



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107812/2022

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Held in Chambers on 31 May 2023

Employment Judge D Hoey

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Miss Michelle Bryce

Claimant

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Jamie McGinn

First Respondent

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Regency Facilities Management Ltd

Second Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The claim is struck out in its entirety as it has not been actively pursued and for the
undernoted reasons.

REASONS

1. On 16 December 2022 the claimant lodged an ET1 arguing that she had been automatically unfairly dismissed and subject to disability discrimination. The ET1 was presented with the benefit of specialist employment law advice.
- 30 2. An ET3 was presented noting the claims were unspecified as it was not clear what the disclosure was (if any was made) and there were no facts supporting the assertion of disability discrimination. The respondent also noted that the claimant had not engaged with the respondent during internal disciplinary

proceedings and she had failed to attend and deal with matters at the relevant time.

Claimant told to specify her claim

3. On 23 January 2023 following initial consideration of the claim and response
5 the claimant was asked to provide detail as to the disclosure relied upon and what her specific Equality Act 2010 claims were.
4. A telephone case management preliminary hearing had also been fixed and both parties were asked to complete an agenda setting out their respective cases.
- 10 5. On 7 February 2023 the respondent submitted their agenda duly completed noting the absence of specification from the claimant which resulted in the respondent being unable to present their defence (as they did not know what the claims were that the claimant was making).
6. The claimant was reminded on 7 February 2023 of the need to reply to the
15 Tribunal's letter.
7. On 7 February 2023 the claimant's former solicitor advised the Tribunal that they were not representing the claimant in these proceedings.

Claimant says she will reply promptly

8. On 8 February 2023 the claimant sent an email to the respondent and Tribunal
20 who said she was seeking alternative solicitors and that she had not received previous correspondence. She said she would "respond promptly on receipt of correspondence".
9. The claimant had indicated that she may not be able to attend the case management preliminary hearing on 14 February She was advised that the
25 hearing would proceed and both parties attend the hearing. The claimant was to receive a further copy of the letter of 23 January 2023 and the agenda for her to complete.

Claimant reminded of need to complete agenda

10. The claimant was reminded to submit her agenda on 9 March 2023,
11. On 9 March 2023 the claimant indicated she was having difficulties carrying out tasks and would need help to proceed. She said she would aim to respond by 16 March 2023.

5 **Claimant reminded again of need to respond**

12. Absent any response on 21 March 2023 the claimant was reminded of the need to comply with the Tribunal's direction and she should complete the agenda by return and if she failed to do so the matter would be referred to a Judge for further procedure.

10 **Claimant says she will respond**

13. The claimant replied that day to apologise for the delay and said she was not keeping well. She said she was communicating with ACAS and would chase them.

Claimant told again to provide specification

- 15 14. On 29 March 2023 absent any substantive response from the claimant the Tribunal wrote to the claimant noting the background and in particular:
1. On 17 February 2023 case management orders were issued which the claimant had to follow
 2. The claimant was to complete an agenda and send it to the respondent and the Tribunal
 3. Parties were advised they could apply to vary dates if required but no application had been made and no response had been received
 4. A case management hearing was fixed for 23 April
 - 25 5. The claimant had indicated her health was affecting her ability to progress the claim.

Claimant to confirm fitness to proceed or to provide agenda

15. The claimant was asked to confirm whether or not she was fit to conduct and progress the proceedings and if not produce medical information to support her position. She was asked to confirm if she was able to progress matters and if not why not and when she would be able to do so. She was told to send her agenda to the respondent and Tribunal urgently if she was able to do so.
16. On 1 April 2023 the claimant replied by email apologising for not progressing matters saying she had been “extremely weak” and was awaiting test results.

Claimant reminded of need to provide medical information or agenda

17. On 11 April 2023 the claimant was reminded of the direction from 29 March and in particular that if she was unable to progress her claim she required to provide medical information in support of her position which failing shew was to complete the agenda.

Claimant says she will provide medical information if needed

18. On 12 April 2023 the claimant replied by email apologising for the lack of response and said she had been admitted to hospital for more tests. She said she aimed to attend the hearing fixed for 25 April and if she was unable to do so she would provide GP and hospital correspondence as required.
19. On 14 April 2023 the claimant was advised that the hearing would proceed and any application to postpone should be made as soon as possible if so advised.

Further reminder for claimant to provide completed agenda

20. On 24 April 2023 the claimant was reminded of the requirement to have completed her agenda prior to the hearing on 25 April.

Claimant asks if hearing can be rescheduled

21. On 24 April 2023 at 1810 the claimant sent an email to the Tribunal saying “I am currently in the hospital for gallbladder surgery. Are we able to reschedule the hearing if possible please.” That application was brought to the Judge’s attention at 930am prior to the hearing starting at 10am. The respondent had
5 objected to the application and it was refused as the respondent noted there had been background in this case.

22. The claimant had not indicated that she could not attend the hearing for which notice had been given (and had previously sought a postponement for another hearing and then attended).

10 **Claimant does not attend the telephone hearing**

23. The claimant did not attend the hearing despite attempts to contact her. The respondent’s agent attended.

24. The respondent’s agent had sought an unless order requiring confirmation of good reason for non attendance which failing dismissal of each of the claims.

15 **Consideration was given to striking out claim in entirety**

25. The claimant had been given a number of clear warnings about the need to be fair to both the respondent and the public purse (the Tribunal). This hearing had been fixed for some time and the claimant understood that. She also understood that prior notice to adjourn the hearing would be needed if that
20 was necessary. She had previously asked for a postponement and then attended. On this occasion her request did not indicate that the claimant would not attend and was a request for a postponement without any accompanying information to support the application, aside from a statement that she was in hospital. No information was given as to when this became known to the
25 claimant. The claimant had also not given any response as to why she had failed to complete her agenda and progress her claim (yet had been able to communicate with the respondent, Tribunal and ACAS on other matters).

26. The claimant had also specifically accepted that she would send relevant medical information to support any application to postpone a hearing if she
30 was unable to attend the hearing. Her email the evening before the hearing

did not indicate that the claimant was unable to attend as such nor provide any supporting information, for example that the gallbladder operation was a last minute and unforeseen operation that resulted in the last minute need to postpone.

- 5 27. The claimant has still failed to set out any details in support of her claims which remain entirely unspecified. It is not possible for the respondent properly to respond to the claims. As the case progresses the respondent incurs costs as does the public purse. There comes a point where it is no longer fair to provide further directions to provide specification and matters
10 have to be drawn to a close. It is not fair to insist a respondent continue to defend unspecified claims and continued requests of the claimant are ignored.

Claimant to provide information and documentation

- 15 28. Rather than strike out the claim at that juncture I decided that the claimant would be given an opportunity to provide information that justified the approach that was taken. She was accordingly ordered to provide the following information and documents, by 10 May 2023, to allow a decision to be taken as to whether or not each of the claims the claimant has bought should be struck out because of the claimant's failure to attend and failure to provide any further information in support of her claims.

- 20 29. The information was:
- a. When was the claimant told that she would require to attend hospital such that she would not be able to attend the hearing of 25 April 2023 (in respect of her gallbladder operation);
 - b. What documents has the claimant in support of the notice she was
25 given of the operation and in support of any explanation for her failure to attend the hearing today; and
 - c. If the claimant was able to correspond with ACAS why has she been unable to set out the specifics of her claim and complete the agenda as required of her (and if the claimant is able to complete and agenda
30 she should do so).

30. The parties were advised that I would then make a decision as to whether or not to strike out the claims. The claimant was given a reasonable opportunity to make representations in writing, or if requested, at a hearing.

5 31. The claimant was told to give any reasons to explain why the claim should not be struck out as it does not appear to be actively pursued. The claimant had been given numerous warnings and reminders as to the necessity to specify the precise basis of her claims which are entirely unclear. She has failed to engage with that request. Absent any reasonable explanation supporting her position, the claim may be struck out as it is not being actively pursued.

10 **Claimant fails to respond in time**

32. The claimant did not respond within the directed time and on 11 May 2023 the respondent wrote to the claimant and Tribunal seeking strike out of the claims given the failure to provide the information and the failure to actively pursue her claim.

15 33. It appeared that the claimant had sent some material to the respondent but not to the Tribunal (as directed). As a consequence on 23 May 2023 the claimant was reminded of the information and documents she had to provide (and referred to the Note). She was given until 30 May 2023 to copy the information to the Tribunal to decide whether or not her claims should be
20 struck out, the claims not being actively pursued and there being a failure to comply with the orders.

34. There has been no response by the claimant to the original order issued in the Note dated 26 April 2023 which required the claimant to engage with the Tribunal to explain her failure to attend the Hearing.

25 35. A failure to engage with the Tribunal process prevents matters from progressing. The claim remains unclear and the issues have not been identified. The claims are serious and it is in no one's interest for the claims to remain unresolved or for them to be delayed unreasonably.

Rules as to strike out

36. In terms of rule 37, at any stage in proceedings a Tribunal may strike out all or part of a claim if it has not been actively pursued or where there has been non-compliance with the Rules or a Tribunal's Order. It is important that parties are given a reasonable opportunity to provide their representations.

5 **It is in the interests of justice to strike out the claims**

37. Given the claimant's conduct to date, her failure to attend the hearing that was fixed and respond to the order (with no acceptable reason or explanation having been given despite two opportunities being given to do so) and given the claim is not being actively pursued, it is in the interest of justice to strike
10 out the claims.

Power to reconsider

38. If the claimant considers there to be good reasons why the judgment should be reconsidered (such that it is in the interest of justice to reconsider the
15 judgment) she can apply for the judgment to be reconsidered and should follow the rules set out at Rule 71 of the Employment Tribunal Rules.

39. The claim is struck out in its entirety.

20 **Employment Judge: D Hoey**
Date of Judgment: 31 May 2023
Entered in register: 01 June 2023
and copied to parties

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