



EMPLOYMENT TRIBUNALS

Claimant

Ms J Khanam

Respondent

v Fisher and Paykal Healthcare Limited

Heard at: Norwich (by CVP)

On: 17 March 2025

Before: Employment Judge Postle (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr P Gorasia, Counsel

JUDGMENT on APPLICATION for STRIKE OUT

1. The Respondent's Application to Strike Out the Claimant's claims succeeds.
2. The Claimant's claims against the Respondent are therefore dismissed.

REASONS

1. This is the Respondent's Application to Strike Out the Claimant's claims for public interest disclosure under Rule 38(1)(c)(d) of the Employment Tribunals Rules of Procedure 2024.

Evidence

2. In this Tribunal we have had the benefit of a Bundle of documents consisting of 161 pages. The Tribunal also had the benefit of written submissions from Mr Gorasia, Counsel for the Respondent. In those submissions he cited the Authorities of:

2.1. Weir Valves & Controls (UK) Limited v Armitage [2004] ICR 371;

2.2. Harris v Academies Enterprise Trust [2015] IRLR 2008;

- 2.3. Leeks v University college London Hospitals NHS Foundation Trust [2004] IRLR 866;
 - 2.4. Birkett v James [1978] AC 297;
 - 2.5. Evans, Executors Of v Metropolitan Police Authority [1992] IRLR 570; and
 - 2.6. Khan v London Borough of Barnet UK EAT/0002/18.
3. Both the Claimant and Counsel for the Respondent had an opportunity to address the Tribunal.

Background

4. The background to this case is well set out in the chronology of Case Management pages 135 – 137. The Tribunal will not re-hearse it as it is there for all to see, but importantly it shows the claim was filed on 25 April 2023, the Response was filed on 6 June 2023 and despite numerous Orders being made by the Tribunal and extension of times for compliance being granted to the Claimant, sadly it showed a complete failure on each and every occasion over nearly a two year period since the claim was filed, for the Claimant to comply with those Orders. It also showed complete failure on a number of occasions to respond and engage with the Respondent's Solicitors.
5. It should be noted that originally the Claimant was legally represented, that legal representation ceased in January 2024.
6. It is important to note that at the outset of the Claimant's submissions to the Tribunal today, she confirmed that she agreed with everything Counsel had said in relation to the chronology of Case Management; a frank admission by the Claimant that she had failed on each and every turn to comply with previous Case Management Orders.
7. It is also noticeable that as at today's Hearing, the Claimant has still made no attempt to comply with the Tribunal's Orders.
8. The Claimant submitted this morning that it was important her case was heard and that it contains serious allegations against the Respondent, despite the fact that the Claimant had done nothing to progress it in nearly two years.
9. The Claimant had emailed the Tribunal on 11 February 2025 which was in response to the Final Strike Out Warning letter. In that email the Claimant suggested the reason for her failure to comply was the sale of her property and moving into a new address and the loss of her former neighbour. She repeats in her summary undue stress, though medical evidence is provided in support. The Claimant says that in her view these are exceptional and extending circumstances.

10. The Tribunal repeats, one cannot get away from the fact that the claim was filed nearly two years ago on 25 April 2023 and despite that period of time the Claimant has failed to engage properly with the Tribunal on a number of occasions, likewise with the Respondent's Solicitors and more importantly, offered no real substantial explanation for the delay other than moving house in January 2024, the death of her former neighbour and finding a job. None of which in the Tribunal's mind prevented the Claimant engaging in her litigation in complying with the Tribunal's Orders over that period of time.
11. It is correct in compliance for Tribunals to consider what is set out in Weir Valves & Controls (UK) Limited v Armitage :

“For justice to be done between the parties to consider all the circumstances, contumelious default, the disruption, the unfairness, the prejudice, whether a fair trial is still possible and whether a lesser remedy would be more appropriate.”
12. Harris v Academies Enterprise Trust offers further guidance to:

“...consider what has happened, the failure to comply with Orders over the period of time, repeatedly may give rise to a view of indulgence if granted the same would happen again.”
13. The Tribunal reminds itself that Under Rule 38(1)(c), the Tribunal must consider whether there is substantial, or significant risk that a fair trial is no longer possible. In cases of non-compliance the Tribunal does have the discretion to take action as it considers just; i.e. whether a lesser sanction should be considered.
14. In relation to Rule 38(1)(d), the Tribunal should only strike out the claim if there has been:
 - 14.1. Intentional and contumelious default; and
 - 14.2. Inordinate and inexcusable delay leading to a substantial risk, a fair trial not being possible and there is serious prejudice to the Respondents.
15. The Tribunal reminds itself that a litigant in person does not mean that litigant is exempt from compliance with procedure, or from engaging in the litigation process to pursue their claim.

Conclusion

16. Having regard to all the circumstances, the Tribunal has considered whether a lesser sanction or further extension should be granted. The Tribunal did not consider that was appropriate bearing in mind the history of the proceedings over two years and a number of extensions have been granted and the Claimant has failed to comply. The period of delay is of some concern.

17. The Tribunal is concerned that given the length of time that has elapsed since the claim was issued and given the current backlog in listing, a further delay means that there is a substantial or significant risk that a fair trial is no longer possible and this is a relevant factor. This is a case where there is significant failure causing massive disruption, unfairness and prejudice to the Respondent.
18. Furthermore, the Tribunal is concerned there has been clearly an intention and contumelious default, together with an inordinate and inexcusable delay leading to a substantial risk that a fair trial is no longer possible and that serious prejudice is caused to the Respondents.
19. The Tribunal therefore conclude, taking all matters into account, that a Strike Out is an appropriate sanction given what has taken place over the last two years.
20. The claims are therefore dismissed.

Approved by:

Employment Judge Postle

Date: 8 April 2025

Sent to the parties on: 15 April 2025

For the Tribunal Office.

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