



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Nualwan Chaowanarabin

v

Providence Bay Restaurants Limited

Heard at: Norwich

Before: Employment Judge Postle

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 38

This is an Application under Rule 38(2) by the Claimant to have the Order dismissing the Claimant's claim for race discrimination, set aside following the Claimant's non-compliance.

Background

1. This matter came before Employment Judge M Warren on 6 June 2023 at a Private Preliminary Hearing, following the Respondent's failure to file a Response.
2. At that Hearing the issues were set out and Employment Judge M Warren set it down for a Full Hearing before an Employment Judge sitting alone on 7 August 2023.
3. Unfortunately on that date the matter came before Employment Judge Postle and there was no Thai Interpreter available.
4. With the Claimant in attendance and the Claimant assisted by her friend Mr Croghan, the matter was re-listed as an in person Hearing at the Norwich Employment Tribunal on 29 September 2023.
5. The matter came before Employment Judge Postle and the following was noted:
 - 5.1. The Claimant had emailed the Tribunal on 15 September 2023 in the following terms,

"On 16 August 2023 the Tribunal Court ordered that this case has been re-listed as an in person hearing at Norwich on 29 September

2023. I confirm that I cannot attend the Hearing as I will still be in Thailand due to my health treatment. I have been advised that my treatment should be finished by December 2023..."

6. The Tribunal, not surprisingly, refused the postponement given the fact that the Hearing had previously been listed in the presence of the Claimant on the basis the new date was convenient to the Claimant.
7. At the Hearing on 29 September 2023, the Claimant had not provided any evidence regarding precisely what health treatment she was undergoing, when it was starting and the nature of it. Therefore, Employment Judge Postle gave serious consideration to dismissing the claim at that stage on the grounds that the Claim was no longer actively pursued. Mr Croghan having been asked to represent the Claimant's interests (as a friend) today, indicates that the health treatment the Claimant refers to was the provision of a crown (dental treatment), though he was unable to offer any explanation as to why this could not have been treated in England.
8. Mr Croghan was also unable to inform the Tribunal when the Claimant cancelled her flight booking which apparently was a return date of 27 September 2023. Employment Judge Postle therefore noted that it was particularly disappointing that this morning's Hearing had been arranged in agreement with the Claimant and judicial time has been wasted, particularly given that Full Merits Hearing dates and listing is under a great deal of pressure due to the volume of cases.
9. Employment Judge Postle therefore took the decision on 29 September 2023 rather than dismiss the Claim, to make an Unless Order in the following terms:-
 - 1.1 Unless the Claimant provides the following documentary evidence to the Tribunal by 27 October 2023, in default of that evidence being provided, the Claimant's claims will be dismissed without further Order, Notice or Hearing as no longer actively pursued, the information required was:-
 - a. The Claimant to provide documentary evidence that her return flight from Thailand was booked for a return date of 27 September 2023; and
 - b. Further, the Claimant must provide medical / dental documentary evidence as to when her treatment started, why it was necessary to be done in Thailand and when the treatment ended.
 - 1.2 The Unless Order went on to warn in no uncertain terms, if both of the above documentary evidence was not provided by 27 October 2023 the Claimant should be aware that her claim will be Struck Out without further Order, Notice or Hearing as no longer actively pursued.
10. In default of that Order, the Claimant failed to provide 1(a) and 1(b), simply providing confirmation of dental appointments. Accordingly, by notice of 7 December 2023, the Claimant was advised,

“Employment Judge Postle directs as to notify the parties that because the Order was not complied with by 27 October 2023, although the Claimant provided confirmation of their dental appointment the Claimant failed to comply fully with the remainder of the Unless Order, particularly paragraphs 1.1(a) and (b). Therefore the Claim of race discrimination has been dismissed under Rule 38.”

11. In simple terms, the Claimant was given a Hearing and chose to absent herself in Thailand for dental treatment, ultimately when asked to provide the full details as set out above she failed to comply.
12. In those circumstances Employment Judge Postle was right to dismiss the Claim as the Unless Order had been wilfully disobeyed.

Employment Judge Postle

Date: ...5 March 2024.....

Sent to the parties on: 19 March 2024
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For the Tribunal Office

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>