 May 2022 (on the basis that ill health precluded compliance) she must supply medical evidence of the medical condition she says was affecting her, and in particular medical evidence of any stay in any hospital between 16 May 2022 and 31 August 2022.

21. If the Claimant does make such an application, the Respondent will wish the costs of today to be considered. If the Claimant does not make such an application (so that the claims remain dismissed) the Respondent makes no application for costs.

22. Subsequent to the hearing and after this judgment had been prepared to this point, I was handed (at 11:55 am) an email dated and timed 31 August 2022 at 07:08 from Dr Hamad A Lawal, sent to the Tribunal's generic inbox. He stated that he is the brother of the Claimant, and that she had been in St Pancras Hospital from 20 July 2022 and remained there. Dr Lawal said also that only today did he find out about this hearing, which he requested be postponed.

23. Having already made and announced the decision, I do not change it by reason of the email from Dr Lawal. However, these judgments are public documents and so there is no breach of confidentiality or any data protection reason why Dr Lawal should not read this judgment. I arranged for the judgment to be sent to him as well as to the Claimant. I had already indicated to the Respondent that I was prepared to reconsider

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the decision to strike out the claims if medical information was made available about the health of the Claimant from 16 May 2022 to date, and it may be that Dr Lawal is able to assist the Claimant in that regard.

**Employment Judge Housego
Dated: 31 August 2022**

Schedule – Respondent’s submissions

Case Nos: 3206208/2021, 3205926/2021 and 3200114/2022

IN THE EAST LONDON EMPLOYMENT TRIBUNALS

BETWEEN:

MISS GANIAT LAWAL Claimant

-and-

(1) FINANCIAL CONDUCT AUTHORITY

(2) ROB MUSKETT Respondents

RESPONDENTS’ SUBMISSIONS FOR THE PRELIMINARY HEARING
ON 31 AUGUST 2022

1. These submissions are prepared for the purposes of the open PH due to take place on 31 August 2022 on behalf of the First and Second Respondent. They cover the following matters:

- a. A brief chronology of these proceedings;
- b. The Respondents’ application for the Claimant’s claims to be struck out;
- c. Further procedural matters that need to be determined.

A bundle of documents has been prepared for the purposes of this hearing, and references in square brackets refer to pages of that bundle.

The proceedings so far

2. The Claimant has brought three claims, which have already been consolidated:

a. Claim number 3205926/2021, submitted on 12/9/2021 against the First Respondent only, alleging sex, race, disability and sexual orientation discrimination and arrears of pay/other payments [5-25];

b. Claim number 3206208/2021, submitted on 1/10/2021 against both the First and Second Respondent, which appears to be identical to the first claim [26-46];

c. Claim number 3200114/2022, submitted on 14/1/2022 against the First Respondent only, alleging unfair dismissal, whistleblowing detriment, sex, race, disability and sexual orientation discrimination, as well as other payments [86-102].

3. A PH took place by telephone before EJ Elgot on 24 March 2022 [122-126]. The ET noted that the Claimant’s claims were ‘unspecific, difficult to understand, not stated chronologically or in any logical order and are in parts incoherent’ [125]. As a result,

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the Claimant was ordered to provide further information on her claims by answering the questions that the Respondents had included in the ET3s by 5 May 2022 [124, paragraph 8] in advance of the next PH on 16 May 2022 (“the March 2022 order”).

4. The Claimant failed to comply with the March 2022 order. This was discussed at the telephone PH on 16 May 2022 before EJ Housego [260-265], who determined that the Claimant needed to comply by 16 July 2022. The Order notes that the EJ ‘spent some time making sure that the Claimant knew what she had to do, and by when, and that she was able to commit to doing it within that timeframe.’ [261]. The further information required was clearly set out in the Order, with each claim broken down into the specific questions she needed to answer from paragraphs 9 to 17 [262-263]. The Order noted that the ET would consider striking out claims at this hearing if the information about them was not provided by the Claimant [261, paragraph 5] (“the May 2022 order”)

5. The Claimant purported to comply with the May 2022 order on 13 July 2022 [298-302]. That document failed to respond to the vast majority of the questions she was required to answer. The ET acknowledged receipt of the Claimant’s document on 27 July 2022; EJ Russell noted that it ‘did not comply with the detailed order of EJ Housego’. This PH was therefore converted to an open hearing to consider striking out some or all of the Claimant’s claims for non-compliance with the Order, amongst other reasons [304].

6. The Respondents had been given leave to file an amended response within 28 days of receiving the Claimant’s further particulars, but wrote to the ET on 27 July 2022 to request that in light of the Claimant’s failure to comply with the full Order, that this be extended to 28 days after this PH [303]. The ET confirmed on 8 August 2022 that the timescale for the Respondents to provide an Amended Response is paused [308].

The Respondents’ application for strike out

7. The Respondents apply to the ET for strike out of all the Claimant’s claims which required further particularisation. This includes her claims for all forms of discrimination on grounds of race, sex, disability and sexual orientation, her financial claims which are based on a claim of discrimination, her claim of victimisation and her claim of detriment arising from a protected disclosure. For the avoidance of doubt, the only claim that the Respondents accept did not require particularisation (and can therefore proceed to a final hearing) is the claim for ordinary unfair dismissal, which can only proceed against the First Respondent in any event.

8. The Respondent relies on the following failures of the Claimant:

- a. The complete failure by the Claimant to comply with the March 2022 order;
- b. The failure to provide the information required in the May 2022 order in the following respects:
 - i. Paragraph 9 (Public Interest Disclosure): the complete failure to provide answers to any of the questions posed;

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ii. Paragraph 10 (Direct disability discrimination), Paragraph 13 (Direct sex discrimination) and Paragraph 14 (Direct race discrimination): the Claimant provided a list of apparent detriments at paragraph 3.3.1.1.3 of her further particulars [300-301] but failed to provide the required details of the dates and the persons whom she alleges discriminated against her, failed to identify whether she alleges the detriments were on grounds of sex, race or disability, failed to identify who she compared herself to, and failed to identify the facts that she says could lead the ET to find that part of the reason for the alleged detriment was that she was a woman/black/disabled;

iii. Paragraph 11 (indirect disability discrimination): the Claimant's particulars at paragraph 3.3.1.1.4 [301] failed to set out the PCP relied on, nor did it set out the reasons why this affected her more than someone who does not have her disability. In addition, the Respondents note that allegations (f) to (i) relate to the ET process and therefore do not arise from her claims;

iv. Paragraph 12 (s.15 ETA discrimination arising from disability): the Claimant's particulars at paragraph 3.3.1.1 [300] do not set out what the 'something arising' from disability is, and the alleged detriments do not confirm who allegedly acted in that way or when it occurred;

v. Paragraph 15 (victimisation): the complete failure to provide answers to any of the questions posed;

vi. Paragraph 16 (failure to make reasonable adjustments): the Claimant's particulars at paragraph 3.3.1.1.2 [300] cannot properly be said to all be reasonable adjustments, do not identify when they should have been made, and do not explain what reason there is for allowing such a claim to proceed at this stage (the Claimant not having raised such a complaint in her pleadings);

vii. Paragraph 17 (claims against the Second Respondent): the complete failure to provide answers to any of the questions posed.

c. The failure by the Claimant to particularise (at any stage) her allegations of sexual orientation discrimination.

9. Pursuant to Rule 37(1)(c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the Respondents invite the ET to strike out the abovementioned claims on the basis that the Claimant has failed to comply with the March 2022 and May 2022 orders of the ET. Such a decision would be consistent with the overriding objective in circumstances where:

- a. The Claimant has not identified any reason why she could not comply with the March 2022 and May 2022 orders;
- b. The extent of the non-compliance is substantial, as identified above;
- c. The impact of the non-compliance is significant, in that the Respondents still do not know what the claims are which they are required to respond to, which puts the current final hearing listed to commence on 21 February 2023 at risk;

d. The Respondents have incurred the unnecessary expense of multiple preliminary hearings simply to identify the claims, when only one hearing should have been required.

10. Further, the Respondents assert that strike-out would clearly be a proportionate response in circumstances where the Claimant was warned by EJ Housego, after failing to comply with the March 2022 order, that a failure to comply with the May 2022 order might result in her claims being struck out. In addition, the Claimant has been aware since EJ Russell's correspondence of 27 July 2022 that the ET considers that she has not complied with the May 2022 order, and that strike-out will be considered at this hearing, but has failed to take any steps (to date) to remedy the situation.

11. In addition, the Second Respondent asserts that in circumstances where the Claimant has wholly failed to particularise any claims against him, despite being given two opportunities to do so, it would be wholly proportionate to strike out all claims against him, given his status as an individual named Respondent. In addition to the reasons set out above, the Second Respondent asserts that he has suffered considerable stress from having been named in these proceedings, which has been exacerbated by the fact that he still does not know, some 11 months after proceedings were commenced against him, what claims he is required to respond to. That is wholly unfair to him. For the avoidance of doubt, even if the ET permit claims to proceed against the First Respondent which relate in part to action/inaction by him, he remains willing to give evidence, and the First Respondent will not plead the statutory defence in relation to his conduct.

12. If the ET permit the Claimant an opportunity to fully particularise her claims at this hearing, the Respondents reserve the right to pursue applications for strike-out on the basis that the claims have no reasonable prospects of success, and/or that the ET does not have jurisdiction to hear them as they have been brought outside the statutory time limit.

Further procedural matters

13. The Respondents note that the Claimant has made an application to add further named Respondents, which the Respondents have objected to [136-137, 272]. If the Claimant is permitted to pursue some or all of her claims, this is a matter that will need to be determined at this hearing.

14. Further, the Claimant has applied to vary the order that the final hearing take place in person, instead seeking a hybrid hearing [269]. This matter will also need to be considered.

15. There are no extant directions for the preparation required in advance of the final hearing, and appropriate directions will be required for disclosure of documents, preparation of a bundle, and exchange of witness statements.

SAFIA THAROO
Counsel for the Respondents

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17 August 2022