



EMPLOYMENT TRIBUNALS

Claimant: Mr Sarfraz Khan
Respondent: Wm Morrisons Supermarkets Limited
Date: 30 November 2023
Before: Employment Judge James

STRIKE OUT JUDGMENT

(1) The claimant's claims are struck out because they are not being actively pursued (Rule 37, Employment Tribunal Rules of Procedure 2013).

WRITTEN REASONS

Background facts

1. Following the Preliminary Hearing on 27 September 2023, which the claimant did not attend, a notice to show cause why the claim should not be struck out, because it was not being actively pursued, was sent to the claimant. At paragraph 6, the following case management orders were made:

*6.1. **By 4pm on 25 October 2023**, the claimant is to write to the tribunal to explain why his claims should not be struck out because they are not being actively pursued. The claimant should also explain why he did not attend the hearing today, and provide any relevant medical evidence he relies on, if his non-attendance was because of continuing ill-health. If the claimant wants a hearing, in order to say why his claim should not be struck out, he should request a hearing by the same time.*

*6.2. **By 4pm on 8 November 2023**, the respondent shall provide a response to any representations made by the claimant. Both the claimant's and respondent's representations will then be considered further by Employment Judge James and a decision made as soon as possible.*

2. The claimant responded in an email sent to the tribunal but not copied to the respondent on 23 October 2023 as follows:

I sirfraz khan, Missing last appointment was due to my health issues, struggling with it for few years seen a few council therapist taking meds mirtazapine, very hard to explain there's times I struggle to free myself on a daily basis I can't control myself, spending most times in my room staring at the four walls n ceiling not moving from where I'm lying down, If u require more info on my health I can speak to my doctor n ask him if that way u may understand (sic)

3. In an email sent to the tribunal and the claimant on 8 November 2023, the respondent requested that the claims be struck out because they were not being actively pursued.
4. The claimant further responded in a brief email dated 11 November 2023 in which he states:

For the missing times of tribunal it was not done on purpose due to the ongoing health problems which is very hard to explain to u, I can get a letter from doctors for u to understand I've been told to get help from citizens advice bureau, Im struggling to read n understand the emails need someone to break it down for me, Monday I'll be contacting the citizens advice bureau for help to reply to wot I need to do

5. The details set out in box 8.2 of the first claim state:

2022 in June I was called in for welfare meeting where the managers acknowledged my health problems n gave me time off from work as long as I need and they asked me to provide sicknote s which I did , in dec I was told that Morrisons was targeting the people with health issues and lack of experience hav given 2 options 1 apply for job else where in morrison location 2 take volunteer redundancy , in jan Morrisons received a medical report from medi gold which mentioned that I was not ready to come back to work with the on going health problems and for that they really did not give me options only 1 take the voluntary redundancy which I had no choice n they wanted it the papers signed straight away because of deadline they were on (sic)

6. The first claim was issued on 27 May 2023. Save that the claimant is complaining that his dismissal amounts to disability discrimination, it is entirely unclear what the factual or legal basis for that assertion is. A second claim issued on 5 July 2023 appears to rely on the same facts and it is assumed was issued in error.

Decision

7. It is now almost 6 months since the claim was issued, but it is still not possible to identify what the issues in the claim are, because of the claimant's failure to actively pursue the claims. Whilst Employment Judge James accepts, from what the claimant says, that his mental health is not good, fairness and justice in these proceedings must be considered from the point of view of both parties. Although the claimant has been requested to provide medical evidence, and refers to him being able to obtain a letter from his GP, he has failed to do so. This is despite him being ordered to provide any medical evidence relied on, in the case management order issued after the last preliminary hearing.
8. In the claimant's replies, he gives no indication as to when he may be well enough to pursue the proceedings. It is clear that the claims are not being actively pursued. Employment Judge James has considered whether, in the circumstances, it would be appropriate to stay the claim for a period instead of striking it out. From the

information provided by the claimant however, there is no indication as to when he may be well enough to actively pursue the proceedings.

9. In deciding whether to strike the claimant's claims out at this stage, Employment Judge James has considered the brief facts set out in the claimant's claim at box 8.2. The claimant states that he had been absent from work due to ill-health from June 2022, nine months or so prior to his employment ending. He was offered the opportunity of applying for another role elsewhere, or accepting voluntary redundancy. He applied for voluntary redundancy.
10. Whilst Employment Judge James notes that an application for voluntary redundancy can still in certain circumstances amount to a dismissal, and it is assumed in the circumstances that it did, it appears from what the claimant is saying that he did have the option of applying for a job elsewhere. Even though he may not have been able to take up an alternative position at that time, the respondent would still have had to consider an application from him, had one been made. On the basis of the facts set out by the claimant therefore, his claims in any event appear to have little prospect of success.
11. Bearing in mind all of the above circumstances, Employment Judge James has concluded that the claimant's claim should be struck out because they are not being actively pursued, and the tribunal can have no confidence that this situation is going to change, within a reasonable period.

Employment Judge James

30 November 2023