



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102797/2023

Employment Judge P O'Donnell

Ms S Murray

Claimant

Teleperformance Ltd

Respondent

JUDGMENT

The claim is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds of non-compliance with an Order in terms of rule 37(1)(c).

REASONS

1. The Tribunal issued an Order following a preliminary hearing in this case on 5 July 2023. At paragraph 12 of the Order the claimant was to provide the information requested at points 1-6 no later than 19 July 2023. The claimant has failed to provide the information.
2. On 7 August 2023 the respondent made an application for an unless order for non-compliance with the terms of the order by the claimant. The Tribunal

requested the claimant's comments by letter dated 7 August 2023 with a reply due by 14 August 2023. The claimant replied by e-mail dated 7 August 2023, stating; *"this is the first e-mail I have received and have NOT had any other email come through to me"*. By letter dated 8 August 2023 the Tribunal provided the claimant with another copy of the hearing Note and Order and directed the claimant to comply with the Order at paragraph 12 by return of e-mail. The claimant failed to reply.

3. On 18 August 2023 the Tribunal gave the claimant an opportunity to give written reasons by 1 September 2023 or to request a hearing in order to consider why the claim should not be struck out.
4. The claimant has failed to respond or give reasons why such a judgment should not be made or to request a hearing.
5. The Tribunal has considered whether, despite the claimant's failure to comply with the Order, a fair trial is still possible. The Tribunal does not consider that a fair trial is possible; the information which the claimant was ordered to provide was the basis of the claim for holiday pay and, absent this information, the respondent does not have fair notice of the case it has to answer.
6. The Tribunal notes that the Order of 5 July 2023 was not the first Order for the claimant to provide this information and a previous Order of 26 May 2023 had been made for similar information to be provided. However, despite these two Orders, the information regarding the calculation of holiday pay has never been provided by the claimant and she has had ample opportunity to do so.
7. It is not in the interests of justice for the respondent to proceed to another hearing (this time a final hearing) without fair notice of the case they have to answer.
8. The Tribunal therefore strikes out the claim.
9. The hearing listed for 12 September 2023 is cancelled.

Employment Judge: P O'Donnell
Date of Judgment: 06 September 2023
Entered in register: 06 September 2023
and copied to parties