



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000886/2024

Employment Judge M Whitcombe

Miss S Healy

Claimant

Advance Construction Scotland Ltd

Respondent

JUDGMENT

The claim is struck out under rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024 because the claimant's ongoing failure to comply with a Tribunal order given more than 6 months ago is making a fair hearing impossible.

REASONS

1. At a preliminary hearing for case management on 9 September 2024 the claimant was ordered to complete the Tribunal's *pro forma* case management agenda for discrimination claims and to produce a disability impact statement. The order explained in detail what that meant at paragraph 6(b). The deadlines were 23 September 2024 and 7 October 2024 respectively. Neither aspect of the order was complied with by that deadline, or since.
2. On 22 January 2025 the Tribunal requested an update from the claimant regarding compliance with directions by return. The claimant's prompt reply of the same date did not provide information which complied with the outstanding directions or explain why it was not possible for the claimant to do so.
3. On 6 February 2025 the Tribunal wrote to the claimant warning that the Tribunal was considering striking out the claim on the basis that the claimant's failure to comply with the above orders was preventing a fair hearing, or alternatively on the basis that it was not being actively pursued. The parties were invited to make any relevant submissions by 19 February 2025, or to request a hearing on strike out by the same deadline.
4. The claimant replied on 7 and 14 February 2025 stating that she had sent everything required and that she did not understand what further she was required to do. In chasing correspondence dated 7 February 2025 the claimant was asked to send all the information requested in the original order.
5. On 24 February 2025 I directed that the claimant should be sent further correspondence which explained in detail what the claimant needed to do to comply with the order. I also directed that additional copies of the correspondence dated 6 February 2025 and the original order dated 9 September 2024 should be sent to the claimant. The deadline for compliance was extended to 17 March 2025.
6. On 27 February 2025 the respondent made a formal application to strike out the claim. While the application referred to the old rule of procedure and used terminology which did not reflect that in what is now rule 38, I took it to be an application to strike out for breach of an order.
7. On 7 March 2025 the claimant wrote to the Tribunal, but the correspondence did not amount either to an impact statement or a completed case management agenda.

8. On 12 March 2025 the Tribunal replied giving the claimant a final opportunity to comply with outstanding orders and reminding her of the potential sanction of strike out for a failure to comply by the existing but extended deadline of 17 March 2025. The letter also explained once again what the claimant needed to do to comply with the order, referencing previous correspondence.
9. No further reply was received from the claimant by the 17 March 2025 deadline.
10. I am satisfied that the claimant remains in breach of two orders given as long ago as 9 September 2024. Compliance with those orders is necessary to progress the claim in accordance with the overriding objective. There have been many opportunities for her to comply since then and compliance has been chased by Tribunal correspondence many times.
11. I am also satisfied that the claimant's continuing breach of directions is making a fair hearing impossible. The basis of the claims remains obscure, as does the basis on which the claimant argues that she was a disabled person for the purposes of section 6 of the Equality Act 2010.
12. In those circumstances, considering also the overriding objective in rule 3, it is just and proportionate to strike out the claim under rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024. The use of less drastic case management powers to progress matters has been tried without success and there no longer appears to be any prospect of useful progress.

Employment Judge M Whitcombe

18 March 2025

Date sent to parties

19 March 2025