



EMPLOYMENT TRIBUNALS

London South Employment Tribunal 7th September 2023 (video)

Claimant: Sandra Mecredy

Respondents: The Royal Borough of Greenwich [1]
Oxleas NHS Foundation Trust [2]

Open preliminary hearing

Before: Judge M Aspinall (sitting alone as an Employment Judge)

Appearances: Mr S Martins, for the Claimant
Mr N Porter (Counsel for the first Respondent)
Mr R Allen (Counsel for the second Respondent)

JUDGMENT

1. The entirety of the claimant's case has been struck out pursuant to Rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013, because the conduct of the proceedings by the claimant or those representing her has been unreasonable, and pursuant to Rule 37(1)(c), because of non-compliance with the tribunal's orders.

Reasons

Introduction

2. This judgment arises from a preliminary hearing on 7 September 2023 in the Employment Tribunal claim brought by Mrs Sandra Mecredy against the Royal Borough of Greenwich (the First Respondent) and Oxleas NHS Foundation Trust (the Second Respondent). Mrs Mecredy alleges disability discrimination, harassment, failure to make reasonable adjustments and unlawful deduction of wages.
3. I presided over an earlier preliminary hearing on 8 August 2023 where I made case management orders that have not been adequately complied with, leading to an application by the Respondents to strike out the claim.

Background

4. Mrs Mecredy lodged her claim form with the Tribunal on 8 June 2022, some 15 months before this hearing. The particulars of claim lacked substantive detail. At a preliminary hearing on 8 August 2023, having considered the parties' proposed case management agendas, I determined that the particulars of claim were deficient. I made the following orders:
 - a. Mrs Mecredy (or those who represent her) was ordered to provide proper particulars of her claims by 15 August 2023.
 - b. The Respondents were ordered to file any amended Grounds of Resistance by 30 August 2023.

- c. Mrs Mecredy's representative, Mr S Martins, was ordered to attend the next hearing on 7 September 2023.
- d. Mrs Mecredy (or those who represent her) was ordered to prepare an electronic bundle for the hearing on 7 September 2023. This was to be served by 4 September 2023.

Non-Compliance with orders

5. Mrs Mecredy (or those who represent her) failed to comply with my orders in multiple respects:
 - a. No further particulars were provided by 15 August 2023 as ordered.
 - b. The particulars later provided on 29 August 2023 were plainly inadequate and deficient. They contained mostly blank tables (albeit with columns and headings – no actual information was included).
 - c. Correspondence followed from the Respondent to the Tribunal (copied to Mr Martins), stating that because of the lack of information, which was in any event provided late, they could not comply with their deadline of 30 August 2023 to file any amended grounds of resistance. Those emails did not galvanise Mr Martins to address any deficiencies in any prompt or meaningful manner.
 - d. Mrs Mecredy (or those who represent her) did not prepare an electronic bundle for the 7 September 2023 hearing as ordered. A partial bundle was submitted late at 5pm on 6 September 2023.
 - e. At the 8 August 2023 hearing, Mr Martins' colleague and representative sought 21 days to provide the further particulars. I refused this and allowed only 7 days given the age of the claim and having addressed the issue directly with the Claimant. Yet Mr Martins simply took 21 days, in flagrant breach of my explicit order. What he then provided remained inadequate.

Application to Strike Out the Claims

6. At the hearing today, Mr Nigel Porter of counsel attended for the First Respondent and Mr R Allen of counsel attended for the Second Respondent.
7. Mr Porter made an application, supported by the Second Respondent, that the Claimant's entire claim be struck out pursuant to Rule 37(1) of the Employment Tribunal Rules of Procedure 2013.
8. Mr Porter submitted that the Claimant had failed to provide proper particulars of her claim by 15 August 2023 as ordered by the Tribunal. The inadequate particulars later provided on 29 August 2023, just one day before the Respondents' deadline to file amended defences, made compliance with the Tribunal's order impossible.
9. Mr Porter argued this demonstrated a blatant disregard of the Tribunal's directions amounting to unreasonable conduct under Rule 37(1)(b). He also submitted it was non-compliance with the Tribunal's order warranting strike out under Rule 37(1)(c).
10. Referring to *Blockbuster v James* [2006] IRLR 630, Mr Porter contended the two conditions for strike out were met - deliberate disregard of procedural steps and impossibility of a fair trial. Given the delays, aged nature of the claim, and prejudice caused, Mr Porter submitted strike out of the entirety of the Claimant's claim was a proportionate response.
11. Mr Allen adopted Mr Porter's submissions in full.
12. In response, Mr Martins, representing the Claimant, apologised for his poor form and health

issues leading to the delays. He accepted the 29 August 2023 documents were inadequate but stated he had complied to the best of his abilities. He asked that the claim proceed to a fair trial.

13. Mr. Martins also stated that his “learned friend”, referring to the paralegal who had attended the 8 August 2023 hearing, had not passed on the full information to him. He sought to apportion some little blame to that paralegal for failing to properly communicate details of the Tribunal's orders.

Decision to Strike Out the Claims

14. I have decided to strike out the entirety of Mrs Mecredy's claims pursuant to Rule 37(1)(b) and (c) of the Employment Tribunal Rules of Procedure 2013.

Narrative and inadequate pleadings

15. As set out in C v D, while narrative pleadings may contain detail, they often fail to clearly identify the specific statutory claims asserted or connect facts to those claims. This impedes the Tribunal's ability to case manage efficiently.
16. Here, Mrs Mecredy's original pleadings and the subsequent documents provided were disorganized narratives lacking clear particularisation or, worse, late blank or incomplete tables which did nothing to illuminate the claims. They did not adequately specify the statutory claims relied on or link facts to specific causes of action. This haphazard approach to pleading has made identifying the issues in dispute and case managing this litigation efficiently impossible, despite the claim being over 15 months old.

Rule 37(1)(b)

17. Rule 37(1)(b) allows strike out where the way proceedings have been conducted has been unreasonable or vexatious. As stated in Blockbuster v James [2006] IRLR 630, strike out is warranted where unreasonable conduct has involved persistent disregard of procedural steps or made a fair trial impossible.
18. Here, the conduct of Mrs Mecredy's representatives - for which she is responsible - has shown blatant disregard for orders and procedural rules. There has been sustained failure to provide proper particulars of the claims made since this claim was first lodged in June 2022.
19. Additionally, the actions of Mr Martins in taking 21 days to provide particulars, despite my clear order on 8 August 2023 allowing only 7 days having explicitly refused the application made on his behalf for 21 days, and then providing inadequate tables and narratives rather than the ordered particulars, exemplify flagrant disregard of my orders.
20. This persistent non-compliance and intransigence by Mrs Mecredy's representatives over the 15-month life of this claim has made progressing the litigation or holding a fair trial impossible. Their conduct has engaged Rule 37(1)(b).

Rule 37(1)(c)

21. Rule 37(1)(c) allows strike out for non-compliance with Tribunal orders. While De Keyser v Wilson [2001] IRLR 324 addressed breach of unless orders specifically, I am satisfied the same principle applies to other Tribunal orders. Orders must have meaning and parties must comply for the Tribunal to function effectively.
22. In this case, Mrs Mecredy (or those who represent her) plainly failed to comply with my clear order on 8 August 2023 to provide proper particulars by 15 August 2023. Her inadequate response on 29 August 2023 also violated my directives. I made no unless order but find that Mrs Mecredy's non-compliance with my orders on 8 August 2023 warrants strike out under Rule 37(1)(c), applying the principles from De Keyser.

Other factors

23. As held in *Blockbuster v James*, intentional non-compliance with procedural requirements demonstrates contumelious conduct warranting strike out as an abuse of process. This high threshold has been met on the facts here.
24. In line with *Weir Valves v Armitage* [2004] ICR 371, adjourning at this late stage would simply add further delay and unfairness. Striking out the entirety of this significantly delayed claim is a proportionate response.

Conclusion

25. For these reasons, applying the law and the principles from the authorities to the facts of this case, I find strike out warranted under both Rule 37(1)(b) and (c).
26. The claims against both Respondents are therefore struck out.

Judge M Aspinall
Thursday, 7th September 2023

Sent to the Parties on:
14th September 2023

FOR THE TRIBUNAL OFFICE