



EMPLOYMENT TRIBUNALS

Claimant: Ms Georgia Barrett

Respondent: The Royal Borough of Kingston Upon Thames

Heard at: London South Employment Tribunal (by Cloud Video platform)

On: 11 October 2023

Before: Employment Judge Taylor

Representation

Claimant: Did not attend

Respondent: Mr Nigel Cameron, Caseworker

JUDGMENT

The judgment of the Tribunal is that:-

1. The claim is dismissed for the claimant's failure to attend the hearing, pursuant to rule 47 of the Employment Tribunals Rules of Procedure 2013 non-attendance at the hearing.
2. In the alternative, all of the claim is struck out, pursuant to Rule 37(1)(c), for the claimant's non-compliance with an order of the Tribunal sent to the parties on 7 July 2023

REASONS

1. This is a preliminary hearing listed to determine whether the claim should be struck out as having no prospect of success, on the ground that the claimant was not employed by the respondent and/or did not work for the respondent.
2. Before considering whether or not the claim should be struck out the tribunal needed to determine:

- 2.1 Was the claimant an employee of the respondent within the meaning of section 230 of the employment rights act 1996?
- 2.2 Was the claimant an employee of the respondent within the meaning of section 83 of the Equality Act 2010?
- 2.3 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?
3. This is the second hearing in this case. It was listed at a preliminary hearing, held in private, conducted on 7 July 2023. A case summary and notice of hearing was sent to the parties on the same day. The claimant attended that hearing and was aware of the date of this hearing.
4. The background to this claim is set out in the case summary of the order sent to the parties on 7 July 2023. To summarise, the claimant brings claims of disability discrimination, race discrimination, public interest disclosure and unlawful deduction from wages against the respondent. The respondent resists the claim on the grounds that at no stage was the claimant employed by, or provided with work via an agency for the respondent, and accordingly the claim should be struck out.
5. At the first preliminary hearing, in order to ensure the claimant was properly prepared for this preliminary hearing (listed to be held in public) the claimant was ordered by 28 July 2023 to:
 - 5.1 Write to the respondent filling out the gaps in the draft list of issues, that had been provided to her by the respondent previously and also at the hearing on 7 July 2023;
 - 5.2 Disclose copies of any documents to the respondent relevant to the issues;
 - 5.3 Prepare a file of documents for use at this hearing and
 - 5.4 Prepare and provide a witness statement.
6. The parties were sent the information required for joining the video hearing the day before, on 10 November 2023. After receiving the information for joining the CVP hearing the claimant wrote a short email to the tribunal 10.00pm asking what the date of hearing was. The claimant was resent the case management order and case summary on the morning of the hearing before the start of the hearing.
7. The claimant did not attend the hearing which was listed to begin at 10:00am. The hearing was postponed for a further 15 minutes to allow further time for the claimant to join.
8. Mr Nigel Cameron, Caseworker, attended on behalf of the respondent. Mr Cameron confirmed that the claimant had not contacted the respondent since the 7 July 2023 hearing, and she had not complied with any of the Tribunal's orders.
9. The respondent applied for the claim to be struck out (1) because it had no prospect of success (2) because the claimant had failed to comply with any of the tribunal's orders (3) that the claim was not being actively pursued and (4) the claimant had conducted these proceedings unreasonably.

The applicable law

Rule 47 Non-attendance

10. Rule 47 provided that: 'If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.'
11. Therefore, in considering its options following a party's non-attendance at the hearing, the tribunal must take into account any information it has about the reasons for the party's absence.

Striking out claims

12. Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013 provides that 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 grounds that it is scandalous, vexatious or has no reasonable prospect of success.
13. Rule 37(1)(c) provides that 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 for non-compliance with an order of the Tribunal.
14. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances. In *Balls v Downham Market High School & College* [2011] IRLR 217 EAT Lady Smith held:

"The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word 'no' because it shows that the test is not whether the Claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral submissions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospect".
15. It was held in *Community Law Clinics Solicitors Ltd & Ors v Methuen* UKEAT/0024/11, it was stated that in appropriate cases, claims should be struck out and that "the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail." In the case of *ABN Amro Management Services Ltd & Anor v Hogben* UKEAT/0266/09, it was stated that, "If a case has indeed no reasonable prospect of success, it ought to be struck out."

Decision

16. In arriving at its decision, the Tribunal considered, firstly, that the claimant failed to attend at the time and place fixed for the hearing. The claimant had attended the preliminary hearing on 7 July 2023 and knew the date and time of this hearing. The

claimant had contacted the tribunal immediately before the hearing but had not given any reason for her non-attendance. Secondly the Tribunal considered the submissions of the respondent, that the claim should be struck out. Finally, the Tribunal considered all of the available documentary material on the tribunal file. The claimant had not provided any information beyond that set out in the claim form. The purpose of today's hearing was to consider the claimant's claim that the respondent employed her or that she worked for the respondent. That has not been possible because of the claimant's failure to comply with the tribunal's orders.

17. Having considered these matters the judgment of the Tribunal is that the claim is dismissed for the claimant's failure to attend the hearing, pursuant to rule 47 of the Employment Tribunals Rules of Procedure 2013 non-attendance at the hearing.
18. In the alternative, all of the claims are struck out, pursuant to Rule 37(1)(c), for the claimant's non-compliance with an order of the Tribunal sent to the parties on 7 July 2023.

Employment Judge Taylor
11 October 2023