



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Carol Davies

**Respondent:** Marks and Spencer PLC

**Heard at:** Cardiff **On:** 31 October 2023

**Before:** Employment Judge R Havard

**Members:** Ms A Fine  
Ms R Hartwell

**Representation:**

Claimant: No attendance

Respondent: Mr Thomas, Chartered Legal Executive, Lewis Silkin, solicitors.

## JUDGMENT

The Respondent's application for the Claimant's claims to be struck out is dismissed.

## REASONS

This is the Tribunals decision in respect of an application by the Respondent for the proceedings to be struck out in accordance with Rule 37 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013 on the basis that the Claimant has failed to comply with directions made at a Case Management Hearing on 26 July 2023, and based on her failure to actively pursue her claim.

The Respondent is represented by Mr Thomas and the Claimant is not in attendance.

It is also necessarily the Tribunal's decision regarding whether the hearing of the Claimant's claims should be postponed, having been listed for 4 days commencing today.

The Claimant is pursuing claims for unfair dismissal and disability discrimination. She issued a claim form on 13 April 2023. The Respondent filed a Response disputing her claims.

At a Case Management Hearing on 26 July 2023, the Tribunal listed the case for 4 days, commencing today, to be heard in person, and issued various other directions.

On 14 July 2023 the Tribunal also made standard disability discrimination directions.

The Claimant has failed to comply with any of those directions.

Up until 25 October 2023, the Claimant was represented by solicitors but, on that date, the solicitors notified the Tribunal that they no longer acted for her. However, prior to their withdrawal, it was evident that they were experiencing great difficulty in obtaining instructions to enable them to comply with the Tribunal's directions. It is equally clear from reading the correspondence that the reason why they were unable to take instructions was due to the Claimant's ill-health.

There is no suggestion that the Claimant is being deliberately obstructive or endeavouring to avoid her obligations. The Respondent has confirmed in correspondence, and through Mr Thomas today, very fairly, that they accept that ill-health is the reason for the Claimant's non-compliance and they also accept that is the reason for her non-attendance today.

Indeed, at the end of August 2023, the Claimant's solicitors requested a stay of 3 months and the Respondents agreed to such a stay based on the Claimant's ill-health. The stay was not ordered because of a lack of medical evidence. However, it would appear that certainly in respect of today's hearing, the Claimant has endeavoured to obtain medical evidence but without success.

The Tribunal accepts that this is an unsatisfactory situation. It has taken full account of the Presidential Guidance on postponements and also the submissions made today by Mr Thomas.

The Tribunal recognises that a postponement on medical grounds engages the right to a fair trial under Article 6. Proper weight must be given to the serious implications for the Claimant if the postponement was refused and her claim was struck out. The Tribunal also takes account of a Respondent's right to a fair hearing within a reasonable time and also the need to consider when, realistically, this matter may come on for a full hearing.

We have taken account of the Employment Appeal Tribunal's guidance to be found in the case of ***Mukarov -v- Independent Workers Union of Great Britain*** [UK EAT/0128/19] and we have looked at the overall history of this case.

On balance, even though there is an absence of appropriate medical evidence available, the Tribunal has decided to postpone the substantive hearing of this case and therefore we do not allow the Respondent's application.

This is based on our assessment of the overall history of the proceedings, our conclusion that the Claimant is not being deliberately obstructive and also the Respondent's acceptance of the Claimant's ill-health, evidenced by their agreement at the end of August 2023 to a stay of 3 months.

The Tribunal proceeded to make further directions which are the subject of a separate order.

Employment Judge R Havard  
Dated: 1 November 2023

JUDGMENT SENT TO THE PARTIES ON 6 November 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche