



EMPLOYMENT TRIBUNALS

Claimant: Ms S Messi
Respondent: Manpower UK Limited (R1)
Teleperformance UK Limited (R2)

Heard at: Bury St Edmunds (CVP) **On:** 4 November 2022

Before: Employment Judge Laidler

Representation

Claimant: not attending
Respondent: Mr A Sutherland, Solicitor (R1)
Ms L Usher, Solicitor (R2)

JUDGMENT

1. All claims against both respondents are struck out.
2. Had the claims not been struck out the claimant would have been ordered to pay the following deposits as a condition of continuing to advance the claims:

3314225/2021 £2250 x 2 = £4500

3314273/2021 £250 in relation to claim against R1
£500 in relation to claim against R2

REASONS

1. The decision was given orally but written reasons are provided as the claimant did not attend the hearing.
2. The claimant has issued two sets of proceedings against the same two respondents.
3. The first claim (3314225/2021) was issued on the 11 August 2021. It brought claims of discrimination on the grounds of age, race, religion, disability and sex. No further particulars were given of the acts of less favourable treatment. It also brought money claims of a failure to pay notice, holiday pay, arrears of pay and 'other claims'. There was also an assertion that the claimant had been treated detrimentally for having made protected disclosures. There was no detail provided of the alleged protected disclosures made.
4. The second claim (3314273/2021) was issued on the next day the 12 August 2021. It alleged unfair dismissal for having made protected disclosures. No details were provided. There was a claim for interim relief.
5. The claim for interim relief was listed urgently as required by statute but the claimant applied for and was granted a postponement. The adjourned hearing took place before E J McNeill KC on the 23 November 2021. The claimant did not attend. The hearing proceeded in her absence and the application for interim relief refused.
6. This hearing was listed by E J Lewis at his preliminary hearing on 21 June 2022 at which the claimant did not attend. In his orders sent to the parties on 23 June 2022 it was made clear that this hearing would consider applications to strike out and/or deposit orders, case management and listing. It was confirmed for the avoidance of doubt that the hearing may proceed in the absence of the claimant.
7. The claimant did not attend this hearing as she had not attended the others. EJ Lewis had directed the second respondent to contact the claimant after his hearing to confirm that it had gone ahead and to advise that orders had been made. This was done by Ms Usher on 21 June at 20:35. Her email was sent to the email address for the claimant that is on her ET1 form. It is a Hotmail address.
8. The claimant replied that 21:00 hours stating "what do you mean there was a hearing today? I did not get anything in regards to this. When was this sent?"
9. Ms Usher replied within half an hour forwarding 3 emails from the Watford Employment Tribunal dated 23 March, 16 June and 20 June 2021 referring to the hearing that was scheduled and each email showing it was sent to the claimant's email address. She also attached the email that was sent from her to the Employment Tribunal on 17 June 2022 enclosing her clients agenda for the hearing and the email from Mr Sutherland on behalf of the 1st respondent enclosing his clients agenda. Again, both of those had been

copied to the claimant's email address.

10. The claimant replied at 22:47 only to Mr Sutherland and the Watford Employment Tribunal stating "I didn't receive any emails in regards to hearing today hence why I did not attend. I have also checked my junk and this wasn't received"
11. Nothing was then received from the claimant

Employment Judge Lewis's orders

12. As the claimant did not attend the hearing before EJ Lewis he was not able to clarify the claims and issues and made orders for further information. He also made an order that the claimant by 15 July 2022 show to the Tribunal in writing why the claim should not be struck out in that she had failed to pursue it by failing to take part in that hearing. She was ordered to state the reason for not taking part and if travelling to provide evidence of travel.
13. In relation to her claims of discrimination she was ordered in relation to each of the protected characteristics relied upon to send to the respondent and the tribunal by 26 August 2022 the following further information: –
 - a. What did each respondent do that the claimant alleges was discrimination
 - b. When did it happen
 - c. Who was responsible for it
 - d. And unless obvious from the context why the claimant states that the event was related to the protected characteristic
14. The judge also ordered further information in connection with the alleged public interest disclosure (also called whistleblowing). By the same date the claimant was to provide in relation to each disclosure the following further information: –
 - a. What did she say or write
 - b. To whom did she say or write to
 - c. Why does she believe that the event was a protected disclosure
 - d. What negative event (s) happened to her as a result of making the disclosure
 - e. Which respondent was responsible for each negative event
15. In relation to disability the claimant was ordered to send to the respondents a summary of the disability on which the discrimination claim is based, such medical evidence as she wished to rely upon and an impact statement setting out the effect of the impairment on the claimant's ability to carry out day-to-day activities.
16. None of these orders have been complied with.

The respondents' applications

17. After the date for compliance with the above orders had expired both respondents made application for the claims to be struck out and in the alternative for deposit orders.
18. This hearing proceeded on the Cloud Video Platform (CVP) it having been made clear at EJ Lewis's this hearing that it would proceed in the absence of the claimant. No application had been received for a postponement or any explanation for her non-attendance.

19. Rules 37 and 39 of the Employment Tribunal Rules 2013

37 Striking out

(1) a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

39 Deposit orders

(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

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(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

- (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and
- (b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

Conclusions

20. Although the respondents focused their arguments for strike out primarily on the failure to comply with orders and the claims not being actively pursued the judge was satisfied that all the grounds in rule 37 could have been argued to apply in this case and consequently all claims are dismissed against both respondents.

(a) that it is scandalous or vexatious or has no reasonable prospects of success

21. The claims in their current form do not have any reasonable prospects of success as they are completely unparticularised.

22. In relation to the 2nd respondent in the 2nd claim it was not the employer the 1st respondent accepting that it was. There was a point noted by E J McNeill at her hearing. The claim therefore of unfair dismissal as against the 2nd respondent has no reasonable prospects of success.

23. It was also noted that as found by E J McNeill the claimant had not been dismissed by the 1st respondent her employer (paragraph 31 of her reasons). Mr Sutherland confirmed at this hearing that the claimant remained on the books of the first respondent.

24. It goes without saying that a claimant who has not been dismissed has no reasonable prospects of claiming unfair dismissal on any basis.

25. Whilst it was suggested on behalf of the respondents that the claims have been brought vexatiously the tribunal did not have sufficient evidence before it to come to that conclusion. It has however noted that the respondents have discovered by a search of the online register that the claimant has brought at least 10 other claims against multiple respondents alleging multiple claims of breaches of the Equality Act 2010 and the raising of protected disclosures like the claims in these proceedings

(b) *that the manner in which the proceedings have been conducted by the claimant have been scandalous unreasonable or vexatious*

26. It is quite clear that the manner in which these proceedings have been conducted has been unreasonable. The claimant has provided very little information in her claim forms and has put the respondents to the cost of defending them. Although acknowledging she is a litigant in person the Employment Tribunal hears from numerous litigants in person and they are generally well able to set out the case they believe they have against their employer.

27. The claimant applied for interim relief which is a claim that had to then be listed for hearing urgently, yet she applied for a postponement was granted it and then did not attend the adjourned hearing. The application was refused

28. The claimant then failed to attend the hearing before EJ Lewis. She has failed to comply with his order to explain why that was.

29. Detailed orders having been made for further information the claimant has failed to comply with them and neither the tribunal nor the respondents' have heard from her since her correspondence with the respondents' following Judge Lewis's hearing

30. All the above amounts to unreasonable conduct

(c) *non-compliance with any order of the tribunal*

31. As has been stated the claimant has not complied with the detailed orders made EJ Lewis. They could not have been clearer in what was required. The respondents are entitled to know the claims they have to meet. The respondents did what they were directed to do and brought the orders to the claimant's attention. She was well able to respond from the email address that both the respondents and the Employment Tribunal have been using and which was used to notify of the date and time of this hearing

(d) *that the claim has not been actively pursued*

32. This again is also self-evident from the chronology. The claimant applied for interim relief but did not attend the hearing. She has not attended other hearings and failed to comply with orders. It is now over a year since the proceedings were commenced and neither the respondents nor the tribunal know the detail of the claims that are being pursued.

33. The tribunal at the present time has a significant backlog of cases waiting to be heard. The claimant's cases have already occupied 3 days of judicial time and as stated the claims are still not clarified. The claimant has not participated, this is not proportionate and is clear evidence that the claimant does not intend to pursue the claims

(e) *The that the tribunal considers it is no longer possible to have a fair trial*

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34. Although detailed evidence was not heard from the respondents' the difficulties they may face if this matter were to proceed are again self-evident and the judge is aware from other listing decisions taken that in a multi-claim case it is unlikely to be heard until 2024. That would be 3 years from the date of the acts complained of. A fair hearing though also involves the respondents being able to take instructions on the allegations against it once it has received the proceedings. These respondents are not able to do that as they do not know what allegations are being made.
35. The judge asked both respondents if they were aware of what the claimant's disability was but they were not. The 2nd respondent's representative explained that the claimant did have DSE assessment and stated that she would be assisted by a back support for her chair. Other than that they know nothing about her condition.
36. In the first ET1 claim form at box 12 the claimant ticked the box stating she had a disability. She did not disclose what it was and only stated that she would need 'frequent breaks and late hearing and by video or telephone'.
37. In all the circumstances the judge was satisfied that it was appropriate to strike out all the claims brought by the claimant against both respondents.

Deposit order

38. In the alternative both respondents invited the judge to consider whether a deposit order should be made. The grounds are slightly different than in relation to strike out and a deposit can be ordered where the tribunal is satisfied that a claim or response has "little reasonable prospect of success". It can order a deposit not exceeding £1000 as a condition of continuing to advance that 'allegation'. The authorities have made it clear that therefore the tribunal can in total award more than £1000.
39. The tribunal was satisfied that the claims as currently put have little reasonable prospects as they are not clarified and not clear. Further that the claim against the 2nd respondent for unfair dismissal has little reasonable prospects as the 2nd respondent was not the claimant's employer and cannot therefore be liable for unfair dismissal. As against the 1st respondent the claimant has not been dismissed.
40. Rule 39 (2) states the tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit. The tribunal has done all it reasonably can in the absence of the claimant to provide details of her ability to pay. She was on notice of this hearing and has chosen not to attend and provide such evidence.
41. Although the respondents sought a deposit of £1000 in respect of each claim the judge did not think that would be fair in the circumstances. The judge has considered the information in the ET1 which disclosed that the claimant was earning £264 a week whilst working at the 2nd respondent.
42. In relation to the 1st claim the claimant has alleged claims of age, race religion, disability and sex discrimination (5 protected characteristics) notice

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pay, holiday pay and arrears of pay (3 money claims) and detriment for raising protected disclosures. Even without the detail that is needed that is 9 distinct heads of claim.

43. The tribunal has therefore determined that had the claims not been struck out it would have ordered in relation to the 1st claim that the claimant pay £250 in respect of each of the 9 heads of claim brought against each respondent. That would be a total of £2250 in relation to the claims against the 1st respondent and the same amount in relation to the claims against the 2nd respondent making a total of £4500 that would have been ordered to be paid as a condition of continuing to advance the 9 heads of claim that have by now been identified above
44. In relation to the 2nd claim it would have ordered £250 to be paid in relation to the claim of unfair dismissal against the 1st respondent and £500 in relation to the claim against the 2nd respondent as a condition of continuing to advance that claim.

Employment Judge Laidler

Date : 4 November 2022

JUDGMENT SENT TO THE PARTIES ON

8 December 2022

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