



EMPLOYMENT TRIBUNALS

Claimant: Mr G Goldthorpe

Respondent: SRCL Limited t/a Stericycle

JUDGMENT

The claim is struck out.

REASONS

Background

1. The claimant claims discrimination arising from disability. Disability is disputed.
2. At a preliminary hearing on 29 January 2024 the claimant was ordered to provide a disability impact statement and medical records to the respondent by 25 March 2024. On 28 May 2024, having chased the claimant's representative for the medical evidence, the respondent made an application for a postponement of the final hearing in September 2024 and for a further preliminary hearing to be listed. While that application was rejected, the Tribunal ordered that the claimant write to the Tribunal by 12 June 2024 providing an explanation of what attempts he had made to obtain medical evidence and when it was likely to be provided.
3. The claimant's representative applied for a postponement of the final hearing on 12 July 2024, indicating that the claimant had spent time in and out of hospital and they had not been able to contact their client since 25 May 2024 nor obtain medical evidence. On 22 July 2024 the respondent applied for a strike out of the claimant's claim on the grounds that the claimant had failed to comply with the Tribunal's case management orders and was not actively pursuing the claim. The claimant's representatives objected to that application but indicated that they were unable to reach their client to take instructions.
4. By letter dated 5 August 2024, the Tribunal refused the claimant's application for postponement of the final hearing and gave the claimant one final opportunity to provide medical evidence as to why he had not complied with

the Tribunal's various orders and why he would be unable to attend the final hearing in September. The order stated that the claimant must indicate when he would be fit to attend a hearing and must respond by 12 August 2024.

5. The claimant's representative responded on 13 August 2024, stating that they had been unable to contact their client, but believed he had been admitted to hospital due to his mental health. They explained that he had been unable to access the NHS app to obtain medical records and had had an incident within his GP practice which resulted in him being refused his medical records or permission to attend the practice. The claimant's representative applied for a 6 month stay of the claim to allow the claimant more time to recover from his apparent mental health crisis.
6. The respondent objected to the claimant's request for the claim to be stayed, noting that there was still no evidence of the claimant's medical condition nor to substantiate that the claimant had been hospitalised, nor to suggest that he would be fit to proceed in 6 months' time.
7. On 28 August 2024, the Tribunal postponed the final hearing and listed a preliminary hearing in public for the first day of the final hearing on 2 September 2024, to consider the respondent's strike out application and the claimant's application for a stay. On the same day, the claimant's representatives informed the Tribunal that they were no longer acting for him, as they were unable to obtain instructions, and requested a postponement of the preliminary hearing to allow time for him to be informed of the hearing and prepare.
8. The preliminary hearing in public was subsequently listed for 30 September 2024 to hear the respondent's strike out application. An error in the notice of hearing also made reference to hearing the 'claimant's strike out application'. It is assumed this was intended to read 'the claimant's application for a stay'.
9. At today's preliminary hearing the claimant was not in attendance, although from the Tribunal's file, it was apparent that he must have received notice of the preliminary hearing from both the Tribunal and his former representatives. There is no telephone number on the file for the claimant. The start of the preliminary hearing was postponed for 20 minutes to allow time for the claimant to arrive, in case he was having technological difficulties, but he did not attend, nor was any contact made by him with the Tribunal.
10. The respondent's representative informed me that the last contact the respondent had from the claimant was an email (apparently copied to the Tribunal though, unfortunately, not on the Tribunal's file) dated 17 September 2024, which stated "I am feeling much better and still absolutely want to fight this case. Can you let me know what information you need... I will provide whatever I have".

Respondent's submissions

11. The respondent repeated its application for the claimant's claim to be struck out on the basis that he had failed to comply with the case management orders of the Tribunal, had had a lengthy period of time and several opportunities to provide his medical evidence to support his claim that he was disabled but still failed to do so. He had also failed to provide any real evidence to explain why he was unable to comply with the Orders. The respondent had incurred

significant costs and time and was ready to go to a hearing. There was no indication of when the matter might proceed or when/whether the claimant might engage.

Conclusions

- 12. The claimant has been given a number of opportunities to provide medical evidence, both to support his contention that he was a disabled person at the relevant time, in accordance with the Tribunal’s Case Management Orders, and also to support his representatives’ explanation of his failure to comply with those Orders. He has failed to produce any medical evidence to support either. To date there is still no concrete evidence before the Tribunal or the respondent to show that the claimant had/has the disability alleged, that he has been unfit to comply with the Tribunal’s Orders, that his ill health necessitated a postponement of the final hearing or a stay in the proceedings or when he will be fit to proceed.

- 13. The claimant has failed to attend this preliminary hearing to consider the application to strike out his claim and/or to allow a stay of the claim. Although in his email of 17 September 2024 he claimed to be feeling better and wanting to fight the claim, his actions speak otherwise. I conclude from his failure to comply with the Tribunal’s Case Management Orders, his failure to respond to the Tribunal’s Orders requiring him to state when he will be fit to proceed and his failure to attend this preliminary hearing today, that the claim has not been actively pursued in any real sense.

- 14. The claim is therefore struck out.

Employment Judge Bright

30 September 2024

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE