



EMPLOYMENT TRIBUNALS

Claimant Ms A Pikzirnyte

Represented by Mrs V Tunikaite, her mother

Respondent Harrods Ltd

Represented by Ms A Greenley of Counsel

Employment Judge Ms A Stewart (sitting alone)

Held at: London Central by CVP **on:** 17 June 2024

JUDGEMENT

1 The Claimant has failed materially to comply with the Tribunal's Order under Rule 38(1) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which was made on 18 March 2024 and promulgated on 4 April 2024.

2 Accordingly, the Claimant's disability discrimination claims stand dismissed as at 4.30 pm on 7 June 2024, the date set for compliance with that order.

Employment Judge A Stewart

Date 18 June 2024

Judgment sent to the parties on

25 June 2024

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FOR THE TRIBUNAL OFFICE



EMPLOYMENT TRIBUNALS

Claimant	Ms A Pikzirnyte
Represented by	Mrs V Tunikaite, her appointee
Respondent	Harrods Limited
Represented by	Ms A Greenley of Counsel

REASONS

Introduction:

1 At a hearing on 18 March 2024 the Tribunal made the following order:

“ Unless by 4.30pm on 7th June 2024 the Claimant has served onto the Respondent and the Tribunal:

1 An Impact Statement setting out the impact upon the Claimant of her Autism Spectrum Disorder (‘the condition) specifying the effects that the condition has on her ability to do day to day activities, stating when it started, when it stopped or if it is continuing;

2 Her GP Records from January 2022 to March 2024;

3 A medical report from a suitably qualified medical expert confirming the Claimant’s diagnosis with the condition,

the Claimant’s claims of direct disability discrimination and discrimination arising from disability will be struck out without further order.”

2 The Respondent contends that the Claimant has failed to comply with 2 out of the 3 limbs of this order because she has only supplied an impact statement.

3 The Claimant says that she has 99% complied with all the orders, as far as was in her power.

4 It therefore falls to this Tribunal to determine whether or not there has been material compliance with that Tribunal order.

The Facts:

5 It is not in dispute that by the compliance date, the Claimant supplied an impact statement and the following material: (i) 2 phone screenshots of 2 GP consultations, on 10 May 2023 and 10 January 2024; (ii) a letter from her GP referring the Claimant for an expert assessment of her condition and a letter from her GP confirming that such a referral had been made. The Agency acknowledged the referral. It is common ground that there is a long waiting list in the NHS for such assessments. No assessment has so far taken place nor is yet booked.

6 The Respondent said that the Judge at the hearing on 18 March 2024 asked the Claimant whether or not she could produce an expert assessment by the end of May 2024 and she said that she could, via private medical insurance. The Claimant said today that the medical insurance company had later refused to deal with this matter because it was a pre-existing condition.

The Law:

6 An 'unless' order under **Rule 38** is a conditional judgment that the claim be struck out unless an order is complied with. This means that the decision regarding the sanction of strike out has already been made by the Judge at the time of making the 'unless' order, having conducted such inquiries at that hearing as the Judge saw fit. Non-compliance results in automatic strike out as at the expiry of the compliance date, here 7 June 2024, without further order.

7 This Tribunal therefore has no discretion in the matter of sanction. The sole question for today's hearing is whether or not there was 'material compliance' with the order. Material compliance must be judged qualitatively rather than quantitatively and what constitutes material compliance needs to be assessed in the context of the purpose for which the order was made.

8 The purpose for which the Tribunal's order set out in paragraph 1 above was made was clearly to provide the Respondent with the evidence necessary to consider whether or not the Claimant was likely to fall within the definition of disability set out in section **6 Equality Act 2010**, and to formulate its response accordingly. Further, if the disability issue remained thereafter in dispute, it provides evidential material which may assist the merits Tribunal in determining the issue of whether or not the **section 6** test was satisfied in the Claimant's case.

Submissions:

9 As to the GP Records: The Respondent says that the Claimant has failed to supply her GP records; that she well understands how to do this, since she has already supplied them to the Social Entitlement Tribunal; that it was clearly explained by the Judge to the Claimant at the hearing on 18 March 2024 that she must send all of her GP records for the stated period but could redact material which was not relevant to her claim and that 2

screenshots patently do not comply with the order.

10. The Claimant says that there is nothing else in the GP records except perhaps for some stomach cramp and knee pain appointments which are not relevant. Her appointee today offered to reveal her GP records to the Tribunal on her phone NHS app.

11 As to the medical report from a suitably qualified medical expert in the field of autistic spectrum disorder: The assessment has not yet taken place and there is no expert report. The reference letter from the Claimant's GP explicitly sets out that the result of the assessment for which she is being referred may have any one of 3 outcomes, namely; a finding of autism, a finding of non-autism or something in between.

12 The Claimant contends that the GP is an expert and his opinion is that the Claimant displays many of the characteristics of female autism. The Respondent says that the GP is not an expert and for that very reason is referring the Claimant for expert assessment.

Conclusions:

13 The Tribunal is mindful that compliance in this context does not need to be precise or exact. But there must not be non-compliance in any material respect.

14 After careful consideration, the Tribunal concluded that there has been material non-compliance with the Tribunal order for the following reasons:

(i) 2 screenshots of individual meetings with the GP do not comply with the order for production of GP records spanning a 2 year period. Other 'notes' are referred to in one of the screenshots supplied. A GP record, showing the full panoply of appointments, referrals, medications etc, even with irrelevant material redacted, provides an overall picture and/or pattern of an individual's health history, including patterns, or indeed the absence of material, which may be supportive or non-supportive of an assertion of disability under **section 6**, and which a Respondent to a disability discrimination claim has a right to see in order fairly to respond to the claim and upon which the eventual merits Tribunal will need to rely in determining the disability issue. That was what was ordered in this case and it has not been complied with.

(ii) The GP letters of referral do not constitute an expert medical assessment of the Claimant's condition. The very reason for the referral, in terms setting out the fullest spectrum of potential expert findings, is because the GP does not purport to have the expertise necessary him/herself.

15 The Tribunal has not simply taken a mathematical view that only one in three heads of the order have been complied with but has considered the entirety of the order. The impact statement is a very important evidential aspect of the disability test set out in **section 6 Equality Act 2010**. However, it is not sufficient by itself. Medical records and medical reports are also important evidential aspects of this issue. The Tribunal concluded that in failing to provide her GP records and an expert assessment, the Claimant has failed to comply with the Tribunal's unless order in important

and material respects.

16 Accordingly, the claim stands as automatically struck out as at 4.30pm on 7 June 2024, in accordance with the 'unless' order made on 18 March 2024.

17 It is not open to this Tribunal to exercise any discretion as to the strike out sanction, nor to have regard to the case of **Denton v TH White Ltd [2014] EWCA Civ. 906** concerning relief from sanctions under CPR rule 3.9, as cited by the Claimant today. The Tribunal is governed by **Rule 38 of the Tribunal Rules** in this matter.

Employment Judge A Stewart

Date 18 June 2024

Judgment sent to the parties on

25 June 2024

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