



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss K Wright

**Respondent:** Minster Law Solicitors

## RECORD OF A PRELIMINARY HEARING

**Heard** by telephone in public;      **On:** 8 June 2020

**Before:**              Employment Judge Rostant (sitting alone)

### **Appearances**

For the claimant: In person

For the respondent: Mr Robinson, solicitor

## JUDGMENT

The claimant has not complied with the Unless Order of 2 April and I confirm therefore that the case was struck out on 17 April 2020.

## REASONS

- (1) The already lengthy history of this case is set out in EJ Licorish's Order of 24 October.
- (2) That Order was made at the second preliminary hearing in this matter, the first having been before EJ Maidment on 12 June.
- (3) EJ Maidment Ordered the claimant to provide copy documents upon which she wished to rely and also a schedule of loss
- (4) The claimant did not comply with either Order
- (5) The claimant did not attend the hearing but made an application that proceedings be stayed because of her ill-health.
- (6) EJ Licorish ordered that the claimant explain her non-attendance in writing and supply medical evidence in support of her application to stay.

- (7) On 19 December, the claimant's GP wrote saying (in effect) that the proceedings should be stayed for 3 to 6 months because of the claimant's continued ill health.
- (8) On 10 January EJ Shepherd ordered that there be a further preliminary hearing to take stock and to try to list this case.
- (9) That hearing was before me on 18 February.
- (10) In circumstances set out in my Order of that date, and with the claimant's agreement, I repeated EJ Maidment's Orders (with minor changes).
- (11) The claimant was required to supply her documents by 17 March and, by the same date supply a limited schedule of loss confined to those matters set out at 2.1 and explained in detail by me.
- (12) I set the case down for a four-day hearing commencing 8 June on the basis of the claimant's assurance that the Orders could be complied with and the case made ready for hearing.
- (13) On 18 March the claimant sent in what she described as a "provisional" schedule of loss which she said was incomplete.
- (14) She did not comply with the Order to provide documents because, she said, she had been unable to open the zip file containing the respondent's documents.
- (15) On 19 March the respondent applied for an Order that the claim be struck out on the grounds of the claimant's failure to comply with the Orders for disclosure and for a schedule of loss.
- (16) On 2 April REJ Robertson made an Unless Order. He agreed that it was clear that the claimant had not complied with either Order but felt that the claimant should be given "a last chance to comply".
- (17) The claimant was required to comply with the Orders within 14 days. The Order was sent on 3 April and therefore the claimant was required to comply by 16 April and to confirm compliance to the Tribunal.
- (18) On 20 April the claimant wrote to the respondent copied to the Tribunal.
- (19) In that letter she said she had "updated and added" to the schedule of loss which contained sections which simply said "to be assessed" and others which said "to be considered". Although she had supplied a list of documents she had not sent copies of them to the respondent.
- (20) On 20 April the respondent wrote repeating its application that the claim be struck out. In its application the respondent quoted the following passage from my Order of 18 February.

"I reminded the claimant that more than one judge had expressed the desirability of this case being heard without undue further delay and I made the point that further delay might risk the case being struck out on the grounds that the passage of time had made a fair trial impossible. The claimant confirmed that she understood that but felt that Orders on the timetable we discussed could be complied with".

For ease of reference I also set out in full the relevant Orders I made on that date

## 1. Calculation of loss

- 1.1 The claimant must provide to the respondent by **17 March** a document – a "Schedule of Loss" – setting out her calculation of lost earnings from the date of her dismissal to the 17 March. This must show total earnings during that period, what she could have expected to earn from the respondent (including the value of any pension contributions from the respondent) and the difference between the two figures.
- 1.2 If the claimant succeeds in any discrimination claim she will also be entitled to an award for injury to feelings but the claimant is not required to attempt to assess that although she may wish to inform herself of the basis on which such awards are calculated either by taking advice or be conducting her own research.

## 2. Documents

- 2.1 On or before **17 March**, the claimant must send to the respondent a list of any documents which she would wish to include in any hearing file and which are not already named on the respondent's list, sent to her in June.
  - 2.2 If any of those documents are documents which the respondent does not have she must send a copy of that document.
- (21) The issue before me is whether the claimant has achieved compliance or substantial compliance with my Orders of 18 February.
  - (22) At today's hearing the claimant stated that she had complied with the requirement in respect of the schedule of loss. She agreed that she left an area "to be assessed" but stated that that was injury to feelings, a figure which I had not required in my Order, In the circumstances, there may have been substantial compliance although (see below) there was no compliance with the requirement that the claimant copy the Tribunal with her schedule after 3 April.
  - (23) The claimant agreed that she had not sent any copy documents to the respondent. She agreed that she had at least one category of documents that the respondent would not have access to unless she sent copies, namely records of her earnings since leaving the respondent's employment. She did not know if there would be others. The claimant also said that she had only sent a

“basic” list of documents which would be added to at a later date. The claimant agreed that, to this extent, to Order for documents had not been complied with. She ascribed this failure to her inability to open the respondent’s own list.

- (24) The claimant was required by EJ Robertson’s order to copy her compliance to the Tribunal. There is no correspondence at all from the claimant after 3 April until 20 April and it follows that that part of the Order has also been breached. There is certainly no evidence of the claimant sending in even her “basic” list of documents or any schedule of loss after the 3 April but before 17<sup>th</sup>.
- (25) It is not for me to decide at this stage whether, if the Orders have not been complied with, there is a good reason for that. It is only for me to decide whether or not there has been substantial compliance. The Ct of Appeal in *Marcan Shipping (London) Ltd v Kefala* 2007 EWCA Civ 463 described the issue in terms of considering whether there has been non-compliance in any “material respect”.
- (26) The purpose of the Order for documents is to ensure that both parties and the Tribunal have sight of all relevant documents. Unless the claimant provides a full list of all documents that she wants included and supplies copies of documents the respondent does not have, that key aspect of case preparation is frustrated.
- (27) The purpose of requiring the claimant to copy the Tribunal with compliance is to ensure that the Tribunal is able itself to check what has or has not been done to comply with an Order which has great significance for the progress of the case and for the administration of justice.
- (28) I am satisfied that there has been material non-compliance with the Order for documents and with the requirement to copy compliance to the Tribunal. It follows that I have no discretion to do anything other than to confirm that this claim stood struck out on 17 April.

**Employment Judge ROSTANT**

**Dated: 18 February 2020**