



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Helen Rolle

**Respondent:** Total Support Services Limited

**UPON APPLICATION** made by the claimant to reconsider the judgment dated 15 July 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing

## RECONSIDERATION JUDGMENT

1. The judgment dated 15 July 2022 is varied as follows:
  - a. The complaints of unfair dismissal and disability discrimination are struck out.
  - b. The remaining complaints shall proceed.
2. The judgment dated 8 November 2022 is revoked.
3. The parties shall write to the Tribunal no later than 28 days from being sent this judgment setting out if any further directions are required (and, if so, their proposals), or to confirm if the remaining complaints have been compromised.

## REASONS

1. The file was re-referred to me upon receipt from the claimant of a letter dated 20 December 2022 which purports to appeal (1) my judgment striking out the claim and (2) my judgment on reconsideration thereof. This letter has been sent to this Tribunal and not to the Employment Appeal Tribunal, however.
2. On reviewing the papers, it appeared that an email from the Claimant dated 30 August 2022 setting out further grounds in favour of reconsideration was not before me when I refused the application for reconsideration in my judgment dated 8 November 2022. In other words, I was not in possession of all of the relevant materials when I made that decision and, in my judgement, it would be wrong to allow it to stand without considering the missing materials. In the circumstances, I considered it was in the interests of justice

to treat the email of 30 August 2022 and letter of 20 December 2022 together as a further application for reconsideration, and to extend time for the making of such an application under Rule 5.

3. Having reviewed the file again, together with the benefit of all of the Claimant's submissions, I considered that there was a reasonable prospect of varying the original decision - specifically to limit the strike out only to part of the claim - and the application should therefore proceed. I noted that paragraph 7 of the Grounds of Resistance acknowledges that a payment is due in relation to notice and accrued holiday outstanding. Therefore, my provisional view was that it would not be in the interests of justice for the strike out of those aspects of the claim to stand. I indicated this provisional view to the parties and invited written representations. I also asked the parties to confirm whether they considered a hearing was necessary, indicating my provisional view that one was not necessary in the interests of justice. This letter was sent to the parties on 24 March 2023.

4. The Respondent's response was, in substance, as follows:

The Respondent requests an order from the tribunal that the Claimant provide her bank details to me (as the Respondent's representative) within 14 days of the reconsideration of judgement notification.

In return, the Respondent agrees to pay the Claimant the monies owed (£1,608.84) within 14 days of receipt of these details.

5. I took from this that the Respondent did not object to the course I had proposed in the letter (as is implicit in the acceptance that a sum of money is due to the Claimant), nor to the decision being made without a hearing.

6. The Claimant also provided a response, which referred back to her earlier submissions, and otherwise sought the assistance of the Tribunal in progressing her claim with ACAS. She did not request a hearing either. I am satisfied that the interests of justice are best served by determining this application without a hearing.

7. Having considered the parties' representations, I consider it is still appropriate to strike out the claim, save in respect of the parts of the claim where liability is not disputed. In my judgement, it is not in the interests of justice to strike out complaints that are, in substance, undisputed and where the only question is one of quantification, a question which should be capable of being agreed by the parties (or which, if not, can be resolved by the Tribunal in a short hearing). This is so notwithstanding that, on their face, the earlier strikeout warnings sent to the Claimant (and referred to below) relate to the entire claim.

8. My reasons for striking out the rest of the claim (i.e. the parts where liability is disputed) are as follows.

9. As the original judgment explained (reasons paragraph 1) the claimant had been warned on two occasions that the Tribunal was considering striking out the claim for not being actively pursued: first on 25 May 2021 and again on 4 April 2022.
10. The request for reconsideration refers to an email sent to the Tribunal on 26 May 2021, responding to the first of these warnings. That email read (in relevant part):

*“In response to your letter, I have been actively pursuing my claim through ACAS. ACAS have been conciliating with the Respondent.”*

11. However, as explained in the Tribunal’s letter of 4 April 2022 (the second warning), sent on the instructions of EJ Tsamados, ACAS is a separate body to the Employment Tribunal. The Judge therefore directed:

*“The Claimant must provide the information requested in our letter of 5 January 2021 or the Tribunal will consider striking out the Claim. Please reply by the 18<sup>th</sup> of April 2022.”*

(The reference to the letter of 5 January 2021 is to a letter containing directions from EJ Ferguson requiring the claimant to provide further particulars of her disability discrimination claim.)

12. The claimant did not respond to the Tribunal’s letter of 4 April 2022. It was in these circumstances that the file came before me, following a request from the respondent that the claim be struck out.
13. The claimant now asserts that she did not receive either the letter of 5 January 2021 or the letter of 4 April 2022.
  - a. Regarding the letter of 5 January 2021, I can see from the file that the letter was sent to the claimant’s correct home address by post. This is the same address to which the letter of 25 May 2021 was sent, which the claimant did receive. Furthermore, the letter of 25 May 2021 expressly refers to the letter of 5 January 2021. Accordingly, even if the claimant had, for reasons that are not explained, not received the 5 January 2021 letter, the 25 May 2021 letter should have alerted her to its existence – however, though she responded to the 25 May 2021 letter by email, she did not request a copy of the 5 January 2021 letter it referred to.
  - b. Regarding the letter of 4 April 2022, I can see from the file that the letter was sent by email to the claimant’s correct email address, which the claimant has used otherwise to correspond with the Tribunal. I do not accept the claimant’s unproved assertion that the letter was not received.

14. I remain satisfied that it is appropriate to strike out the claim for not being actively pursued, save (for the reasons given above) in respect of the parts of the claim where liability is not disputed. The claimant had not complied with the directions issued on 5 January 2021 despite the passage of more than 18 months from those directions being made. She had been twice warned that the claim was liable to be struck out because it was not being actively pursued. Her response to the first of these warnings was to refer to action through ACAS, but the Tribunal had already explained in the letter of 4 April 2022 that this was not sufficient and that she still needed to comply with the directions of 5 January 2021. She again failed to do so, or to take any steps to advance her claim in the Tribunal.
15. In coming to this decision, I have disregarded any without prejudice materials that the claimant has provided to the Tribunal. The very nature of without prejudice discussions is that evidence of them should not be put before Tribunal and cannot be taken into account.
16. I therefore vary my judgment dated 15 July 2022 such that the strike out does not apply to the parts of the claim where liability is not disputed (i.e. in respect of notice pay and accrued holiday outstanding) but otherwise stands, and I revoke my reconsideration judgment dated 8 November 2022, which is replaced by this judgment.
17. It will now be a matter for the parties to discuss how to proceed and, in particular, if the remaining complaints can be resolved without further pursuit of the Tribunal process. Now that, as a result of this judgment, the claim has (in part) been reinstated, ACAS should be available to assist in agreeing any settlement, if necessary. I note that in the email from the Respondent quoted above a specific sum has been identified as being due to the Claimant. I do not know if the Claimant agrees that is the correct sum in respect of her notice and holiday pay claims but, if she does, then acceptance of that sum would seem to resolve the remaining claims. If she does accept that sum, she should provide her bank details to the Respondent as soon as possible so that it can be paid (though the Tribunal does not have power to order her to provide her details).
18. The parties should write to the Tribunal no later than 28 days from being sent this judgment setting out if any further directions are required (and, if so, their proposals), or to confirm if the remaining complaints have been compromised.

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Employment Judge Abbott  
Date: 10 May 2023

