



EMPLOYMENT TRIBUNALS

Claimant: Ms K Langley

Respondent: North East Ambulance Service NHS Foundation Trust

Heard at: Newcastle Employment Tribunal

On: 15 June 2023

Before: Employment Judge Sweeney

Representation

Claimant: No attendance

Respondent: Angela Carver, solicitor

JUDGMENT

1. Pursuant to Rule 37(1)(b) (c) and (d) of the ET Rules of Procedure 2013, the Claimant's claim of disability discrimination is struck out on the grounds that the manner in which the Claimant has conducted the proceedings is unreasonable, that she has failed to comply with orders of the Tribunal, that she is not actively pursuing the claim.

REASONS

Facts

1. The Claimant was employed by the Respondent for a short period of time from **19 April 2022** to **10 May 2022**. Before commencing a role in either the Respondent's 999 or 111 service, it was a mandatory requirement that all employee's achieve a pass mark of 70% in two written assessments. Therefore, there is a 6 week period of training during which these assessments are completed.
2. The Claimant failed the assessments and re-sits (which were completed by the end of April 2022). Consequently, her employment was terminated with effect from **10 May 2022**.
3. The Claimant presented an ET1 on **14 October 2022**. She first contacted ACAS on **02 September 2022** and an ET Certificate was issued on **14 October 2022**.

4. The details of claim were set out in fairly general terms. What could be discerned from it (by implication) was that the Claimant contended that she failed the assessments because of the heavy writing demands of the training course, which – because she suffered with arthritis – aggravated her condition, resulting in her failing the tests. She made a number of assertions as to what had been said to her or what she had said to others, without identifying these others. The Claim Form did not say much about her arthritis as a disability and did not identify what type of disability discrimination claim she was pursuing. That is not uncommon where claims are presented by litigants in person and is the sort of information that a judge would always seek to obtain either at a case management preliminary hearing or by making orders for the provision of information or both.
5. On **27 October 2022**, the parties were sent a notice of a telephone preliminary hearing for **31 January 2023**. Thus, they were given over 3 months advance notice to enable them to prepare and to make arrangements to participate in that hearing.
6. The Respondent did prepare. On **24 November 2022** (the day on which it served its Response to the Claim), it sent a request for further and better particulars of the claim. The Claimant did not respond to that request. Therefore, on 10 January 2023, the Respondent's solicitor, Ms Carver emailed the Claimant saying: "*Dear Ms Langley, it would be useful for you to complete the attached document to enable the Hearing at the end of the month to run swiftly. As it stands, your claim remains unclear and not particularised.*"
7. The Claimant did not respond to that request. Therefore, on **12 January 2023**, the Respondent sought an order from the Tribunal that the Claimant provide the information requested within 14 days to '*ensure both parties are able to take part in a meaningful hearing on 31 January 2023*'.
8. That application was referred to Judge Arullendran who, on **20 January 2023**, directed that the Claimant "*must cooperate with the Respondent and provide the further information requested by the Respondent no later than 27 January 2023.*"
9. On **22 January 2023**, the Claimant sent an incomplete letter from a consultant dated **09 November 2022** (some 6 months after her employment ended). That was all she did. She made no attempt whatsoever to address or answer the information she was ordered to provide by Judge Arullendran.
10. In preparation for the preliminary hearing of **31 January 2023**, the Respondent's solicitors sent to the Claimant and the Tribunal a short bundle of documents. The preliminary hearing was listed before Judge Loy. The Claimant did not attend – by which I mean, she did not dial in to the hearing. She had not alerted the Tribunal or the Respondent in advance of that hearing that she was not going to attend. Judge Loy could make no progress and directed that he was considering striking out the claim on the basis that the Claimant had failed to attend the hearing. However, he wished to give the Claimant an opportunity to first explain her absence. Therefore, he ordered that, to avoid the claim being struck out, she was to write to the Tribunal by 4pm on **07 February 2023** explaining why she did not attend the hearing and why she did not contact the Tribunal to warn it that she would not be attending.
11. That order was not in fact sent to the parties until 08 February 2023. On that day, the Claimant responded to say that:

“I did not attend because I have just started my new job role for the NHS and could not get the time off as I have no annual leave until April 2023. I apologise I tried calling and texting and I could not get through I was not also aware I would of [sic] have to attend I tried calling into the case but technically could not.”

12. That explanation was, on the face of it, inherently contradictory. On the one hand, the Claimant said she did not attend because she had started a new job and could not get time off. On the other, she said she tried to call in but could not. The Tribunal received no message from the Claimant that day nor did it receive any email from her. In fact, on **02 February 2023**, she emailed the Respondent’s solicitor and the Tribunal to say that *‘I have not received any correspondence in regards to y hearing which was held on the 31/01/23, if you have any updates please can you send me the drafts’*. I infer from that email – and the complete silence of the Claimant leading up to the hearing – that she did not attempt to dial into the hearing. Had she done so, I would have expected her to have mentioned the technical difficulties. I also note that whereas the Claimant says she tried texting, there is no such facility.
13. On **16 February 2023**, the Respondent applied to strike out the claims. The Claimant responded the same day suggesting that she had messaged a person from the court to say that the log in details to listen to the hearing had failed. In a further email, dated **17 February 2023**, the Claimant appeared to suggest another reason for failing to participate in the preliminary hearing, namely that she was off on the sick – albeit, it was not entirely clear what period of time she was referring to. In any event, the communication from the Claimant has been vague and inconsistent.
14. On **25 May 2023**, Judge Loy directed that the proceedings be listed for a public preliminary hearing in person to consider striking out the claimant’s claim form under Rule 37(1)(a)-(e) of the ET Rules 2013. A notice of hearing was sent to the parties that day directing them to attend by 09.30am on **15 June 2023**, in readiness for a 10am start.
15. On **14 June 2023**, at 09.42am, the Respondent’s solicitors emailed the Claimant and the Tribunal a bundle of documents consisting of pleadings, correspondence a case management agenda, and a skeleton argument.
16. Ms Carver, solicitor for the Respondent, attended at 09.30am. However, the Claimant did not. She had not arrived by 10am at which point I directed the clerk to contact her. The Claimant had not alerted the Tribunal or the Respondent in advance of the hearing that she was unable to attend. By 10.15 am there was no sign of the Claimant and no contact from her. I proceeded to hear from Ms Carver at that point, in the absence of the Claimant. She confirmed that the previous morning, the Claimant had acknowledged receipt of the bundle and that upon doing so did not say that she had any difficulty in attending today’s hearing.
17. At 10.22 am I again contacted the clerk to inquire if the Claimant had been in touch. I was told that she had not been in touch. Ms Carver pursued her application to strike out. I had read into the history of the proceedings in advance and had read Ms Carver’s helpful skeleton argument.
18. I struck out the claim and gave reasons for doing so which I have set out in the conclusion below. After the hearing, I was told by the clerk that the Claimant had now made contact. The clerk emailed me at 10.29 but I did not see the email as I was engaged in the hearing. I was subsequently shown an email sent by the Claimant at 10.30am (not copied to the Respondent) which said as follows: *“I have just called the*

courts to see [sic] I will not be able to attend this hearing because I cannot get the time off work I understand the hearing will go ahead.”

Relevant Law

19. Paragraph 37 of Schedule 1 of the Tribunal Rules provides:

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).

20. In **Barber v Royal Bank of Scotland Plc** [2018] UKEAT/0302/15/ Simler P endorsed previous guidance on questions of strike out given in the case of **Bolch v Chipman** [2004] IRLR 140, as referred to in Ms Carver’s skeleton argument, paragraph 27.

21. In reaching my decision to strike out the proceedings I have had regard to those cases and to the overriding objective.

Conclusions

22. I am in no doubt whatsoever that the Claimant is in default in the way she has conducted these proceedings in that:

- a. She has failed to respond to requests by the Respondent for further information of her claim.
- b. She has failed to comply with the order of Judge Arullendran to provide the information requested by the Respondent.
- c. She failed to participate a telephone preliminary hearing on 31 January 2023.
- d. She failed to alert either the tribunal or the Respondent that she was not going to take part or that she had any difficulties in taking part in the hearing.
- e. She subsequently gave inconsistent explanations for her failure to participate, from which I infer that she had no good reason and had never intended to participate.
- f. She subsequently failed to attend the preliminary hearing listed for **15 June 2023**.
- g. She failed to alert the Tribunal to the fact that she was not going to attend.
- h. It was only upon the Tribunal contacting the Claimant at 10am on the morning

of the hearing that the Claimant eventually said she was not attending because she could not get the time off work.

- i. The Claimant has provided no evidence to support any difficulties she has had in getting time off work and no evidence of any attempts to get time off or no explanation as to why she was unable to book leave to attend today's hearing. She had previously said she was unable to take leave until after April 2023. She had received a notice of hearing for today's hearing on **25 May 2023** and, therefore, had plenty of opportunity to make arrangements or to alert the tribunal of any problems. When she received the bundle from the Respondent on **14 June 2023**, she must have known that she was not attending today but she said nothing. I infer from her conduct to date that she had no intention of attending and no intention of alerting anyone she was not going to attend.
 - j. The Claimant has still not provided the information she was ordered to by Judge Arullendran.
23. I conclude that the Claimant has treated these tribunal proceedings contemptuously. Having concluded that the Claimant is in what I regard as serious default in the way in which she has conducted these proceedings, I must go on to consider, nevertheless, whether a fair trial is still possible. I have no hesitation in concluding that a fair trial is not possible. It is not fair to the Respondent to have to proceed to a hearing in circumstances where the claim remains unspecified. Despite being ordered to give important details, the Claimant has not done so with the consequence that the Respondent does not know sufficient detail of what is claimed. Importantly, much of the Claimant's ET1 consists of assertions that unspecified individuals said things to her and that she said things to unspecified individuals regarding her arthritis, the conditions of the training and so on. She has been repeatedly asked and then directed to provide details of these assertions but has failed to do so. This is in respect of events back in April 2022. Clearly with the passage of time it is more difficult for anyone to recall what was said, especially when the identity of those people is unclear. I have asked how can a respondent have a fair hearing in those circumstances and where the Claimant has been given every opportunity to provide the information.
24. I must at the end of the day consider whether strike out is a proportionate sanction. I considered whether an order for costs against the Claimant might be a more proportionate sanction. However, I am satisfied that it would not. I have no confidence, given the Claimant's conduct to date, that she would actively pursue the claims or respond to any orders. I looked for some grain or sign in the Claimant's correspondence that she is taking these proceedings seriously and could see none. Indeed, I was satisfied that the Claimant was not taking the proceedings seriously. An award of costs would not alleviate the disadvantage already caused to the Respondent by the delays to date. Further, I have had some regard to the wider impact on the administration of justice of conduct such as this. Two hearings have now been listed. The Claimant has failed to attend both and give no advance warning. There is no satisfactory or acceptable explanation for this conduct. Other cases could have been listed on those occasions.
25. Therefore, I considered it proportionate to strike out on the combined grounds that:
- a. The Claimant has not complied with the tribunal order to particularise her claim,

- b. The Claimant has not actively pursued her claim,
- c. The manner in which the Claimant has conducted the proceedings is unreasonable.

26. I would make one final observation. The Claimant's ET1 was presented out of time. Ms Carver was not aware of the ACAS conciliation dates until this morning. The Claimant does not have the benefit of an automatic extension of time because she commenced early conciliation more than three months after the date of the acts complained of. Therefore, she would have to persuade the Tribunal that it was just and equitable to extend time in her case. Given her conduct to date and the contemptuous way in which she has, in my judgement, approached these proceedings, that would not be a straightforward matter and was a factor – albeit by no means a key factor – in my assessment of the proportionate action to take in this case.

Employment Judge Sweeney

Date: 15 June 2023