



THE EMPLOYMENT TRIBUNALS

Claimant: Mr Alon Williams
Respondent: Norwich City Council
On: 14 November 2023
Heard at: Norwich
Before: Employment Judge M Warren

Representation

For the Claimant: Ms Strefford, Solicitor
For the Respondent: Ms Ifeka, Counsel

JUDGMENT

1. I reconsider my Judgment for the Claimant in this case dated 28 June 2023 and set it aside.
2. The Respondent's Application for an extension of time for the filing of the Respondent's Response is granted and time is extended to 12 September 2023. The ET3 on the Tribunal File date stamped as received on that date shall stand as the Respondent's Response to these proceedings.

PUBLIC PRELIMINARY HEARING SUMMARY

Background

1. Today's hearing was listed as a Remedy Hearing. I had given Judgment for the Claimant pursuant to Rule 21, the Respondent having failed to provide a Response. The Judgment is dated 28 June 2023. It was posted to the parties on 14 August 2023.
2. Upon receipt of the Judgment, the Respondent applied on 18 August 2023 for reconsideration and that it be set aside, on the grounds that the Respondent had not received the ET1 Claim Form and further, they applied for an extension of time for filing their Response. The applications

were opposed. Employment Judge Lewis directed that the applications be considered at the outset of today's hearing.

Papers for Today

3. I am grateful to the parties for my having been provided with a Bundle, a Witness Statement from the Respondent's Head of HR, (Mrs Bradshaw), a Skeleton Argument from Ms Ifeka, a draft List of Issues and an Agenda from Ms Strefford.

Applications Granted

4. I identified at the outset of the hearing that I probably ought not to have issued a Rule 21 Judgment, in that it is apparent from the Claim Form that there are potential jurisdictional issues as to time that require judicial determination before the Claimant would be entitled to Judgment.
5. Ms Strefford very sensibly and quite rightly, did not oppose either application. Accordingly, I decided to reconsider my Judgment, set it aside and grant the Respondent's Application for an extension of time for filing its Response. The Response Form ET3 on the Tribunal File is date stamped as received 12 September 2023 and shall stand as the Response to these proceedings.

Further Public Preliminary Hearing

6. The parties agreed that a further Public Preliminary Hearing is appropriate in order for the Tribunal to decide whether or not Mr Williams was a disabled person at the material time, (28 October 2019 to 4 October 2022) and whether the claims are out of time by reason of the Claimant having obtained a first ACAS Early Conciliation Certificate on 16 June 2021 and later, having obtained a second Certificate on 6 October 2022, in light of the case of HMRC v Garau [2017] ICR 1121.
7. In the presence of the parties and on the basis of their dates of availability, I arranged with the Listing Team for this case to be listed for a further Public Preliminary Hearing with a time estimate of one day, on 19 February 2024.
8. In discussion with the Representatives and with their agreement, I made the Case Management Orders in relation to the Public Preliminary Hearing as set out below.

Listing for Final Main Hearing

9. So as to ensure that this case does not lose its place in the queue for its Final Hearing, in the presence of the parties and on the basis of their dates of availability, I listed the case for a Final Main Hearing before a Full Tribunal in person at the Norwich Employment Tribunal on 10 – 14 June 2024.

10. I arrived at a time estimate of five days by allowing one half a day for preliminary reading by the Tribunal, one day for the evidence of Mr Williams, (he is not calling any other evidence) and one and a half days for the evidence of the Respondent's three witnesses, (that is the person who dealt with the Disciplinary Hearing, the person who dealt with the Grievance Appeal Hearing and Mrs Bradshaw to provide an HR overview). I further allowed one half a day for a combination of closing submissions and delivery of an oral Judgment by the Tribunal and one day for deliberation by the Tribunal. The foregoing is not a timetable, just an explanation as to how I arrived at the five day time estimate.
11. Even if the Respondent decides in due course to concede that Mr Williams was a disabled person, the above mentioned Preliminary Hearing will still have to take place to decide the time point connected to the ACAS Certificates. With that in mind, I did not make any Case Management Orders in relation to the Final Main Hearing, thus giving the parties time to agree on a List of Issues and enabling appropriate Case Management Orders to be made, depending upon the outcome of the Public Preliminary Hearing on 19 February 2024.

No determination of any question of a continuing act at the Preliminary Hearing

12. I made it clear that there should be no question of the Employment Judge at the next Public Preliminary Hearing deciding any question of whether or not there had been a continuing act, as that issue is only appropriately determined after hearing evidence, at a Final Hearing.

Suitable for conversion to the Cloud Video Platform (CVP)

13. Whilst we agreed that hearings in person are preferable, the parties sensibly agreed that both the Public Preliminary Hearing and the Final Main Hearing could be converted to hearing by CVP if the circumstances were such that the Hearings would otherwise be postponed.

ORDERS

Made under the Employment Tribunals Rules of Procedure 2013

PUBLIC PRELIMINARY HEARING

1. This case has been listed for a Public Preliminary Hearing before an Employment Judge sitting alone at the **Norwich Employment Tribunal** sitting at **Norwich Magistrates Court, Bishopgate, Norwich, NR3 1UP**, to commence at 10am on **19 February 2024**. The issues to be determined are:-
 - 1.1. Whether or not the Claimant was a disabled person as defined in the Equality Act 2010 at the material time, being 28 October 2019 to 4 October 2022;

- 1.2. Whether the Claimant's claims are out of time by reason of his first ACAS Early Conciliation Certificate having been issued on 16 June 2021, having regard to a second ACAS Certificate issued on 6 October 2022 and the case of HMRC v Garau [2017] ICR 1121; and
 - 1.3. To identify the issues in this case and make Case Management Orders for the Final Main Hearing.
2. In preparation for the Public Preliminary Hearing, the following Case Management Orders are made:-
- 2.1. The Claimant is to serve the Medical Evidence upon which he intends to rely and an Impact Statement in relation to the issue as to whether or not he meets the definition of disabled person at the material time, by no later than **29 November 2023**.
 - 2.2. The Respondent is, by no later than **19 January 2024**, to confirm to the Claimant and the Tribunal whether or not it accepts that the Claimant was a disabled person at the material time.
 - 2.3. The Respondent is to serve a written statement of any witness it intends to call at the Public Preliminary Hearing, by no later than **2 February 2024**.
 - 2.4. The Claimant's Representatives are to prepare a Bundle for the Public Preliminary Hearing containing the documents both sides wish to refer to, providing a copy to the Respondent by no later than **14 days before** the Public Preliminary Hearing and shall bring two copies of the same to that hearing.
 - 2.5. The Representatives are to exchange Skeleton Arguments and file copies of the same, no later than **72 hours before** the Public Preliminary Hearing.
 - 2.6. The parties are to agree upon a List of Issues for the Final Main Hearing on the assumption that the Claimant's claims are permitted to proceed as pleaded and the Claimant's Representatives are to file a copy of the same with the Tribunal, by no later than **72 hours before** the Public Preliminary Hearing.

FINAL MAIN HEARING

3. This case has been listed for a Final Main Hearing as to liability only before a Full Tribunal in person at the **Norwich Employment Tribunal** sitting at **Norwich Magistrates Court, Bishopgate, Norwich, NR3 1UP**, with a time estimate of five days, on **10 – 14 June 2024**.

APPLICATIONS for POSTPONEMENT

4. The above hearings have been listed on the basis of dates of availability provided by the parties and postponements will only be granted in the most extenuating of circumstances and any application for a postponement must be accompanied by supporting evidence.

Public access to employment tribunal decisions

The parties should note that all judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

President’s guidance

The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’, which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/

Other matters

(a) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(b) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party’s participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(c) You may apply under rule 29 for this Order to be varied, suspended or set aside.

Dated: 22 November 2023

Employment Judge M Warren

ORDERS SENT TO THE PARTIES ON
..5 December 2023.....
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FOR THE TRIBUNAL OFFICE