



EMPLOYMENT TRIBUNALS

Claimant: Miss S Young

Respondent: Mitchells & Butlers Retail Ltd.

Hearing: Open Preliminary Hearing London South by CVP

On: 9 May 2023

Before: Employment Judge Harley sitting alone

Representation

Claimant: Representing herself

Respondent: Miss Sally A Laughton

JUDGMENT ON STRIKE OUT

The Tribunal's judgment, having heard and considered the respondent's application and the claimant's response is that the Claimant's claims are **struck out**.

The basis for the decision to strike out is:

- the claimant behaved unreasonably in the conduct of her claim, contrary to rule 37(1)(b) of the Employment Tribunal Rules of Procedure 2013, and
- the claimant did not comply with any part of the Tribunal's Case Management Order dated 08/11/2022, contrary to rule 37(1)(c)) leading to the cancellation of the full hearing at short notice.

REASONS

1. Full reasons were provided orally at the hearing. For the benefit of the parties, I will confirm here in brief the basis for the decision.

2. This matter was listed for final hearing on 9 – 12 May.
3. By a letter dated 3 May 2023 the Tribunal confirmed that it had cancelled the Full Hearing of the claims listed for 9-12 May, converting it to an Open Preliminary Hearing where a Strike Out application would be considered. The Tribunal did this on the application of the respondent.
4. The Tribunal cancelled the hearing having considered the respondent's position that the claimant had failed to comply with any of the Tribunal's Case Management Orders of 8/11/22, (which had been communicated to the parties orally by the Judge at the preliminary hearing, and which were then confirmed in writing), she had failed to respond to any communication from the respondent querying the non-compliance, and had failed to engage in the preparation of a trial bundle. In addition, the claimant did not respond to a letter from the Tribunal of 3 April warning her that an unless order was being considered and requiring a response within 7 days.
5. By not complying with the Orders the claimant had specifically not supplied her statement of loss, not supplied any evidence on which she might rely, or provide a witness statement. The claimant's failure to comply with the Orders, to respond to Tribunal correspondence or generally to engage in the preparation for the trial with the respondent meant that it was not possible for the respondent to prepare for the hearing or for a fair trial of the matters to take place on 9 May.
6. At the hearing conducted by CVP the claimant confirmed her failures to comply and engage at the hearing and was apologetic. She confirmed that she had returned to employment in November 2022 and that this and her caring responsibilities had taken priority. The claimant was unable to offer any reason for her failure to observe the Tribunals Orders made in November 2022, to respond to Tribunal correspondence or to engage with the respondent. She was unable to provide any reason why in the face of these failures the claims should not be struck out.
7. While the Tribunal noted the claimant was a litigant-in-person, and that she had suffered medical issues in Autumn 2022 which she mentioned in mitigation, this was not an excuse for not engaging with the Tribunal process she had commenced. The Tribunal notes the medical issues predated the Preliminary Hearing where case management orders were discussed and agreed, predated her return to employment, and noted that the claimant had made no attempt at any point before today to warn the Tribunal or respondent of any issues which might be impacting on her ability to prepare for the hearing.
8. I was left to conclude that the claimant's persistent and unreasonable failure to engage with the Tribunal, its Orders, and the respondent (in the face of the overriding objective) meant that a fair hearing, as envisaged by the overriding objective, was not possible in this case. A fair hearing cannot be achieved where only one party is engaged in the process, and that was the situation here.

9. Having regard to the fact of the claimant's persistent disregard for the required procedural steps, the Tribunal's Orders and requests, her general non-engagement with the respondent and the fact that the Final Hearing had to be abandoned means that there was no appropriate lesser sanction here than to strike out these claims under Rule 37 (1)(b) and 37 (1)(c)

Employment Judge Harley
23 October 2023