



EMPLOYMENT TRIBUNALS

Claimant: Ms Sarah Fox

Respondent: South Essex Academy Trust

Heard at: East London Hearing Centre

On: 15 December 2022

Before: Employment Judge B Elgot
Members: Mr D Ross
Ms M Long

Representation:

For the Claimant: in person, assisted by her daughter Ms S Brooks
For the Respondent: Mr M Williams, counsel

This was a hybrid hearing conducted by the Employment Judge in person together with the two non-legal members on CVP

The Claimant and her daughter attended in person

Mr Williams attended on CVP.

The Tribunal's unanimous judgment is as follows :-

JUDGMENT

(Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013)

1. The Claimant's application for a costs order against the Respondent is struck out and DISMISSED under Rule 37 (1) (c) of the 2013 Rules.
2. The Tribunal strikes out the application of its own initiative on the ground that the Claimant has not complied with orders of the Tribunal.
3. The Claimant was given a reasonable opportunity at this hearing to make representations. Her application to postpone today's hearing was refused.

REASONS

1. Written reasons were asked for by the Claimant at the Hearing itself.
2. We wish to record that the Claimant exhibited signs of anxiety, distress and tearfulness as symptoms of her mental health impairments but was able to listen to the Tribunal's explanations, understand the points made by Mr Williams on behalf of the Respondent and certainly after the break between 12.20 and 12.40 pm was calm and less agitated. We are satisfied that every reasonable adjustment was made to address the substantial disadvantage caused by a formal tribunal hearing. In particular as notified to the Claimant on 4 November 2022, in a letter sent by Acting Regional Employment Judge Russell, a new judge with no prior involvement was allocated to this case. Employment Judge Elgot made it clear to the Claimant that she has not read any part of the without prejudice correspondence which has been deemed inadmissible.
3. No member of the Tribunal has read the content of the bundle (149 pages) sent yesterday by the Respondent (14 December 2022). The Claimant has strongly objected to the content of that bundle but has not been able to say why or identify those documents or parts of documents to which she takes objection; she told us that she had insufficient time to undertake this task. The Respondent has in any event withdrawn that bundle and does not rely on its content for the purposes of this costs hearing.
4. The Respondent's costs application against the Claimant was withdrawn on 18 November 2022.
5. The Claimant made a costs application dated 21 July 2021 shortly after receipt of a Remedy Judgment in her favour in relation to proceedings begun on 8 June 2017. The short history of those proceedings is that over the course of four years the claims of constructive unfair dismissal and disability discrimination were the subject of a partially successful appeal and reconsideration in relation to both liability and remedy (calculation of interest).
6. The most recent Judgment with Reasons following Reconsideration is dated 15 June 2022 and was sent to the parties on 21 July 2022.
7. It is therefore only the Claimant's application for costs which is the subject of today's hearing listed for two days on 15 and 16 December 2022. That is the only matter still in issue in this case.
8. On 15 June 2022 there was a Preliminary Hearing (PH) in private by CVP conducted by the original judge EJ A Ross (sitting alone). He had converted the previously listed Costs Hearing into a preliminary hearing to consider case management. At that PH despite the subsequent amendments and further orders which were made the Claimant was told that she would have responsibility for agreeing with the Respondent an index of documents relevant to the mutual costs applications. She

therefore knew that she must search for and disclose all her relevant documents to the Respondent and she should have commenced that task immediately; her deadline was 11 August 2022. She did not apparently do this. At the same hearing she was given permission to prepare a further witness statement and exchange of witness statements was ordered no later than 8 September 2022. The Claimant did not take any such step even though at paragraph (2) (f) of her email dated 11 November 2022 and addressed to AREJ Russell she agrees a new deadline for witness statements by 9 December 2022.

9. On 7 October 2022 this hearing was listed for 15 and 16 December 2022 and the parties were notified.
10. On 4 November 2022 following receipt of further clarification sought from the parties Acting Regional Employment Judge Russell wrote to them in relation to redaction of certain documents and an amendment to the List of Issues from the PH of 15 June 2022. The amendment to the List of Issues was relevant to the content of any witness statement that Claimant was directed to prepare and indeed removed two of those issues.
11. AREJ Russell then made further case management orders including a requirement for the parties to send to each other a copy of any witness statement upon which they intended to rely. The Claimant did not comply with this direction even though she told us today that she intends to give witness evidence on her own behalf in support of her costs application. She similarly did not, as directed by AREJ Russell, identify those documents in the existing bundle which she required to be redacted. Her email dated 11 November 2022 makes it clear at paragraph (2) (b) that the Claimant seeks *'permission to include further documents to those proposed by the Respondent in relation to the unreasonable conduct I allege'*.
12. Shortly after 4 November 2022 the Respondent withdrew its application for costs against the Claimant.
13. The Claimant's application dated 28 November 2022 requesting a postponement of the Costs Hearing, acknowledging her case management responsibilities and requesting that *'I be given adequate time to produce the chronology, bundle and my witness statement'* was decided by AREJ Russell who wrote to the parties on 2 December 2022 refusing a postponement and stating *'if the Claimant pursues her costs application then she must make sure that all relevant documents, chronology and statements are provided to the respondent by 9 December 2022'*. The Claimant did not comply with these directions of the Tribunal. We are satisfied that it is not the case, as the Claimant alleges, that she only had one week between 2 and 9 December 2022 to prepare her documents and witness statements. She was on notice of the necessity to take these steps by reason of the orders of the Tribunal on 15 June 2022 and 4 November 2022.
14. The Claimant applied again for a postponement which was refused by AREJ Burgher on 14 December 2022 but which extended the deadline for her *'to provide all the relevant documents she wishes to rely on by 2pm today'*.

15. The Claimant has not complied with the orders of AREJ Russell dated 2 December 2022 or the order of AREJ Burgher dated 14 December 2022. Her application to us for a further postponement is refused. This is a case which began in June 2017. A postponement would lead to a further delay of at least four months before a new listing is possible. The Claimant has had ample time and forewarning of her case management obligations in relation to her own costs application.
16. The Claimant produced a small bundle of miscellaneous paper work today, no chronology and no witness statements. It is unclear which parts of it have been sent to the Respondent. The non -legal members do not have a copy. The file of paperwork she has sent to the Tribunal at 13:08 on 14 December 2022 is not compliant with previous orders. It makes extensive cross-reference to '*tribunal papers*' and states that these will not be sent '*as you clearly have copies*'. There is then a list of documents not all of which are readily identifiable which it would require the Tribunal and the Respondent to search their existing files to discover. The Claimant requires certain of those documents to be redacted but does not say how. We anticipate that any such exercise would take at least 4-6 hours to search the relevant files. Those documents include, using the Claimant's own description, an unfinished chronology (work in progress), unfinished statement (work in progress), notes for statement (work in progress). The Claimant concludes '*I cannot be sure this is everything I would include with more time but in this short time is the best I can do*'.
17. In all the circumstances and in view of our findings of fact set out above we are satisfied that the Claimant has failed to comply with orders of the Tribunal. The limited documents she has sent in support of her application for costs against the Respondent are incomplete by her own admission and unusable in their existing format (requiring significant cross-referencing). There is no witness statement sent by her to the Respondent or the Tribunal.
18. The Respondent does request a dismissal of the costs application in its email dated 12 December 2022. This application was not robustly pursued by Mr Williams today who did his best in furtherance of the overriding objective to assist the Claimant and acknowledged her health difficulties. However of our own initiative and under Rule 37 of the Employment Tribunal Rules we are certain that the Claimant has persistently failed to comply properly or at all with the orders of the Tribunal and accordingly her costs application is struck out and dismissed.

Employment Judge B Elgot
Dated: 19 December 2022