



EMPLOYMENT TRIBUNALS

Claimant: Ms O Adeyanju

Respondent: Barts Health NHS Trust

JUDGMENT (Reconsideration)

The Claimant's application dated 27 December 2023 for reconsideration of the judgment (Strike out and Costs) dated 12 December 2023 (sent to the parties on 13 December 2023) is refused.

There is no reasonable prospect of the original decision being varied or revoked for the following reasons.

REASONS

1. The Claimant's application for a reconsideration (copied to the Respondent's solicitors) was made on 27 December 2023. There were 11 attachments to her email which are taken into account in this reconsideration decision.
2. I was not informed that the Claimant had made an application for reconsideration until 12th February 2024 when she chased the Tribunal about a response and her application and attached documents were then referred to me.
3. The Claimant's application raises the following matters said to mean that the judgment dated 12 December 2023 should be reconsidered. The ground for a reconsideration in Rule 70 is whether it is in the interests of justice to reconsider a judgment. The first stage of the reconsideration process is to consider whether there is a reasonable prospect of the original decision being varied or revoked on the basis of the reconsideration application. If the reconsideration application does not pass that first hurdle the reconsideration application goes no further.
4. The Claimant raises the following matters in her reconsideration application:

Strike out

- i. Her lack of legal representation leading to non-compliance with some Tribunal Orders
- ii. Substantial past compliance with Tribunal Orders
- iii. Issues relating to the medical evidence she had previously provided and the Respondent's concession as regards disability in January 2023
- iv. Her awareness of the hearing she did not attend on 19 October 2023
- v. The reason she did not attend the hearing on 19 October 2023 and the documents she supplied regarding that non-attendance
- vi. Tribunal delays between February 2023 and July 2023
- vii. Health problems causing delays in her being able to prepare her case
- viii. The efforts she made to keep the Tribunal and the Respondent informed of her health issues
- ix. The fact that she said at the hearing on 28 November 2023 that she was prepared to complete the clarification of her claim which remained uncompleted from the hearing on 6 September 2023

Costs

- x. Any delay was not intentional and the majority of the delay lay with the Tribunal
- xi. The financial burden of the costs award including the financial commitment of efforts to aid recovery
- xii. Her limitations during the proceedings being something which necessitated a reasonable adjustment.

Lack of representation

5. As regards lack of legal representation (application para 3) this was fully taken into account as set out in paras 12,13,15,16, 25,29,33 and 66 of the judgement. The point she makes about the identification of her claims misses the point; identifying 20 allegations is not the same as saying they are well-founded or have good prospects of success – it is simply the early stage of clarifying what the claim or allegation is so that the Respondent can respond to it.

Past compliance with Orders

6. As regards substantial past compliance with Orders (application para 3) any such compliance was outweighed by the Orders not complied with and her approach to the claim overall, the non attendance at the hearing on 19 October 2023 and, of particular importance, the significant adverse effect these matters had on the lack of progress in the claim as set in paras 19 57,58,59,60,61,62,63,64 and 65 of the judgement. Her 3am emails on the day of the hearing (judgment para 37-38,58) were acknowledged but her approach was unreasonable and disruptive (judgement para 39) and further compounded by the production at the hearing itself of two further envelopes.

Medical evidence

7. As regards the medical evidence provided by the Claimant after the October 2022 first preliminary hearing and the Respondent's previous concession at that stage (application para 4,7) this matter was fully addressed and taken into account in the judgment (paras 19,37). The point is that when the Claimant provided her medical evidence in December 2022 (on the basis of which the Respondent then conceded disability on its understanding of what appeared at that stage from the October 2022 preliminary hearing to be a more limited claim) she said that she had more; at the hearing in July 2023 she said she was not sure she had provided everything. The Order made at the September 2023 hearing was made partly to assist her to organise her medical evidence including an explanation was given as to why the Order was now made and to make sure she had a full opportunity to present her case (judgment para 19, preliminary hearing summary 6 September 2023 para 19). The situation had changed since the Respondent had conceded disability in January 2023 when it was basing its assessment on the limited claim as discussed at the October 2022 preliminary hearing and since then her claim form attachment had come to light. This was explained to the Claimant (September 2023 hearing para 19). It would not have been fair on the Claimant to hold her to the January 2023 medical evidence in that context (now that the claim had been identified to span a wider range of claims than originally thought) and in the context of her saying twice she had not provided everything. It would also not have been fair on the Respondent not to give it an opportunity to review the previous concession given the claim's prior much more apparent limited ambit as discussed at the October 2022 hearing. Both parties' positions were considered and the Claimant's allegation of bias in favour of the Respondent is unwarranted.
8. The Order made on 6 September 2023 told the Claimant exactly what to ask her GP for (para 18.1). The point is that she did not ask for them promptly on receipt of that Order which had a knock on effect on the timetable (judgment para 19). The problem was not that she asked for them promptly but then there was a delay beyond her control at the GP end.
9. As regards the claimed discrepancy between paras 14 and 67 of the judgment (application para 5,6), para 67 makes it clear which Orders are

being referred to as relevant to the strike out. It does not say that no Orders have been complied with.

Failure to attend hearing 19 October 2023

10. As regards the non-attendance at the hearing on 19 October 2023 (application para 8), the judgment sets out why the Claimant should have been aware of it (judgment para 21). Para 24 of the judgment sets out that she could have read emails and that if she was not she was ignoring Tribunal ones about the next hearing on 19 October 2023. It was a significant hearing (judgment para 25) and had been listed for one day to complete clarification of her claim, which only she could do (judgment para 60).
11. As regards her hospital attendance on 19 October 2023 (application para 8) the only document provided was the hospital form referring her for a blood test at 12.37 (judgment para 34). This was not a discharge summary from A and E of the type provided previously (judgment paras 34) provided for an earlier date which would contain the detail of arrival and discharge times and the presenting problems and what was done.
12. The Claimant says that the preliminary summary dated 19 October 2023 was incorrect because it recorded that she had said that she had forgotten the date, when in fact her case was that she was not aware of the date. Even if that were the case, it was up to her to diarise important dates.

Reasonable adjustments

13. As regards adjustments to the hearings (application para 9) these are set out in each of the preliminary hearing summaries as follows: July 2023 (para 11), September 2023 (para 2,4) and November 2023 (para 2-3). That she was given extra time to do things and given reminders is set out in paras 30,33,66 of the judgment.
14. The Claimant in her response to the strike out application (page 1) acknowledged that the Tribunal had made adjustments which she appreciated.

Tribunal delay in not relisting postponed February 2023 preliminary hearing until July 2023

15. As regards the relisting delay between February 2023 and July 2023 (application para 10), the postponement of the February 2023 preliminary hearing arose because the Claimant asked for a postponement and it is common for there then to be delay of a few months until the hearing can be relisted. Due to the many demands on limited Tribunal time and resources the Claimant was not entitled to require her hearing to be relisted as soon as the GP certificate she had provided expired. The Claimant is not being criticised for not doing something in that gap. The problems resulting in the strike out came after July 2023.

Health affecting case preparation not taken into account

16. As regards a claimed failure to take into account her health (application para 11-12) this is addressed at para 66 of the judgment. It is not accepted that her health on the evidence provided meant that she could not respond to correspondence, or comply with Orders (judgment para 24). It was not accepted that she was unaware of the 19 October 2023 hearing (judgment para 60) and that if she was unaware it was because she ignored correspondence. The medical evidence showed she had been referred for a blood test and was not evidence that she could not have attended the hearing. The Claimant in her response to the strike out application (page 1) acknowledged that the Tribunal had made exceptions for her because of her health conditions.

Efforts to notify circumstances

17. As regards efforts to notify of circumstances (application para 13) the judgment records what the Claimant did or did not do and why it amounted to a disruptive and unreasonable approach to her claim (judgment para 57-62) notwithstanding her communications to the Tribunal and the Respondent's solicitors which are identified and taken into account throughout the judgment. As regards the Propanalol for anxiety I checked with her that she had in fact taken it that day, in order to check that she had taken the medication prescribed to help with her anxiety.

Future ability to progress claim

18. As regards taking into account future compliance (application para 13 final bullet point) the Claimant's approach in the run up to this hearing and at the hearing (judgment paras 6, 33-43) did not show that she was now better able to progress her claim, leading to the real ongoing and substantial difficulties identified (judgment paras 57-65,70). The fact that she said she was willing to comply going forward (judgment para 36) was taken into account but it was not accepted that this is what in reality would happen, based on experience to date (judgment para 63,70). The day before she had said that she was not well enough to attend referring to the trial of the medication (email dated 27 November 2023 referred to at para 35), which is inconsistent with now saying in this application that the next day it was evident that she was clearly now able to manage her condition on that medication.

Costs Order

19. As regards the costs Order (application paras 14-19) the factors in the strike out analysis are set out in paras 57-66 of the judgment. Mere delay or delay beyond her control is not one of them. Her claim was not struck out simply due to lapse of time since presentation but because of her approach to the claim.
20. As regards the financial burden the Claimant has not provided with her reconsideration application any new evidence about her ability to pay a costs award. The judgment para 73 records that I did not need to take into

account her ability to pay a costs award but that in the circumstances I exercised my discretion to take them into account, given her personal circumstances. The costs award only covered Counsel's fees for the unattended hearing on 19 October 2023. I did not award the other costs claimed (Counsel's other fees and solicitors' costs) because I was taking her personal circumstances including limited income and the (limited) financial information she had provided into account. I extended the usual time for payment of a costs award because of her circumstances (judgment para 76). The Claimant refers to the costs of managing her health but she had not provided details of such costs in her response to the costs application, only saying (page 7) that a costs award would cause undue hardship.

21. As regards reasonable adjustments see above.

Conclusion

22. In conclusion the matters raised by the Claimant are already addressed in the judgment and this reconsideration application is a disagreement with the outcome. She has a detailed explanation in the judgment of why her claim was struck out and why a costs award was made and I had in mind that it was a draconian step especially in a discrimination claim (judgment para 68). The reconsideration process is not a way for a party to have a second chance to re-argue matters that the Tribunal has already decided on the evidence and the interests of justice include the interest of the other party in having had a final decision. I appreciate that this outcome will be disappointing for the Claimant.

**Employment Judge Reid
Dated: 23 February 2024**