



EMPLOYMENT TRIBUNALS

Claimant Miss Priyanka Oliver
Respondent Surrey and Sussex NHS Healthcare Trust
Heard at Croydon **On 27 September 2023**
Before Employment Judge Fowell
Representation
Claimant Miss Priyanka Oliver
Respondent Surrey and Sussex NHS Healthcare Trust

JUDGMENT

Rule 37 Employment Tribunal Rules of Procedure

1. The claim is struck out under rule 37(1)(d) of the Employment Tribunal Rules of Procedure on the basis that it has not been actively pursued.

REASONS

1. This order is made following a preliminary hearing today, which is the second hearing the claimant has failed to attend.
2. The first was on 17 July 2023, at which point the claimant was represented by the Chartered Society of Physiotherapy, a trade union. She remains employed by the Trust and an application was made on her behalf, shortly before that hearing, for an adjournment, on the basis that an internal grievance process was still ongoing. The application was refused and the hearing went ahead, but neither the claimant nor any representative attended on her behalf.
3. The only information available at that stage came from the respondent's representative, Ms Turpin, who advised the tribunal that she believed that the Chartered Society of Physiotherapy were no longer acting on behalf of the claimant.

4. In the subsequent case management orders the claimant was ordered to write to the tribunal within seven days of the hearing to explain her failure to attend and inviting her to withdraw the claim if she did not wish to pursue it. No response has been received.
5. Further detailed orders were given for the claimant to provide further information about her claim, together with a schedule of loss to be completed by 7 August 2023. No such schedule has been received either.
6. This further hearing was listed to consider a number of matters including:
 - “3.2 If the claimant does not attend the preliminary hearing on 26 September 2023, whether her claim should be struck out pursuant to rule 37(1)(d) on the basis that it has not been actively pursued.”
7. That warning was repeated at paragraph 25.
8. The claimant was also warned that if she wished to change representation she must do so promptly so as to be ready for the next hearing, which was listed for two months' time.
9. The hearing was put back at 10 o'clock because of the claimant's failure to attend and enquiries were made by telephone by the tribunal clerk. She spoke to the claimant and was told that the claimant was abroad, and that she was trying to sort out representation. The claimant was urged to try to join the hearing by telephone to explain the position but did not do so and said that she would send an email.
10. That email sent her apologies and explained that she was abroad. It added that she attempted to join the hearing but it did not seem to work, and suggested that she was told that the hearing would be adjourned. In fact, she was told that that was a possibility.
11. The respondent explained at this hearing that there had been no contact from the claimant since the last hearing of any sort. They had also sent to the claimant directly a copy of the previous case management order and, more recently, a link to the hearing, to ensure that she was aware of it. Hence, the claimant was aware of the hearing and the steps she was required to take.
12. The claim itself remains unclear. It concerns an application for flexible working following maternity leave. The application was for very specific changes to individual days and the respondent's position is that they could not immediately accommodate all of them. There was no compromise and so ultimately the request was refused. A further application was then made which was ultimately agreed, hence the claimant remains working for the Trust. The initial failure is said to be an act of race discrimination or disability discrimination or discrimination on grounds of pregnancy or maternity. It is not clear why the claimant suggests that race or disability played a part, or even what disability

she relies on. For that reason detailed questions were put to her following the previous hearing to clarify her claim.

13. I have considered whether an order striking out the claim is proportionate in the circumstances. An alternative would be to adjourn the hearing for the third time, potentially on terms that the claimant pays the wasted costs of this hearing. (If there is an application for reconsideration of this order and the claim is reinstated, the costs of this hearing may have to be reconsidered too.)
14. However, it is clear that the claimant was aware of this hearing even though it took place during the holiday. She has made no application to adjourn on that basis and did not intend to attend until contacted by the tribunal. She has not responded the previous case management order at all and has not taken the opportunity to arrange representation. All this indicates that there is no real intention on her part to actively pursue the claim.
15. All such orders have to be made in accordance with the overriding objective of dealing with cases justly and fairly, which includes fairness to both parties and avoiding delay and expense. In those circumstances, where no steps have been taken to progress the claim since the claim form was submitted in November 2022, I conclude that it is proportionate to make an order under rule 37(1)(d) i.e. on the basis that it has not been actively pursued.
16. There is a right of appeal to the Employment Appeal Tribunal if you think this decision involves an error of law. Any appeal must be made within 42 days of the date on which this decision was sent.
17. There is also a right to have the decision reconsidered if that would be in the interests of justice. An application for reconsideration should be made to the tribunal within 14 days of the date on which this decision was sent.

Employment Judge Fowell

Date 27 November 2023