



EMPLOYMENT TRIBUNALS

Claimant: Ms A Adodibe

Respondent: Sodexo Limited

Heard at: Watford

On: 6 December 2022

Before: Employment Judge Manley

Representation

Claimant: Ms Malhan, caseworker

Respondent: Mr Bruce, solicitor

JUDGMENT having been sent to the parties on 11 December 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

- 1 This matter was heard at a preliminary hearing having been adjourned from 2 November 2022 to deal with the issue of whether the claim for disability discrimination should be struck out for failure to comply with a tribunal order and/or whether it had already been automatically struck out for that failure. In that case, it would be treated as an application for relief from sanction. The claimant also applied to be allowed to amend the disability discrimination claim if it proceeded.
- 2 For this hearing, I was sent a bundle of documents, a summary of the preliminary issues by the respondent's representative and submissions in writing by the claimant's representative. I heard oral argument and gave oral judgment after a short adjournment.
- 3 A summary of the history leading to this hearing is as follows. The claimant's claim form was presented on 12 November 2021. She brought claims for race and age discrimination and public interest disclosure detriment as well as ticking the box for disability discrimination. She was originally represented by her trade union. After the response was presented, the tribunal made an order on 30 March 2022 for the claimant to provide specific information on the disability discrimination claim by 27 April 2022. This included details of the impairment relied upon, an impact

statement and copies of GP or medical records. On 30 March 2022 the trade union representative notified the tribunal that they were no longer representing the claimant.

- 4 There was no response to the tribunal order for information. The respondent's representative told me that they had made several attempts to contact the claimant. They wrote to the tribunal on two occasions asking that an unless order be made so that the necessary information on the disability discrimination claim would be provided. This led to a letter from the tribunal being sent to the claimant on 12 June 2022 informing her that the judge was considering striking out the disability discrimination claim and stating the claimant could give reasons in writing why it should not be struck out and ask for a hearing by 27 June 2022. The claimant did not respond to that, except there may have been a telephone conversation between the claimant and a tribunal clerk which is not noted on the file. The respondent's representatives wrote to the tribunal on 28 June and 12 July asking for confirmation that the disability discrimination claim had been struck out.
- 5 On 3 August 2022 the claimant sent an email to the tribunal about her case, purporting to explain the delays by reference to her representative's withdrawal and cataract surgery. The information first ordered in March 2022 was not provided and the respondent's representatives repeated their position that the disability discrimination claim should be struck out. A preliminary hearing was listed for 2 November 2022 where the respondent repeated its position. That preliminary hearing was postponed to the date above as there was insufficient time to deal with the issue. The claimant has had the assistance of Ms Malhan and made applications to amend the claim, which was a request to add a claim for failure to make reasonable adjustments.

The claimant's submissions

- 6 The claimant argues that her disability discrimination claim should not be struck out. She was unrepresented after her trade union representative withdrew. I understand she has health problems, including serious mental health issues related to a significant childhood trauma and she was finding it very difficult to cope. She had been carrying out agency work since October 2021 and had been in touch with the tribunal office. At the time of this hearing I was told that she had begun her impact statement and had provided some partial medical evidence. Ms Malhan urged me not to strike the disability discrimination claim out now the claimant had some assistance. The claimant also submits that a claim for failure to make reasonable adjustments should be added to the claim on the grounds that there is sufficient information in the ET1 to make out such a claim.

The respondent's submissions

- 7 The respondent argues, first, that the disability discrimination claim was or should have already been struck out because of the failures to comply with the tribunal order and the strike out warning letter. If it is not automatically struck out, the respondent submits that I should now strike it out as there is still no compliance with an order made in March 2022. Although the claimant has provided some information, there remains a lack of clarity

about the impact of her impairment, diagnosis and any treatment. The delay is lengthy and the disability discrimination claim is still not clear, unlike the other claims which are to continue.

The relevant law

- 8 The power to strike out for failure to comply with tribunal orders is contained in Rule 37 Employment Tribunal Rules of Procedure 2013:-

Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, 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.

- 9 I am considering the matter primarily under Rule 37 (1) (a), (b) and (c). If it is the case that the disability discrimination claim has already been automatically struck out, I will treat what the claimant says as an application for relief from sanction and can consider allowing the claim to proceed applying the tests in *Denton v TH White* [2014] EWCA 906. That is to consider the seriousness and significance of the breach; the reasons why the default occurred and all the circumstances of the case.

- 10 When considering an application to amend a claim, I must consider the nature of the amendment, the reasons for any delay in bringing that claim and balance the injustice to the parties in allowing or refusing the amendment.

Conclusions

- 11 I have decided that the disability discrimination claim can proceed no further. I appreciate that the claimant has had health issues but the failure to respond was over many months and was despite reminders by the respondent and the tribunal. There is still no clarity about the claim which is being brought. The first stage in such a claim is for there to be a finding that the claimant was disabled at the material time and that evidence is still not available. The last hearing was on 2 November and the claimant has not been able to comply by 6 December with providing that

information. The claimant has been given several opportunities to comply with orders and has not been able to give the information. My view is that the claim was not automatically struck out because the strike out warning was contained in a letter and not an order. If it was, I would not give relief from sanction because of the delays and the impact on the progress of this case.

- 12 I do find, however, that the disability discrimination claim should now be struck out under Rule 37. The claimant's actions in failing to respond are unreasonable and she has failed to comply with a clear order. I am not confident that, if the disability discrimination claim were allowed to continue, that the necessary information would be provided. In balancing the interests of the parties, I have taken into account that the rest of the claimant's claims, which are substantial, will proceed and her case heard. The respondent has attempted to get the information on the disability discrimination claim and has still not got what it needs to defend the claim.
- 13 I understand that the claimant was without representation for a time but, even now, with the helpful assistance of Ms Malhan, the information has still not been provided. In all the circumstances, I find that the disability discrimination is struck out. It is not necessary, therefore, for me to consider the application to amend. The rest of the claimant's case proceeds as set out in the case management summary with the issues as identified.

Employment Judge Manley

Date 13 February 2023

JUDGMENT SENT TO THE PARTIES ON

16 February 2023

FOR THE TRIBUNAL OFFICE