



## **EMPLOYMENT TRIBUNALS**

**Claimants:** Mr C Campota (C1)  
Miss C Madureira (C2)

**Respondent:** Surrey and Sussex Healthcare NHS Trust

**Heard at:** London South                      **On:** 3/7/2023  
(Croydon) via CVP

**Before:** Employment Judge Wright

**Representation:**

**Claimants:** Miss Madureira representing both claimants (C2)

**Respondent:** Ms H Patterson - counsel

## **JUDGMENT**

The claims are struck out. They have not been actively pursued. There has been repeated non-compliance with the Tribunal's Order. A fair hearing is no longer possible.

## **REASONS**

1. The chronology of this case is set out:

- a. C1's claim was presented on 8/10/2020. C2's claim was presented on 14/10/2020.
- b. According to box 8.1 of the ET1 claim form, C1 was claiming: unfair dismissal; age/race/disability/sex discrimination; holiday pay; arrears of pay; 'other payments'; and breach of contract (other headings were provided for claims for which the Tribunal does not have jurisdiction (such as breach of the Data Protection Act)). C1's medical situation was set out, however there were no particulars of claim provided.
- c. According to box 8.1 of the ET1 claim form, C2 was claiming: unfair dismissal; age/race/disability/sex discrimination; notice pay; holiday pay; arrears of pay; 'other payments' and breach of contract. The word 'whistleblowing' was mentioned and as per C1's claim form, other claims were referenced. C2's claim cross-referred to C1's claim.
- d. C2's claim form (box 8.2) did contain some allegations; it was not however possible to distil from that narrative what the legal basis of the allegations was. Contrary to the heading to box 8.2<sup>1</sup>, no dates were provided.
- e. Aside from the respondent's knowledge of the dismissals, it was not possible for it to respond to or to answer any other allegation.
- f. On 3/12/2020 both claims were listed for a preliminary hearing on 21/9/2021. The notice of hearing was accompanied by a case management agenda.
- g. The respondent presented its response to both claims on the 23/12/2020. The respondent made the point that it was not able to respond in a meaningful manner, due to the lack of particulars. The respondent also set out what information was missing, for example for all discrimination claims, it asked relevant and sensible questions (such as: 'what was said, done, or not done as unfavourable treatment'). The claimants were therefore on notice

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<sup>1</sup> 'Please set out the background and details of your claim in the space below. The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed.'

[The bold type appears in the original document.]

from that date, that information was missing and they were given some guidance as to what they needed to provide.

- h. On 13/8/2020 the parties were asked to provide information in advance of the preliminary hearing on the 21/9/2021.
- i. C2 in effect requested a postponement on the 17/9/2021 due to C1's recent shoulder surgery. In any event, the preliminary hearing was postponed due to lack of judicial resources. The preliminary was relisted for the 26/4/2022 on the 21/9/2021.
- j. On the 15/3/2022 the parties were again asked to confirm information in advance of the preliminary hearing. The respondent responded and made a request that the claims were not consolidated.
- k. The claimants were asked to provide their response by the 12/4/2022. They did not respond.
- l. The preliminary hearing took place on the 26/4/2022 and it was not particularly effective. The claimants were however Ordered to:
  - '... provide a summary of the claims they are making. The documents must each be no longer than four pages. This must be sent to the tribunal and respondent by 7.6.22. They must set out:-*
    - 13.1 each claim (e.g., age discrimination),*
    - 13.2 what they say the respondent did wrong (e.g., dismissed them or mistreated them) and*
    - 13.3 why it is, for instance, discrimination (e.g., the respondent only dismissed older people, not younger people).'*
- m. Both claimants attended the preliminary hearing.
- n. The claimants did comply with the Order.
- o. A second preliminary hearing was also listed for the 18/7/2022.
- p. On the 25/5/2022 the claimants were made homeless. Although it is noted that the claimants had the period immediately after the preliminary hearing and prior to their homelessness, to comply with the Order. Equally, the claimants could have and should have

notified the Tribunal if they were having difficulty in complying with the Order.

- q. As a result, and in the absence of any compliance by the claimants on the 9/6/2022 the respondent applied for an Unless Order.
- r. On the 21/6/2022 that resulted in the Tribunal asking the claimants to respond by the 29/6/2022.
- s. At 23:59 on the 29/6/2022 C2 responded. She apologised for the failure to comply with the Order and confirmed both claimants had been made homeless on the 25/5/2022. It is noted that C2 had the means to respond to this request from the Tribunal at the very last minute; but was not able to comply with the Order itself. C2 also said that she was unable to open the email attachment (the Tribunal's letter of the 21/6/2022), yet she clearly had seen the letter, as she responded to it (the covering email read 'please find attached correspondence from the Employment Tribunal.' the covering letter does not provide any details of the contents of the letter and so C2 must have seen the letter/attachment to respond to it).
- t. On the 1/7/2022 the respondent wrote that whilst it had sympathy for the claimants' circumstances, the Order from the 26/4/2022 remained outstanding. The respondent again applied for an Unless Order.
- u. In reply, the Tribunal asked the claimants to set out within seven days, their proposal for complying with the Order within a timeframe of six weeks. The result of granting the claimants more time, was that the preliminary hearing on the 18/7/2022 was postponed.
- v. The claimants did not comply with the Tribunal's Order and the respondent again requested an Unless Order on the 27/7/2022.
- w. C2 sent an email on 3/8/2022 and said that the outstanding information would be provided by no later than the 5/8/2022.
- x. On the 5/8/2022 C2 emailed to say that the information was proving to be 'complex' and she proposed to provide it by October 2022.

- y. On the 7/9/2022 the respondent said that it did not object to the claimant providing the information by the 3/10/2022. The respondent repeated its request for an Unless Order.
- z. On 30/9/2022 the postponed preliminary hearing was relisted for 28/3/2023.
- aa. The Tribunal was told the claimants' homelessness was resolved in September 2022.
- bb. On the 7/10/2022 as the claimant had not provided the outstanding information, the respondent again requested an Unless Order.
- cc. Rather than grant an Unless Order, the Tribunal sent a strike out warning to the claimants. They had until the 14/11/2022 to respond or to request a hearing to make their objections.
- dd. Rule 37 of Schedule 1 of the The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides:

*Striking out*

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).*

*(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*

[Emphasis added.]

ee. C2 responded at 23:59 on the 14/11/2022. That correspondence was not however before the Tribunal and the strike out took effect. The reasons given to both claimants on the 28/11/2022 for the strike out were:

*'The claimant has repeatedly failed to comply with orders, [has] been given extra time and [has] still not to date complied with the order of 26 April 2022. There is no apparent prospect of the claimant complying.'*

ff. On the 12/12/2022 C1 made an application for a reconsideration.

gg. As a result, this public preliminary hearing was listed to hear the claimants' representations.

hh. Despite the strike out judgment being reconsidered, C1 appealed against the judgement on the 9/1/2023. On the 15/2/2023 the Registrar at the EAT confirmed the preliminary checks indicated the appeal had been properly instituted. It therefore follows that the correct documentation had been submitted and in time.

2. At the hearing, C2's representations/objections can be summarised as the delay was caused by ill health and homelessness. Although there was no medical evidence, the ill health was accepted.
3. It is noted the homelessness was rectified in September 2022.
4. Despite having a strike out warning hanging over both claimants since November 2022, the claimants have still not complied with the Tribunal's Order of 26/4/2022. They have not provided basic information in respect of their claims.
5. Besides the submissions the respondent previously made in its applications for an Unless Order and notwithstanding the respondent's sympathy for the claimants' personal circumstances; the respondent's position was that the claims should be struck out. The respondent pointed out that C2 had been able to send articulate emails in response to the matters raised and often at the very last minute before a deadline expired. C2 however has not, to date, provided any particulars of the claims. The respondent has not been able to preserve witness evidence as it does not have any details of the allegations. Of the allegations it is able to anticipate, two of those witnesses have left the respondent's employ. The

respondent also referred to the systemic failure by the claimants to comply with Orders and in particular, the Order from the 26/4/2022. The information they claimants were directed to provide was not particularly onerous.

### Conclusions

6. Due to ill health, C1 last worked for the respondent on the 30/11/2018 and C2 on the 4/3/2019 (before their dismissals on 12/5/2020 and 15/7/2020).
7. The allegations potentially could predate both claimants' ill health and as such, go back to the latter part of 2018 and possibly earlier than that (due to the lack of particulars it is simply not possible to say when the events occurred).
8. There has been a wholesale failure to pursue the claims and to comply with the Tribunal's Orders. The claimants were on notice that a strike out was being considered for those reasons. They have chosen not to belatedly comply with the Order and instead, pursued and appeal to the EAT (which they are entitled to do). Even once that appeal was instituted, they claimants chose not to seek to rectify the issue which was leading the Tribunal to consider striking out the claim. Notwithstanding ill health, C2 has been capable of sending articulate emails, has objected to the strike out and presented a correctly constituted appeal to the EAT.
9. It has not been possible to list a final hearing and it was not possible to consider the claimants' application to consolidate their claims, as there are no details of the claims provided. Unfortunately, despite the Tribunal's best attempts to elicit this information from the claimants, it has not been forthcoming and it remains outstanding, two years nine months after the claims were presented.
10. In those circumstances, in view of the lack of information, a fair trial is no longer possible. As was previously noted, besides the disregard for compliance with the Tribunal's Orders and the failure to pursue the claims, there is no indication that the claimants will provide the outstanding information. It is not in accordance with the overruling objective for them to have a further opportunity to do so and to give them that opportunity will cause further delay. Similarly and even if they provided that information in the short-term, due to the listing congestion, a multi-day final hearing is not likely to be listed before the end of 2024 or even before 2025.

11. The fact of the delay is wholly down to the claimants' failure to pursue their claims/comply with the Tribunal's Orders. It is contrary to the overriding objective and it is not just and equitable to allow the claimants to have yet another opportunity to provide what is outstanding. The result is a fair trial is no longer possible.
12. As a result, the claims are struck out. As C2 indicated her intention to appeal this decision, written reasons have been provided.

**3/7/2023**

**Employment Judge Wright**