



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Halui M Angus

v

Academy Enterprise Trust

Heard at: Huntingdon (by CVP)

On: 15 August 2022

Before: Employment Judge M Ord

Appearances

For the Claimants: Mr D Ibekwe, Case Work Co-ordinator

For the Respondent: Mr T Cordrey, Counsel

JUDGMENT on RECONSIDERATION

1. The Claimant's Application for Reconsideration of the provision to strike out the Claimant's claim on the bases that:-
 - 1.1 the Claimant had not complied with the Tribunal's Orders dated 3 July 2021; and
 - 1.2 the claim had not been actively pursued;does not succeed.
2. The claim remains struck out.

REASONS

1. The Claimant was, at the time that she lodged her claim form with the Tribunal, employed as a Deputy Head Teacher of the Sir Herbert Leon Academy operated by the Respondent at Bletchley, Milton Keynes.
2. Following a period of Early Conciliation which began and ended on 13 January 2021, the Claimant presented her claim form to the Tribunal on the same day, making allegations of discrimination on the protected characteristics of race and / or disability.
3. In its Response, the Respondent said that there was a lack of particularisation in the claim and disability was denied.

4. That Response was filed on 15 February 2021 and on 22 April 2021, the Tribunal Ordered:-
 - 4.1 an Impact Statement; and
 - 4.2 medical reports / evidence;to be disclosed by the Claimant to the Respondent by 20 May 2021, with the Respondent to advise the position on disability within 14 days thereafter.
5. The same day, 22 April 2021, the Tribunal advised the Respondent that it required further information to understand the case against it, it should make a request for particulars of the Claimant and give the Claimant reasonable time to provide the information requested.
6. The Respondent made a request for further information from the Claimant on 30 April 2021.
7. On 19 May 2021, the Claimant's Impact Statement and some medical information was provided from the Claimant to the Respondent.
8. On 3 July 2021, the Tribunal sent notice of a Preliminary Hearing for Case Management purposes to the parties. That Preliminary Hearing was due to be heard on 5 October 2021 but did not proceed on that date due to a lack of judicial resource.
9. Accompanying the notes of the Preliminary Hearing were two Orders. The first required the Claimant to provide a Schedule of Loss to the Respondent by 2 August 2021 and the second required the parties to exchange lists of documents which were relevant to the issues between them by 30 August 2021.
10. The Respondent advised the Claimant on 27 August 2021 that it had not received the Schedule of Loss and asked for it to be delivered.
11. On 28 August 2021, the Tribunal, having been advised that the further information requested by the Respondent had not been forthcoming, directed the Claimant to provide the information by 6 September 2021 in default of which the Tribunal would consider making Orders.
12. On 31 August 2021, the Respondent again asked the Claimant for her Schedule of Loss and sent a reminder that it was time to exchange lists of documents.
13. A further chasing letter was sent on 14 September 2021.

14. On 16 September 2021, the Respondent sent its list of documents to the Claimant and asked the Tribunal for an Unless Order in relation to the Schedule of Loss and the Claimant's documents.
15. On 22 October 2021, the Respondent chased the Claimant again regarding her Schedule of Loss and a list of documents and asked the Tribunal regarding its Application for an Unless Order about which there had been no response.
16. On 8 November 2021, the Respondent carried out the same actions as it had done on 22 October 2021.
17. Throughout this entire period the Claimant did not respond either directly or through her then Representative in relation to any of the requests for information, a Schedule of Loss or list of documents which the Respondent was making.
18. On 21 November 2021, the Tribunal re-listed the Preliminary Hearing to take place on 18 January 2022.
19. On 29 November 2021, still having received no information from the Claimant, the Respondent wrote to the Tribunal asking what was happening with regard to its Application for an Unless Order.
20. As with all other correspondence to the Tribunal from the Respondent, this was copied to the Claimant.
21. On 3 December 2021, the Tribunal issued a Strike Out Warning. That warning stated that on the Application of the Respondent, having considered any representation made by the parties, Employment Judge Tynan was considering striking out the claim because the Claimant had not complied with the Orders of the Tribunal dated 3 July 2021 and that the claim had not been actively pursued. The Claimant was advised that if she wished to object to the proposal to strike out, she should give her reasons in writing or request a Hearing by 10 December 2021.
22. Nothing was heard in reply.
23. On 13 December 2021, the Respondent advised the Tribunal, copied to the Claimant and her Representative, that there had been no compliance.
24. On 17 December, 29 December 2021 and 5 January 2022, the Respondent wrote further chasing letters.
25. On 10 January 2022, I issued a Judgment striking the claim out following the direction issued on 3 December 2021 and the Claimant failing to make representations in writing or failing to make any sufficient representations why the claim should not be Struck Out and had not requested a Hearing, the claim was therefore Struck Out.

26. On 24 January 2022, the Claimant made an Application for Reconsideration of the Order.
27. On 3 February 2022, the Respondent made submissions in reply.
28. Against that chronology, it is important to note that as of today the Claimant has not provided any of the Ordered Schedule of Loss, the Ordered list of documents, nor the requested further information.
29. It is 15 months since that information was sought, it is 12 months since the expiry of the date for providing a Schedule of Loss and it is 11½ months since the Claimant's list of documents was due.
30. These failures were the reasons for the Strike Out Warning. The Claimant did not respond to it and although the Claimant was given 7 days to do so, no Strike Out was made until 31 days after that deadline had expired. There was no response at all from the Claimant.
31. The Claimant only made any attempt to make progress with the case when the Strike Out Order was sent and on that day the Claimant made her Application, through her then Representative, for reconsideration.
32. According to the written Application, the grounds for reconsideration were as follows:-
 - 32.1 it was accepted by the Claimant that there had been non-compliance with the Tribunal's Orders of 3 July 2021, but it was said that this was because the Order was at the end of the Notice of Hearing and the Claimant's Representative only looked at the first page of the document because there was no "*legitimate expectation*" that the document would also contain Orders as "*this is not the norm to so do*";
 - 32.2 that the non-compliance with the Orders was because:-
 - 32.2.1 the Claimant did not receive such notice (it had been sent to the Representative); and
 - 32.2.2 that the Claimant's Representative was out of the country from 27 November 2021 when he travelled to Granada and was in quarantine (because he was unvaccinated) on 4 December 2021 whereafter his only consideration was to deal with the funeral arrangements for his sister's burial and that thereafter his mind "*was in temporary disarray and not focused*" because both his sister and his uncle had died and this was the "*sole cause for not discharging the terms of the 3 July 2021 Order*";
 - 32.3 the further ground for reconsideration was that the magnitude of the non-compliance, the question of whether or not the default was her

responsibility or that of her Representative, what disruption, unfairness or prejudice has been caused and whether a fair Hearing was still possible, should be weighed in the balance in favour of the Claimant;

- 32.4 it was contended that the claims were being actively pursued and that Strike Out can only take place following non-compliance of an Unless Order;
- 32.5 it was repeated that striking out was not proportionate, that a fair Hearing was still possible and that *“this is not a situation where there has been either an intentional or contumelious breach of an Order or where an Unless Order has been issued”*.
33. The Respondent’s reply set out the background and chronology and further stated that:-
- 33.1 it was not denied that the Orders of 3 July 2021 had been received and the Claimant had not explained why there was a failure to comply, not only with those Orders but to reply to any of the *“myriad of communications”* from the Respondent that followed;
- 33.2 that the Claimant / her Representative was clearly aware of the need to reply to the Tribunal’s Strike Out Warning because on the Claimant’s own Application *“the Claimant’s Representative’s mind was not on 10 December 2021 deadline...”*, but went on to say that there was a *“lack of knowledge or being aware of the same”*, although there was no evidence on non-receipt; and
- 33.3. most importantly in the Respondent’s submission, the Claimant had still not provided her Schedule of Loss, disclosure documents nor the additional disability documentation requested. The Respondent pointed to the case of Amey Services Limited v Bate and Ors. UK EAT/0082/17.
34. The case of Amey Services Limited v Bate and Ors. is particularly relevant to this case. In that case the Employment Appeal Tribunal stated that an Employment Tribunal had erred in law in granting relief from the sanction of a Strike Out Judgment in a failure to provide particulars pursuant to an Unless Order, absent material compliance with the terms of the Order.
35. I view circumstances here as being directly analogous.
36. The Claimant has had many months to do that which the Employment Tribunal Ordered. There has been no Schedule of Loss and no list of documents, as well as a lack of taking action on the Respondent’s proper request for information.
37. Even today, there has been no compliance. It is not explained how, given the complete inactivity in relation to progress of the case since the

Claimant provided an Impact Statement and medical information on 19 May 2021 (almost exactly 15 months ago) it is said on behalf of the Claimant that there is “*active pursuit*” of the case.

38. Here the Claimant was issued with a Strike Out Warning. It was issued in December 2021 and the claim was struck out in January 2022, there having been no response whatsoever to the Tribunal’s Strike Out Warning.
39. Today it was suggested by the Claimant’s Representative that the Orders of 3 July 2021 were either unnecessary or premature. In the body of the Orders it was stated that anyone affected by the Orders could apply for it to be varied, suspended or set aside. No such Application has been made.
40. The Claimant’s default by failing to comply with the Orders in question and failing to actively pursue the claim throughout the period since May 2021 were the reasons for her claim to be struck out.
41. It would, as stated in Amey Services Limited v Bate and Ors. , be perverse to allow relief from strike out in circumstances where the Claimant has not made (in this case any) effort to comply with the Orders, even today.
42. The interests of justice are not served by the Tribunal disregarding non-compliance with its Orders. Nor are the interests of justice served by allowing relief from strike out when still today the failures of the Claimant have not been rectified, either fully or at all. Indeed, no steps have been taken to comply with the Orders or to provide the information requested of the Claimant, even today.
43. For those reasons, the Application for Reconsideration fails and the claim remains struck out.

3 October 2022

Employment Judge M Ord

Sent to the parties on: 6/10/2022

N Gotecha

For the Tribunal Office.