



## **EMPLOYMENT TRIBUNALS**

### **OPEN PRELIMINARY HEARING**

**Claimant** Ms A Iqbal

**Represented by** Was not represented and did not attend.

**Respondent** Royal Marsden Hospitals NHS  
Foundations Trust

**Represented by** Ms A Chute of Counsel

**Employment Judge** Ms A Stewart (sitting alone)

**Held at:** London Central by CVP                      **on:** 15 December 2022

## **JUDGEMENT**

The Claimant's complaint of unfair dismissal is struck out because she does not have the requisite qualifying period of employment under the provisions of section 108(1) of the Employment Rights Act 1996 and the Tribunal consequently has no jurisdiction to consider it.

## **ORDERS**

**1 Pursuant to Rule 38 of Schedule I of the Employment Tribunals (Constitution and rules of Procedure) Regulations 2013, it is Ordered that if the Claimant does not comply with each of the following three orders by 19 January 2023, the remainder of her complaints will be struck out on that date, without further hearing or order:**

**A That she give to the Respondent's Solicitor, permission to disclose to the Respondent those aspects of her medical records which are relevant to the 2 conditions which she contends constitute her disabilities for the purposes of section 6 of the Equality Act 2010, so as to enable the Respondent's Solicitors to take instructions, to conduct the Respondent's case and to comply with existing Tribunal orders.**

**B That she provide to the Respondent's solicitors all documents which she has in her possession or control which are relevant to any of her discrimination complaints. If there are no such documents she should inform the Respondent's Solicitors of this fact.**

**C That she inform the Tribunal and the Respondent whether or not she intends to pursue her complaints of disability and/or race discrimination, as set out in the detailed Tribunal Orders following the Preliminary Hearing held on 7 July 2022. If she does wish to pursue them, or any of them, she is requested to inform the Tribunal and the Respondent whether or not she would be willing to engage in a Judicial Mediation as a means of trying to achieve a settlement of her claim.**

## **REASONS**

### **Conduct of the Hearing:**

1.1 This OPH was convened for the purpose of hearing the Respondent's application to have the Claimant's complaints struck out on the following grounds:

(i) That she is failing actively to pursue them and is failing to comply with Tribunal Orders to that end; and/or that they have no reasonable prospect of success; or

(ii) Whether the Claimant should be made the subject of a Deposit Order of up to £1,000.00 as a condition of being permitted to pursue her claims, on the grounds that they have little reasonable prospect of success.

1.2 The Claimant did not appear at today's hearing although notice of it was sent to her on 8 November 2022 and the Respondent has communicated with the Claimant by email regarding this hearing on numerous occasions. Further, the Tribunal Clerk tried to telephone the Claimant 4 times at 10am today, but there was no answer to his calls.

1.3 There has been no response from the Claimant to any of the many correspondences from the Respondent and the Tribunal about this case since about mid September 2022. Accordingly, the Tribunal decided to go ahead with today's hearing in the Claimant's absence today, in furtherance of the Overriding Objective and in fairness to the Respondent.

1.4 Counsel for the Respondent was mindful of her duty to draw the Tribunal's attention to, as far as possible, points favourable to the Claimant, in her absence, and provided a very detailed bundle and a full chronology of correspondence in her written submissions.

### **Unfair Dismissal**

2.1 The Claimant was employed by the Respondent from 18 October 2021 until 11 March 2022. That this is less than the 2 year qualifying period required in order to bring a claim of unfair dismissal was raised by the Judge at the Case Management PH held on 20 July 2022, which the Claimant

attended in person. On 5 September 2022 the Tribunal wrote to the Claimant saying that she should provide reasons why her unfair dismissal claim should not be struck out, by 13 September 2022. The Claimant did not address this issue in her substantive email of 7 September 2022 and has at no time responded on this issue to either the Tribunal or the Respondent, who has raised it regularly in correspondence.

2.2 It is clear that the Claimant's period of employment, by her own pleadings, falls far short of the 2 year period required by **s.108 of The Employment Rights Act 1996**. There is nothing in the pleadings/documents nor has there been any response from the Claimant giving any grounds why this complaint should not be struck out. The Tribunal therefore has no jurisdiction to hear a complaint of unfair dismissal.

2.3 Accordingly, the complaint of unfair dismissal will be struck out.

### **Discrimination Complaints:**

3.1 The Claimant is a litigant in person and has shown only sporadic engagement with her own case. The Respondent's solicitor has shown consistent efforts to engage the Claimant in cooperating in order to comply with Tribunal Orders made at/after the PH held on 20 July 2022. As is clear from the email correspondence before the Tribunal today, they have tried to encourage and assist the Claimant to that end. When the Claimant sought hard copies of documents, the Respondent sent, by recorded delivery, a complete bundle of hard copy documents and correspondence since the date of the PH, to the Claimant on 8 September 2022.

3.2 The Claimant has consistently failed to comply in a timely fashion, or at all, with Tribunal orders. The Tribunal on 8 September 2022, sent the Claimant a Strike Out Warning for non-compliance with Tribunal Orders and/or not actively pursuing her case. On 9 September the Claimant sent her Medical records/Impact Statement as ordered, although late as these were not in accessible form until a few days later (12 September 2022 – the last contact of any kind with the Claimant to date). She has made no contribution to disclosure of documents and the Respondent has therefore, under Tribunal Orders, produced a hearing bundle as best it can, for the Full Merits Hearing listed for 8 days to start on 15 May 2023.

3.3 The Claimant had expressed concern about the confidentiality of her medical records at the PH hearing in July and has consistently refused since that date to give the Respondent's solicitor permission to disclose relevant parts of those records to the Respondent, despite repeated requests. This has considerably prejudiced the Respondent in being unable to give instructions to their Solicitors, in knowing fully the case which they have to meet and in conducting their defence to the Claimant's claims.

3.4 The Tribunal is mindful that striking out a discrimination claim of this kind, without a merits hearing, is rare. I considered carefully whether this was indeed one of those rare cases where strike out would be appropriate, given,

in particular, the Claimant's refusal to allow disclosure to the Respondent of vital evidence on the disability issue underlying all of her disability discrimination complaints.

3.5 In concluding that strike out today was inappropriate but that the Claimant should be given a final opportunity to engage properly with the pursuit of her complaints, in the form of an unless order, I had particular regard to the following matters:

(i) The Claimant's last substantive engagement with the Respondent was a lengthy email dated 7 September 2022, which showed a proper concern for the issues which had been raised in correspondence with her and with Tribunal process, including her medical records. She apologised for her non-compliance by the dates ordered, explaining that she required hard copies of documents for her dyslexia, saying that she was currently unwell and was due hip surgery in the near future. She also said that she was awaiting her Subject Access Request. The overall import and tone of this email was that the Claimant did want to engage with pursuing her case.

(ii) The Claimant is a litigant in person and it is possible that something untoward has occurred to prevent her responding in any way since 12 September, the very last email contact; a period of 3 months.

(iii) I am also mindful that the current situation is untenable over any extended period. And is causing prejudice and additional costs for the Respondent. I concluded that the Claimant should be given a final opportunity to engage before the remainder of her case is struck out.

(iv) The date of 19 January 2023 was decided upon in order to allow space for the Christmas holidays. The Respondent undertook to have these Tribunal Orders courier delivered to the Claimant's home address, in order to ensure that she received them in hard copy, as postal strikes are currently interfering with postal deliveries.

**Other Matters:**

The Respondent did not pursue an application for a Deposit order today. It is noted that here is, however, a costs warning from the Respondent on record and which has already been sent to the Claimant.

The possibility of a Judicial Mediation as a way of resolving this case, should the Claimant comply with the unless orders set out above, was raised by the Tribunal today. Counsel for the Respondent undertook to take instructions from the Respondent about this possibility and the Claimant is asked to respond in the above orders.

Signed: Employment Judge A Stewart

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**Employment Judge**

Date 15 December 2022

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Judgment sent to the parties on

15/12/2022

FOR THE TRIBUNAL OFFICE

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**NOTES**

- (1) Any person who without reasonable excuse fails to comply with this Order shall be liable on summary conviction to a fine of £1,000.
- (2) Further, if this Order is not complied with, the Tribunal, may (a) make an Order for costs or preparation time against the defaulting party under Rule 76(1) or (2), or (b) strike out the whole or part of the claim, or, as the case may be, the response, and, where appropriate, direct that the Respondent be debarred from responding to the claim altogether.
- (3) You may make an application, upon notice to the other parties, for this Order to be varied or revoked.