



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Boucher  
**Respondent:** Next Distribution Ltd

## JUDGMENT

The claimant's application dated 14 August 2022 (two emails sent at 14.44 and 14.49) for reconsideration of the judgment sent to the parties on 11 August 2022 is refused.

## REASONS

- 1 There is no reasonable prospect of the original decision being varied or revoked.
- 2 The claimant presented her claim on 19 November 2021 and wrote to the Tribunal by email on 22 November. Her claim was served, and included Equality Act allegations relating to race, religion, sex and maternity, unfair dismissal and allegations of money claims. She was directed in a letter dated 25 November 2021 that any correspondence to the Tribunal must be copied to the respondent. A response was presented asserting dismissal of the claimant, following suspension in March 2021; she allegedly became abusive when challenged about observing a Covid one way system.
- 3 The claimant then corresponded with the Tribunal about the response and other matters on a number of occasions without copying the respondent and was further reminded.
- 4 She was late in attendance at a case management hearing on 8 March 2022, before Employment Judge Knowles. His orders, sent to the parties on 17 March, directed a further case management hearing because the claims required substantial clarification. The claimant's telephone line had been poor, and she had said she required a French interpreter. This was directed for the next hearing. Her allegations and correspondence to the Tribunal were written in discernible English, albeit communicating about complex matters orally would

no doubt have been assisted by an interpreter. Employment Judge Knowles' orders again directed the claimant to copy the respondent any communications to the Tribunal and by this stage she had clear details of the respondent's solicitor.

- 5 She failed to attend the next hearing on 12 May 2022. She sent an email 20 minutes before the hearing asking the hearing be postponed. The Employment Judge and the respondent attended the hearing. The Employment Judge's Rule 47 orders, sent to the parties the same day, with a letter warning the claimant the Judge was considering striking out her claim, instructed her to include in her response to that strike out warning, at 6.1 to 6.3 of his orders, the medical evidence to which she had referred previously, the date of receipt of the family court decision (referred to in her email concerning inability to attend), and an explanation of why she had not notified her inability to attend the previous hearing sooner. A further hearing was arranged for 20 September 2022, no doubt in the expectation that the claimant would reply and show cause in relation to the strike out warning.
- 6 The claimant had sent to the Tribunal at 10.27 on 12 May an email (again apparently not copied to the respondent) attaching a fit note from Dr Sutcliffe which indicated that the GP had seen her on 6 May 2022, diagnosed "mental health issues, an acute stress reaction", and advised she was not fit for work for six weeks until 16 June 2022. This was sent to the Tribunal before the strike out warning was sent to her with the Rule 47 orders, but was not before the Employment Judge.
- 7 The claimant did not then reply to the strike out warning or request a hearing. I then reviewed the file as duty judge and struck out the claim, there still being no further from the claimant.
- 8 In an application dated 14 August the claimant emailed briefly; for the first time visibly copying the respondent's solicitor on correspondence to the Tribunal; she alleged a breach of Article 6 in denying her a fair hearing. She opposes the judgment and appeals the strike out decision and I treat this as a reconsideration application. She says it is common sense to give another hearing and considers that she could attend on the re-arranged hearing and provide the information ordered orally.
- 9 The claimant does not, in her application, provide the date of the family court decision, nor explain why she left it so late to notify non attendance on 12 May. That is all the more relevant when she had a fit note, it seems, on 6 May 2022, several days before the hearing and could have requested a postponement then.
- 10 Evidence of further information in support of postponement applications is routinely required to ensure compliance with the Tribunal's Rules on postponements and the Practice Direction. That is because non attendances and late applications waste the resources of the Tribunal and the other party or parties.

**11**As to the Article 6 point, the claimant is not the subject of criminal proceedings; she is the claimant, that is she is making allegations against the respondent in an employment tribunal. She has had the opportunity to attend fair case management hearings, latterly with an interpreter; she had the opportunity to seek a postponement when she became unwell but instead sought to adjourn at the last minute; she has had the opportunity to provide to the Tribunal the information in writing of the circumstances which she says gave rise to her requiring that adjournment as ordered by the Employment Judge. She has not fully done so and what she has provided raises more questions. She has serially failed to copy the respondent solicitor on her communications, despite repeated instructions to do so – see Rule 92.

**12**The Tribunal's resources have to be shared with all users, many of whom are operating in second languages, and when ordered to provide information in support of what they say, they do so. The prejudice to the claimant in having her claim struck out at this stage, having had the opportunity to prevent that happening by the provision of information, is, in reality, very little. It is likely that the conduct of the case would continue to be similarly non compliant, and in those circumstances she will be at risk of strike out again in the future. The prejudice to her of strike out now is far less than it would be for a party who has routinely demonstrated being able to progress a claim in accordance with directions, as most do.

**13**In the meantime, the respondent has had stigmatising and now stale allegations hanging over it and has had wasted costs.

**14**In all these circumstances there is no prospect of the strike out judgment being revoked and the application is dismissed.

Employment Judge JM Wade

14 September 2022