



EMPLOYMENT TRIBUNALS

Claimant: Ms A Walker

Respondent: MS and AC Banbury

RECORD OF A PRELIMINARY HEARING

Heard at: Southampton

On: 12 May 2023

Before: Employment Judge Dawson

Appearances

For the claimant: No appearance

For the respondent: No appearance

JUDGMENT

1. The claims are struck out on the basis that;
 - a. the claimant is not actively pursuing her claims and, in any event
 - b. the tribunal has no jurisdiction to consider the claims due to the passage of time.

REASONS

1. The claimant presented her claim of unauthorised deduction from wages and being subject to a detriment/dismissal for whistleblowing on second December 2022. The claim form stated that the claimant had worked until 2 August 2022 as a manager and indicated that the claimant had been instantly dismissed on that day.

2. It was not clear from the claim form (and it has not been clarified by the tribunal) whether the claim is against two individuals, MS Banbury and AC Banbury or whether MS and AC Banbury is a partnership or an unlimited company. A response was presented on behalf of “MS and AC Banbury”, the email address given for contact was one which would appear to relate to Mark Banbury but the legal status of the respondent/s remained unclear.
3. A preliminary hearing was listed to take place on 20 April 2023.
4. On 28th of March 2023 the claimant forwarded to the tribunal a copy of a Non—Molestation order made in the County Court on 6 February 2023 which, amongst other things, prevented Mark Banbury contacting the claimant in any way.
5. On 13 April 2023 the tribunal wrote to the claimant on the direction of a judge stating as follows:
 - i) If the non-molestation order is still in force it would appear to make any communication between the parties and/or any attendance at any court hearings impossible. The order is dated the 6th February 2023 and refers to a hearing on 15th February 2023 which suggests that there are ongoing proceedings in the family court.
 - ii) The parties are directed to notify the tribunal by return whether the order was varied in any way at the 15th February hearing and/or if there is an updated order and/or whether there are ongoing proceedings in the family court.
 - iii) If the order and/or an equivalent order remains in place and/or there are ongoing proceedings in the family court in the view of the Employment Judge these proceedings should be stayed until the proceedings are concluded and/or the order is revoked. If either party disagrees it should notify the tribunal by return.
6. On 14 April 2023 Mark Banbury wrote to the tribunal stating that there was a non-molestation order in force for a period of 12 months and attached what he described as the updated order. He said that he agreed to the stay in proceedings. However the order which he attached was not a non-molestation order but was a record that Antonia Walker and Mark Banbury had given mutual undertakings to the court which included that the parties would not contact each other, directly or indirectly, for a period of 12 months.
7. The tribunal did not stay the proceedings but, on 20 April 2023, a judge directed as follows “The case management hearing listed for 12 noon today is cancelled because the Judge is considering striking out the claim because (i) it was presented out of time, (ii) the claimant has failed to comply with directions relating to the claim being out of time and as to the possible stay and (iii) the claimant has failed to pursue the claim. It will instead be converted into a public preliminary hearing to held on 12 May 2023 at 10:00am by telephone. A Notice of Hearing together with the steps to be taken before it will follow”.

8. It is for that purpose that this hearing was listed.
9. Neither party contacted the tribunal following that direction and no one attended at this hearing.
10. I considered whether I should go ahead with the case in the absence of the parties. I had, as is apparent from the above chronology, considered the file and the tribunal staff attempted to contact the parties but the claimant had not given a contact number and the respondent's phone was turned off.
11. I considered whether it was possible that the parties had not attended the hearing because of the undertakings which they had given to each other. It seems to me unlikely that was the case, since I would have expected the parties to contact the tribunal directly in that event.
12. Moreover, it does not seem to me that the undertakings would have necessarily have stopped all of the parties attending this hearing. Firstly, it might be said that whilst the parties could not contact each other, that did not stop them attending at a tribunal hearing by telephone.
13. Secondly, if the respondents are two named individuals, there would be no reason to stop AC Banbury attending the hearing and no reason why the claimant could not attend the hearing to pursue her claim against AC Banbury. On the other hand, if MS and AC Banbury was a partnership or an unlimited company then the undertaking would not prevent the claimant contacting that partnership or unlimited company (as long as she did not do so via Mr Banbury) and would not stop the partnership or unlimited company the hearing attending via an agent.
14. Thus, in all circumstances, it seemed to me that I should go on to consider the case.
15. Firstly, I considered whether the claim should be struck out on the basis that the claimant was not actively pursuing it. Given that she had not responded to the direction given on 20 April 2023 and had not attended at this hearing I found that the claimant was not actively pursuing her claim and the claim should be struck out that reason.
16. Secondly, and in any event, I find that the claims were presented to the tribunal out of time. The latest primary limitation date in respect of the whistleblowing claims must be three months after the date of dismissal which would be 1 November 2022. Although the claimant entered into early conciliation, date A- being the date of receipt by ACAS of the early conciliation notification- was 30 November 2022 and therefore cannot extend the limitation period.
17. The claim of unauthorised deduction from wages would run from the date when the wages should have been paid. In my judgment, except in unusual circumstances, unpaid wages will be payable on the date of a summary dismissal, since that is the date when the contract comes to an end. In any event the claimant has not suggested any other date for the date of payment of

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wages. Again, the limitation period is three months and, again, the claim was presented out of time.

18. In those circumstances, in the absence of any argument that it was not possible to present the claim within the primary limitation period, the tribunal has no jurisdiction to consider the claim and it must be struck out.

Employment Judge Dawson

Date 12th May 2023

JUDGMENT SENT TO THE PARTIES ON
24 May 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP

The hearing was conducted by the parties attending by telephone. It was held in public in accordance with the Employment Tribunal Rules. It was conducted in that manner because it was in accordance with the overriding objective to do so.