EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Miss S Scott-Emuakpor	**v**	Central and North West London NHS Foundation Trust

Heard at: Reading (by CVP) **On:** 18 October 2023

Before: Employment Judge Anstis (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Ms C Meenan (counsel)

JUDGMENT

1. The claimant's application to adjourn the hearing is refused.

2. The claimant's claims are struck out.

REASONS

INTRODUCTION

1. On 23 May 2022 the claimant submitted a claim of disability discrimination and for holiday pay and arrears of pay.

2. On 20 April 2023 EJ Tobin dismissed the claimant's complaint of disability discrimination on the basis that the claimant had not demonstrated that she was a disabled person at the relevant time. That left the claims for holiday pay and arrears of pay. EJ Tobin gave directions for those claims to be heard today by CVP, and made case management orders including for exchange of witness statements by no later than 13 July 2023.

THE RESPONDENT'S ET3

3. Unfortunately the claimant has found it very difficult to see beyond an issue she considers exists with the respondent's ET3. That ET3 was due to be submitted by the respondent by 12 July 2022. The claimant has diary notes from 12 July 2022 and 13 July 2022 saying that the Watford tribunal told her on those dates

that no ET3 had been received. Her position that the ET3 had not been received on time underlay much of what occurred during and in preparation for this hearing.

4. There has never been any doubt that the tribunal did, in fact, accept the respondent's ET3 as having been received in time. The claimant's position is that the tribunal was wrong to do so.

5. On 3 August 2023 EJ Tobin wrote to the claimant to say:

> *"The claimant seems to be confused as to the date that the respondent submitted its response to her claim. The response was filed with the tribunal on 11 July 2022, namely within time …"*

6. The claimant has subsequently submitted an administrative complaint, and I understand the response to that has also said that the ET3 was received within time. A second-level administrative complaint from the claimant remains outstanding.

PREPARATION FOR THIS HEARING

7. Having chased the claimant a number of times for her witness statement, the respondent wrote to the tribunal seeking an unless order in respect of the provision of the claimant's witness statement for this hearing. It is accepted by the claimant that she has produced no witness statement for this hearing, and therefore is in breach of EJ Tobin's order.

8. Rather than issue an unless order, on 22 September 2023 the tribunal wrote to the claimant under rule 37 saying that it was considering striking out her claim on the basis that she had not complied with EJ Tobin's order and her claim had not been actively pursued. She was given seven days to respond.

9. On 25 September 2023 the claimant replied to this, saying that she had raised a complaint. She said:

> *"In terms of strike out, there's nothing to strike out because the whole case folder will be sent to the necessary body for the British people to debate on the above case number, because British public needs to be aware of Watford Employment Tribunal.*
>
> *Please, note that the impact statement* [I take it this means the witness statement] *was not sent because of the tribunal malpractice, and it is my intention to take necessary steps, by withdrawing the case from Watford Employment Tribunal to a court hearing …*
>
> *I will not be in attendance to the next hearing date … because the case will be transferred to court hearing."*

10. In a later email the claimant says:

> *"… can you please explain to me why an Employment Tribunal would hear a case that has missed deadline in submitting their ET3? In addition, a complaint has been lodged to Watford Employment Tribunal and I am awaiting response."*

THE HEARING

11. This hearing had been listed to take place by CVP. Given that she had previously said that she would not be attending and would withdraw her claim it was something of a surprise that the claimant did attend the hearing. She had difficulty attending by video. For the avoidance of doubt, I accept that those were genuine difficulties. She eventually attended by telephone – audio only. She could not see the judge or those attending from the respondent, nor could the judge or they see her. However, she was able to hear everything. I took the view that on this basis the hearing was validly constituted as a public hearing under rule 46.

12. The claimant's first application was to adjourn the hearing, on the basis that her lawyer could not attend today because of technical difficulties. While the tribunal was aware of technical difficulties suffered by the claimant there had been no sign that anyone else had tried to attend but not been able to. I took the view that in those circumstances the tribunal ought to try to enable the lawyer's attendance by telephone in the same way that it had for the claimant. On telephoning the lawyer the tribunal clerk was told that the lawyer had only spoken to the claimant for the first time yesterday and was not in a position to represent her at the hearing, but the lawyer said he had advised the claimant to seek an adjournment of the hearing. On being told this the claimant did not dispute it.

13. I refused the claimant's application to adjourn the hearing on the basis that she had only spoken to the lawyer the previous day, and there was no good reason for this late instruction of a lawyer given the notice she had had of the hearing.

14. The claimant said that she would also be applying to adjourn the hearing on the basis that technical problems were preventing her from attending by video. I would have had some concerns about that if we had got to the point of taking witness evidence, but it seemed to me that the claimant was fully able to participate in the legal argument concerning the question of striking out her claim, so I did not consider it necessary or appropriate to adjourn the hearing at that point.

15. There remained the fundamental problem that the claimant had not complied with the order of EJ Tobin by providing a witness statement. Since the burden of proof was on her it was difficult to see how her claim could succeed without a witness statement from her. That had previously been the subject of a strike out warning and her responses to that had not been good ones. She continued to refer back to the supposedly incorrect acceptance of the ET3, which I

considered to be a matter that if not dealt with by the original acceptance letter had been conclusively dealt with in EJ Tobin's letter of 3 August 2023.

16. Unfortunately the claimant was so exercised by this point and other matters that she sometimes had difficulty in responding to my instruction to give me or Ms Meenan the opportunity to speak, so much so that I had to put her on mute twice during the hearing.

17. The claimant was in breach of her obligation to provide a witness statement. There is no good reason for that breach. Without that witness statement I did not see any way in which the hearing could go ahead today. To adjourn was bound to increase the respondent's costs and to create delay. In those circumstances I considered that the only appropriate action was to strike out the claimant's claims. Having given my decision, I said that full written reasons would follow (the claimant having already said that she would be appealing my decision). These are those reasons.

Employment Judge Anstis
Date: 18 October 2023

Sent to the parties on: 13 December 2023

For the Tribunals Office