



EMPLOYMENT TRIBUNALS

Claimant: Ms P O'Neill

Respondent: Jaeger Retail Limited (in Administration)

JUDGMENT

The claim is struck out under Rule 37(1)(d).

REASONS

The Employment Tribunal Claim

1. The claimant was employed as a Sales Adviser by Jaeger Retail Limited between November 2016 and September 2017.
2. On 3 April 2018 she presented a claim form complaining of age discrimination, disability discrimination and sex discrimination.
3. The response form of 3 May 2018 denied that there had been any discrimination but said that the claim had been presented out of time.
4. The question of time limits was set for a preliminary hearing on 15 October 2018. I heard the case and decided that it was not just and equitable to extend time. The claim was dismissed.
5. My written Judgment confirming that was sent to the parties on 17 October 2018. The Written Reasons for that Judgment were sent out on 8 November 2018.
6. The claimant applied for reconsideration of my judgment in October 2018. I rejected that application in a Judgment and Reasons sent to the parties on 23 January 2019.

Appeal to the Employment Appeal Tribunal

7. On 29 November 2018 the claimant had filed an appeal against the October 2018 judgment.

8. The appeal was heard by the Employment Appeal Tribunal on 1 November 2019. The appeal was allowed, and the matter was remitted to a differently constituted Tribunal for a re-hearing of the time limit point.

Appeal to the Court of Appeal

9. Regional Employment Judge Parkin held a case management hearing by telephone on 9 April 2020 to make progress in the Employment Tribunal case. The respondent had indicated that it was planning to appeal to the Court of Appeal, and by agreement the case was stayed until the conclusion of that process.

10. On 1 July 2020 I succeeded Judge Parkin as Regional Employment Judge. I asked the parties for an update, and I was told that permission to appeal had been granted by the Court of Appeal and a hearing date was awaited. I confirmed on 15 August 2020 that the case would remain stayed in the Employment Tribunal until the outcome of that appeal to the Court of Appeal.

11. The appeal was withdrawn in February 2021 (see below) but the Tribunal was not informed of that.

Administration

12. On 19 November 2020 the respondent went into administration.

13. Under schedule B1 of the Insolvency Act 1986 that meant that any legal proceedings against the company were stayed and could only proceed if permission were granted by the court dealing with the insolvency, or by the administrator.

14. This was confirmed to the claimant (through her then representative, Mr Jones) by a letter of 25 March 2021. The letter said:

“You should decide whether to ask the Administrator for such consent or whether to apply to the court for such permission. If you obtain the consent of the Administrator or the permission of the court, you should send a copy to this office immediately.

Otherwise an Employment Judge will consider your claim in 6 months. You will then be asked whether you have applied to the Administrator or to the court and, if so, with what result. If no such application has been made (or if it has been refused) the Judge may then ask you to give reasons why your claim should not be struck out because it is not being actively pursued.”

15. On 22 October 2021 I wrote to both sides asking for an update on the progress of the appeal and whether to consent to proceed was to be granted by the administrators. The claimant replied promptly saying that the administrators had declined to give consent for the claim to proceed, and that she had taken advice on potentially applying to the court for permission but understood that would expose her to a risk of costs, which she could not afford. She asked that if the claim could not proceed, it should remain stayed to await the possibility that the respondent might come out of administration.

16. In November 2021 the claimant provided to the Tribunal a copy of an order sealed by the Court of Appeal on 3 February 2021 which showed that the appeal by the respondent had been withdrawn.

17. That meant that the only proceedings which were stayed as a consequence of the administration were the proceedings remitted to the Employment Tribunal.

18. In the months that followed letters of the following dates were sent by the Employment Tribunal confirming that the stay would remain in place:

- 10 March 2022
- 3 August 2022
- 5 January 2023
- 18 May 2023
- 18 August 2023

19. I was prepared to allow the case to remain stayed as I recognised that the claimant was hoping the respondent would come out of administration and the stay could be lifted. The case would have been progressed in the Employment Tribunal in 2020 had the respondent not sought to appeal to the Court of Appeal prior to going into administration and then withdrawing the appeal.

20. However, during all this time the respondent company remained in administration. The case did not proceed.

Final Strike Out Warning

21. On 18 January 2024 the Tribunal wrote to the claimant saying that the respondent remained in administration, all proceedings were stayed, and it did not appear that the claimant had taken any steps to get permission for the claim to be pursued. The letter continued:

“In the circumstances Regional Employment Judge Franey proposes to strike out the claim because it has not been actively pursued. If the claimant objects she should make written representations within 28 days, or request a hearing at which she can do so.”

22. There was no reply from the claimant. She did not object or request a hearing in order to do so.

Decision

23. The power to strike out a claim arises under rule 37 of the Employment Tribunal Rules of Procedure 2013. Rule 37(1)(d) enables a Tribunal to strike out all of a claim on the ground that it has not been actively pursued.

24. The claimant had approached the administrators who said they would not consent to it proceeding. The only way in which the claim could then be actively pursued would be by the claimant making an application to the court. She has chosen not to do so in the hope that the company might come out of administration.

25. The company has now been in administration, and these proceedings stayed, for well over three years.

26. The claimant has not actively pursued this case and in the absence of any objections from the claimant, or any indication that she is going to apply to the court for permission, it is now struck out.

Regional Employment Judge Franey

4 March 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
18 March 2024

FOR THE TRIBUNAL OFFICE

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