



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Ms M Janusauskaite
First Respondent: Just Ask Estate Services Ltd

Heard at: London South (Croydon) (in private)

By: CVP

On: 9th May 2023

Before: Employment Judge L Clarke

Members: Mrs K Beckett
Mr S Khan

Appearances

For the claimant: Did not attend and was not represented
For the Respondent: Mr A Williams (solicitor)

JUDGMENT

- (1) All claims brought by the Claimant are struck out.

REASONS

1. The claim, brought on 21st May 2020, was made for automatic unfair dismissal and race discrimination in relation to a dismissal on 4th March 2020. The Claimant was unable to bring a claim of ordinary unfair dismissal as she had less than 2 years continuous service. The details of the claims on the claim form were unclear.
2. The Respondent's response (accepted following a successful request to extend time) indicated that the Claimant had been re-employed from 7th

January 2021 and stated that it was unable to understand the Claimant's claims. In any event, the Respondent denied all of the Claimant's claims.

3. A telephone case management hearing was held on 28th July 2021 which was attended by both parties. At the hearing the Claimant advised that she had been sectioned under the Mental Health Act. The hearing was not effective to obtain further information about the claims because the Claimant required, but did not have, the assistance of an interpreter to aid with communication. A further preliminary hearing was scheduled on 16th February 2022.
4. In advance of the preliminary hearing, the Claimant e-mailed the Tribunal on 20th January 2022 to provide contact details. She did not however attend the preliminary hearing.
5. The preliminary hearing proceeded in her absence with various case management orders being made to progress the case, which was listed for final hearing over 5 days on 8th to 12th May 2023. The case management orders included a direction to the Claimant to provide further information about her claim and directions to both parties in respect of a list of issues, disclosure, production of a file and witness statements.
6. On 28th March 2022 the Claimant wrote to the Tribunal stating: "I have detained Peterborough Hospital Section 3 Mental Health Act 1983 and still Hospital continue."
7. The Claimant did not comply with any of the orders in the case management order of 16th February 2022 and on 5th April 2022 the Respondent applied to strike out the claim under Tribunal Rule 37(1) on the basis of failure to comply with orders and actively pursue the claim.
8. On 28th April 2022 the Tribunal declined to make any order on the application but indicated that the file would be reviewed in 8 weeks.
9. On 12th November 2022 the Tribunal wrote to the Claimant requesting that she provide the Tribunal with an update as to her current position and evidence in support by 26th November 2022.
10. No response was received to this correspondence.
11. The Respondent made a further application to the Tribunal to strike out the Claimant for non-compliance with orders and failure to pursue on 14th April 2023.
12. The claim was listed today for the first day of the final hearing. Although initially listed to commence on 8th May 2023, that date was vacated when it became an additional bank holiday to celebrate the King's Coronation.

13. The Claimant did not attend the hearing today. The Respondent attended and requested that the Tribunal strike out the claim for the reasons set out its (undetermined) application of 14th April 2023.
14. Attempts were made today to contact the Claimant to ascertain the reason for her non-attendance. Telephone contact was unsuccessful as the telephone number held by the Tribunal is no longer operational. An e-mail was sent to her by the Tribunal today at 10:28am today asking for her reasons for non-attendance. At 12:00 there had been no response and the hearing proceeded in her absence.
15. The Claimant has made no contact with the Tribunal for over a year since her e-mail of 28th March 2022.
16. Although the Respondent re-employed the Claimant on 7th January 2021, she ceased to attend work and has made no contact with the Respondent in respect of her employment since April 2022. The Respondent subsequently initiated absent without leave processes and the Claimant's employment was terminated with her last pay-check having been issued on 31st October 2022.
17. The Claimant has also not been in contact with the Respondent's representatives in connection with this case for in excess of 1 year.

The Tribunal's conclusions

18. The Claimant has failed to comply with numerous Tribunal orders, including directions requiring her to provide further information about her claim and evidence and information about her mental health.
19. The claim she is seeking to make in relation to automatic unfair dismissal is unclear and she has given no particulars at all in relation to her claim for race discrimination.
20. Although the Claimant has twice indicated that she has been sectioned under the Mental Health Act, she has not provided any evidence of her hospitalisation or mental health difficulties. Further, despite stating that she had been sectioned, she was able to attend the hearing on 28th July 2021 and contact the Tribunal by e-mail on 28th March 2022.
21. There is a presumption of capacity under section 1(2) of the Mental Health Act 2005. Capacity and the ability to weigh and retain information, and make relevant decisions is situation specific. Detention under the Mental Health Act may be an indicator of mental health difficulties and a flag for further enquiry, but is not determinative, of a lack of capacity. The Claimant has been asked to provide further information but has failed to do so.
22. The Tribunal did not consider that the presumption of capacity under the Mental Health Act was displaced merely by the Claimant's assertion that she has been hospitalised. In any event, that assertion was made over 12 months ago and there is no information or evidence that any capacity mental

health difficulties or capacity issues which existed at that time are still extant today.

23. The Claimant did not attend the final hearing today and has not contacted the Tribunal or the Respondent for in excess of 12 months.
24. In all of the circumstances, and having regard to the overriding objective, the Tribunal concluded that the Claimant had failed, without reason being given, to comply with the Tribunals orders and is not actively pursuing her claim and that it should be struck out.

Employment Judge Clarke

Date: 9th May 2023

Judgment sent to the parties and entered in the Register on:

The reasons for this decision were given orally at the hearing. Written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of this written judgment being sent to the parties.

Public access to employment tribunal decisions

Note that both 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 parties.