



EMPLOYMENT TRIBUNALS

Claimant: Mr C Best

Respondent: POBL Group

JUDGMENT

The claimant's application dated 11 March 2024 for reconsideration of the judgment sent to the parties on 26 February 2024 is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, because the Claimant's representative has not provided sufficient evidence of his ill-health and its impact, or complied with the previous case management order as the further and better particulars provided are deficient.
2. The Claimant's representative, a professional representative, emailed the Tribunal seeking a reconsideration of the Judgment striking out the Claimant's claims. The claims had been struck out on the basis that the Claimant had not complied with the Order of Employment Judge R Harfield of 2 February 2024 to provide further and better particulars and it appeared that the claim was not being actively pursued. The Claimant's representative did not respond to the Tribunal's strike out warning. It had not been possible to conduct the listed case management hearing on 29 February 2024 due to the failure of the Claimant to comply with the order.
3. The Claimant's representative in his email provided no evidence. He simply said that he had been unfit for work between 1 February 2024 & 15 March 2024. The Claimant's representative confirmed that he understood why the claim had been struck out, but sought relief from sanctions on the basis that the claim was at an early stage.
4. In response, I reminded the Claimant's representative to copy the Respondent's representative into correspondence, that evidence was required, and that the

Claimant was still in breach of case management orders. The Respondent's representative replied to both the Tribunal and the Claimant's representative, noting that key questions remained unanswered about the nature of the Claimant's representative's ill-health, whether the Claimant had been made aware, and if the Claimant's representative was relying on his ill-health to explain the failure to comply, how was he was conducting litigation and making applications while signed off as unfit? They highlighted that another month had passed without compliance with case management orders by the Claimant.

5. The Claimant's representative on 19 April 2024 provided a fit note, dated 11 March 2024, saying that he had been unfit for work between 2 February 2024 & 15 March 2024. It is marked as a duplicate but appears to have been issued retrospectively. He also provided further and better particulars. The Claimant's representative confirmed that he worked alone and had no process in place to look after the affairs of his clients while unwell or absent.
6. I do not consider that the Claimant has a reasonable prospect of success of obtaining a revocation of the strike out judgment on the basis of the evidence provided to date. The Presidential Guidance on case management makes it clear that a fit note will not suffice. The Claimant's representative is a professional and it is reasonable for him to be expected to provide detailed medical evidence and to answer the questions posed by the Respondent's representative about his absence. Further concerns are raised by the retrospective nature of the fit note and by the fact the Claimant's representative was working on 11 March 2024. The Claimant's representative has not shown that he was unfit and unable to communicate effectively, though a hearing was listed to take place while he allegedly was unwell. He has not shown that it was not possible to arrange for another professional to assist, such as a locum or instruction of Counsel. The Claimant's representative has been given two opportunities to provide persuasive evidence and has failed to do so (when he first applied for a reconsideration and when he was reminded by the Tribunal of the need for evidence).
7. Critically, the Claimant still has not complied with the case management order. The further and better particulars are deficient. They do not clearly identify the "something arising" from his disability or the discriminatory treatment that resulted, there is no attempt to identify a comparator for a direct discrimination claim or what is the discriminatory treatment, there may not be a reasonable adjustment identified ("resolving a dispute" is not an adjustment/step, though arguably the roster suggestion could be), or it does not set the grounds of the alleged automatic unfair dismissal. This is not a comprehensive list of deficiencies. From a professional representative, the further and better particulars are of no assistance to the Tribunal and the Respondent remains unable to sensibly respond. There is no reasonable prospect of the strike out judgment being revoked when the Claimant still has not complied with case management orders.

8. However, I am conscious that it appears to be the Claimant's representative who is at fault. Bearing in mind the authority of Phipps v Priory Education Services Ltd 2023 EWCA Civ 652, I have directed that the Claimant is served by the Tribunal office a copy of this Judgment to ensure that he is fully aware of what his representative has failed to do and the current position. The Claimant may wish to seek alternative advice and consider the options available to him. If an application is made out of time by the Claimant promptly on receipt of this Judgment, depending on the evidence provided and if proper further and better particulars are provided, I may be in a position to revoke my Judgment. If such an application is made, and if I consider there is a position that I will reconsider, I will seek the comments of the Respondent first.

Employment Judge C Sharp

Dated: 7 May 2024

Corrected: 21 May 2024

JUDGMENT SENT TO THE PARTIES ON 22 May 2024

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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