



EMPLOYMENT TRIBUNALS

Claimant

Mr J Waltham

Respondent

v Halsey Masonic Hall, Watford, Limited

Heard at: Watford

On: 10 November 2022

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant:

Not present or represented

For the respondent:

Mr C Ilangaratne, of counsel

JUDGMENT

The claimants' claims are dismissed.

REASONS

- 1 This case has a relatively lengthy procedural history. On 22 October 2021, Employment Judge ("EJ") McNeill QC conducted a preliminary hearing for case management purposes. She listed the hearing of the claims to take place in person on 18-20 July 2022 at Watford Employment Tribunals.
- 2 The claim was pleaded in a narrative form and without precision. One of the claims was of disability discrimination in regard to a claimed disability of which the respondent claims not to have been aware before it dismissed the claimant for (it is its case) redundancy. Another was that the claimant had been subjected to detrimental treatment and dismissed for raising health and safety issues and making protected disclosures within the meaning of section 43A of the Employment Rights Act 1996 ("ERA 1996") so that his dismissal was automatically unfair under sections 100 and 103A respectively of that Act.
- 3 EJ McNeill QC made a number of procedural orders of the usual sort and an order requiring the provision by the claimant of further information about his claims of detrimental treatment and unfair dismissal for raising health and safety issues and making protected disclosures.

- 4 On 10 March 2022, EJ Maxwell made an “unless” order under rule 38 of the Employment Tribunals Rules of Procedure 2013 (“the 2013 Rules”), requiring the claimant to comply with that order for the provision of further information by 31 March 2022, so that if he did not do so then his claims of detrimental treatment and unfair dismissal for (1) raising health and safety matters, and (2) making protected disclosures, would be automatically dismissed.
- 5 On 14 June 2022, in a document which was sent to the parties on 29 June 2022, EJ Maxwell recorded that those claims had been automatically struck out because of the claimant’s failure to comply with that order.
- 6 EJ Maxwell also made an order requiring the claimant to provide to the respondent by 12 July 2022 further information and documents concerning the claim of disability discrimination. In addition, he ordered that the first day of the hearing of the claimant’s claims, namely 18 July 2022, was replaced by a 3-hour preliminary hearing for further case management purposes, and ordered that the hearing of 18-20 July 2022 was otherwise vacated.
- 7 On 15 July 2022, the preliminary hearing of 18 July 2022 was postponed because it was extremely unlikely that it would be possible for it to be heard because of a lack of judicial resources available to do so.
- 8 On 22 July 2022, the claimant wrote to the tribunal acknowledging the postponement “with gratitude”, saying that he was “currently still signed off from work by [his] doctor”, and asking for “Three month’s grace ... effectively until 22nd October 2022”.
- 9 On 25 July 2022 the hearing of 18 July 2022 was re-listed to take place on 10 November 2022 at 10.00am.
- 10 On 22 September 2022, the tribunal wrote at the direction of EJ Maxwell, extending the date for the provision by the claimant of “the information ordered with respect to his disability” to 22 October 2022. The letter continued:

‘Any further application for delay must be supported by a report or letter from the Claimant's GP (or other treating doctor) answering the following questions:

1. is the Claimant prevented from providing information in writing about his Tribunal claim by reason of a mental illness?
2. If yes, what is the diagnosis?
3. If yes, when is it likely that he will be able to provide this information?

For the avoidance of doubt, a letter or GP certificate saying the Claimant is “unfit for work” or similar will not satisfy this order.

If Claimant has still not provided the information required by the time of the preliminary hearing in public on 10 November 2022, the judge on that occasion will consider whether to strike out the Claimant's disability discrimination claim because of his failure to comply with case management orders.'

- 11 On 25 October 2022, the respondent's solicitor wrote to the claimant by email in the following terms:

"We act for the Respondent in the above matter.

As detailed in the letter from the Employment Tribunal dated 22 September 2022, we note that you were required to provide the information ordered with respect to your medical conditions by 22 October 2022.

We have not received this information to date. Please could you confirm when this will be provided?"

- 12 The claimant had not responded to that email, or subsequent emails pressing for a response.
- 13 I conducted the postponed hearing of 18 July 2022. That is to say, I conducted the hearing on 10 November 2022. The claimant did not attend the hearing.
- 14 In the circumstances, rule 47 of the 2013 Rules applied. That provides:

"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

- 15 The claimant had plainly not complied with the order of EJ Maxwell for the provision of further information to which I refer in the first sentence of paragraph 6 above.
- 16 In all of the above circumstances, I decided that all of the claimant's remaining claims should be dismissed. That was because the claimant appeared not to be pressing any of his claims which had not already been struck out.
- 17 I nevertheless record here that the claimant may have had a good reason for (1) not attended the hearing of 10 November 2022 and (2) not informing the tribunal in advance or on the day of the hearing that he was not going to do so and the reason or reasons why he was not going to do so (for example because for some good, i.e. acceptable, practical reason he was not able to do

so). If so, then he can apply under rule 70 of the 2013 Rules for a reconsideration of my above judgment. However, such an application will be likely to be rejected on the basis that it has no reasonable prospect of success unless the claimant includes with that application some corroboratory evidence supporting the assertion (assuming that he makes one) that he was not able to attend the hearing for good reason.

- 18 In addition, in order to have any prospect of success (let alone a reasonable prospect of success), an application to reconsider the decision to dismiss the claim of disability discrimination would need to be accompanied by the further information ordered by EJ Maxwell as described in the first sentence of paragraph 6 above.

Employment Judge Hyams

Date: 10 November 2022

JUDGMENT SENT TO THE PARTIES ON

21 November 2022

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FOR THE TRIBUNAL OFFICE