



EMPLOYMENT TRIBUNALS

(England and Wales)
London Central Region

Claimant: AMBER HYLTON
Respondent: FAE VENTURES LTD (t/a FAE GROUP)

On the Tribunal's own initiative and having read the Claimant's third impact statement signed and dated on 1/7/23, and the Respondent's Solicitor's submissions in its email dated 13 July 2023:

JUDGMENT

The judgment dated 6/6/23 striking out the Claimant's disability discrimination claims is set aside and the said claims are re-instated and will proceed to trial on the following basis:

- (i) the Claimant's disability at the relevant time is not admitted by the Respondent and the Claimant will have the onus of proof in this regard.
- (ii) The Claimant will not be permitted at trial, (except with leave of the Tribunal) in attempting to discharge that onus, to rely on evidence which she has not mentioned in her three impact statements served to date but which she could and should have included therein pursuant to the direction in paragraph 5 of the CMO dated 25/4/23; and
- (iii) The Respondent's costs of dealing with the issue whether or not the Claimant was disabled at the relevant time, are reserved.

REASONS

1. I reconsidered my previous strike-out judgment on my own initiative as, in the light of the judgment in Minnock v Interserve EA 2021 305 - AT, of which I became aware on 16/6/23, I concluded that the strike-out had been a disproportionate response to the Claimant's failure to provide complete and satisfactory information about the impact of her claimed impairments.
2. The Claimant has now served a third impact statement which is an improvement on the previous two, although I largely agree with the Respondent's continuing criticisms of its contents as per the Respondent's Solicitors email of 13 July 23.
3. The Claimant has other claims which are to proceed to trial in any event. I have concluded that the overriding objective is best served by allowing the disability claims to proceed to trial at which point the trial Tribunal will be able to properly consider the question of the impact of the Claimant's impairments.
4. It would seem inappropriate in the circumstances - (notable the fact that the Claimant has been ordered several times to produce a full and detailed impact statement and has now produced three) for the Claimant to be allowed at trial, if she attempts to do so, to adduce additional material which she has not to date included but which she could and should have included in her impact statements. However that will be a matter for the trial Tribunal to decide.
5. If at trial it appears that the Respondent has been put to additional unnecessary costs by the manner in which the Claimant has handled the disability issue, then, if so advised, the Respondent can make a costs application against her..
6. Both parties have agreed that I should deal with the reconsideration on the papers, and that is what I have done.

7. I apologise to the parties for the inconvenience.

Direction:

The parties are to finalise a list of issues for trial as soon as possible, and the Respondent must finalise a trial bundle by 18/8/23 so that witness statements can be exchanged by 4pm on 19/9/23.

J S Burns Employment Judge
London Central
25/7/2023
For Secretary of the Tribunals
Date sent to parties: 26/07/2023
