



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000661/2024

Employment Judge P O'Donnell

Mr J Boal

Claimant

Chemring Energetics UK Ltd

Respondent

JUDGMENT

The claim of disability discrimination under the Equality Act 2010 is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds of non-compliance with an Order of the Tribunal in terms of rule 37(1)(c).

REASONS

1. On 12 September 2024, the parties attended a Case Management Preliminary Hearing where various Case Management Orders were issued. The Orders were contained within a Preliminary Hearing Note issued to the parties on 13 September 2024. Order 3 required the claimant, within 14 days of receiving it, to sign and return to the respondent's representative a GP mandate providing access to his GP records for the period of 1 September 2022 to 28 February 2024.

2. On 21 October 2024, the respondent wrote to the Tribunal to apply for the claim to be struck out on the basis that the claimant had failed to comply with the Case Management Order. The respondent stated that the GP mandate was issued to the claimant on 30 September 2024. The mandate was not returned to the respondent's representative within 14 days in accordance with the order.
3. On 22 October 2022, the claimant was asked to provide his response to the application within 7 days. When no reply was received, the claimant was sent a reminder on 31 October 2024. The claimant replied on 7 November 2024 to confirm that permission had been given for his GP to be contacted. The claimant sent a second email on 12 November 2024 and confirmed that the mandate had been signed and returned "to the appropriate offices".
4. On 13 November 2024, the respondent wrote to the Tribunal to confirm that it was their position that the Order had still not been complied with and that the claim should be struck out by the Tribunal. The respondent stated that the claimant's representative had been provided with the GP mandate on 30 September and 23 October but had failed to sign and return it on either occasion.
5. On 13 November 2024, the Tribunal wrote to the parties to provide directions to the claimant. The claimant was directed to confirm to which "appropriate office" the mandate was sent; to whom it was addressed; by which format it was sent (email or post) and the date on which it was sent. The claimant was also asked to provide any documentary evidence. The claimant did not reply, and a reminder was issued on 25 November 2024.
6. On 26 November 2024, the claimant wrote to the Tribunal stating that documents were scanned to the respondent's representative on 26 September 2024. The respondent wrote to the Tribunal on 27 November 2024 to confirm that the mandate was not among the documents sent to them on 26 September.
7. On 5 December 2024, the Tribunal wrote to the claimant to issue a Strike Out warning. The claimant was issued a direction to comply with the Case Management Order by signed and dating the mandate, taking a photograph of the signed and dated mandate; emailing the photograph of the signed and dated mandate to the respondent's representative; and posting the paper signed and dated mandate, or hand delivering it to the respondent's representative's office. The claimant was directed to copy their email to the Tribunal to confirm compliance with the Order. The claimant was informed that a failure to comply with the Order by 10 December 2024 would result in the claim being struck out in terms of Rule 37(1)(c) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

8. Furthermore, the claimant was given the opportunity to write to the Tribunal by 10 December 2024 to explain why the claim should not be struck out or to request a hearing to put forward reasons in person.
9. The claimant has failed to comply with the Order or to give an acceptable reason why the claim should not be struck out or to request a hearing. The Tribunal therefore strikes out the claim on the grounds of non-compliance with an Order of the Tribunal.
10. The Tribunal considers that the failure to comply with the Order means that a fair trial of the claim for disability discrimination is no longer possible. The claimant has been given multiple opportunities to comply and has failed to do so. He has not suggested that there is any impediment to compliance with the Order and it requires no more than for him to sign and return the mandate. The Tribunal has no confidence that the claimant will comply with the Order if given a further opportunity to do.
11. The GP records are essential evidence relevant to a fundamental issue in relation to the claims under the Equality Act 2010, that is, whether the claimant is disabled as defined in s6 of the Act. This issue goes to the jurisdiction of the Tribunal to hear such a claim and the respondent is prejudiced in preparing to deal with that issue by the claimant's failure to comply with the Order.
12. In these circumstances, the Tribunal has concluded that a fair trial of the claim of disability discrimination under the Equality Act 2010 is no longer possible due to the claimant's failure to comply with an Order of the Tribunal. That claim is, therefore, struck-out.
13. The position is different for the claim of unfair dismissal under the Employment Rights Act 1996. There is no equivalent jurisdictional issue and the GP records are not required for the respondent to be able to prepare to defend that claim. The Tribunal does not consider that a fair trial of the unfair dismissal claim is no longer possible and that claim is not struck-out.
14. The final hearing listed for 13-15 January 2025 will proceed to determine the unfair dismissal claim only.

P O'Donnell

Employment Judge

11 December 2024

Date of Judgment

Date sent to parties

12 December 2024
