



EMPLOYMENT TRIBUNALS

Claimant: Miss N Pasquwelage

Respondent: Chief Constable of Wiltshire Police

Heard at: Bristol (via CVP)

On: 16 January 2023

Before: Employment Judge Cuthbert

Representation

Claimant: Did not attend

Respondent: Mr J Berry (Counsel)

JUDGMENT

The claimant's claim is dismissed, pursuant to Rule 47.

REASONS

1. The claim was listed for a one-day Case Management Preliminary Hearing today. It has a long procedural history and I summarise the key aspects of that history below, which I carefully considered in reaching my decision to dismiss the claim.

Commencement of the claim – 8 July 2020

2. The claimant is a trained solicitor and has a degree in law and criminology. The respondent police force was her employer. She was a member of police staff.
3. On 8 July 2020, she presented an ET1 complaining of race and disability discrimination with an accompanying document (an internal appeal by the claimant against a Medical Advisor's decision) which was 29 pages long in which she set out a lengthy narrative. Events in that narrative were not in a clear or chronological order and it made extensive reference to documents

within the claimant's Occupational Health file. There was little identification of the legal claims that she was making in respect of the events described within it; specifically which, if any, were claims of race discrimination and which were disability discrimination. The document itself made further reference to a separate internal complaint made by the claimant which was not presented to the tribunal.

4. Amongst the complaints, were allegations that the claimant's managers had produced assessments of the claimant's illnesses and character which were subjective and not based on facts; that they made excessive and unnecessary referrals to Occupational Health; and that an individual who worked in the respondent's Occupational Health Unit made numerous "conflicting and unfounded assessments" of the claimant's character and health. The claimant further complained that the respondent's Medical Advisor made a decision based on an inaccurate interpretation of the claimant's mental health.

First "Particulars of Claim" – 26 July 2020

5. The claimant was ordered by the tribunal to provide further information to clarify the claims, and on 26 July 2020, she presented a 49-page document entitled "Particulars of Claim". That document identified claims of direct race discrimination, perceived disability discrimination, sex discrimination (harassment) (which was a new claim), and allegations which the tribunal had no jurisdiction to hear, namely breach of the Health and Safety at Work Act, breach of the Data Protection Act and complaints of libel and slander. The period of events which formed the subject of the complaints began on 29 October 2018, when the claimant's employment began.
6. On 14 August 2020 the claimant sent the respondent an email stating "*...I wish to withdraw all consent I had previously given to the force to process my medical data: this means that the data in my medical file is not to be shared or processed outside of OHU at this time.*"
7. On 30 October 2020, the respondent lodged an ET3 and Holding Grounds of Response. It was explained that the respondent was unable to plead a full response to the claim until it had access to the claimant's medical records.
8. EJ Livesey directed that the claimant should, by 3 January 2021, provide further clarification of the claims, identifying the protected characteristics relied upon, and (by reference to the paragraphs of the 29-page document attached to the ET1) the type of discrimination alleged.

Second Particulars of Claim – March 2021

9. In March 2021, the claimant submitted a further document to the tribunal and the respondent, which ran to 55 pages. It did not comply with EJ Livesey's earlier direction but added claims of indirect discrimination without particularising those claims. The claimant sought permission to rely on the new document in substitution of the original Particulars of Claim.

Third Particulars of Claim

10. On 11 May 2021, the claimant resigned from the respondent's employment.
11. On 6 June 2021 the claimant sent a further 40-page document headed "Particulars of Claim". That document included further references to new claims which were not originally brought, including indirect discrimination and whistleblowing.

First Case Management Preliminary Hearing – 14 June 2021

12. This hearing (by CVP) was before EJ Cadney. The claimant indicated that she wished to pursue a claim for constructive unfair dismissal arising out of her recent resignation. The respondent did not object to that application. In consequence, the claimant was given permission to serve an amended claim to include particulars of her claim for constructive unfair dismissal by 30 July 2021. The respondent was permitted to file an amended response addressing any new allegations of constructive unfair dismissal by 30 September 2021.
13. EJ Cadney also advised the claimant that if she did not allow the respondent to process her medical data there was a significant risk that the relevant parts of her claim would be struck out at the next hearing.
14. EJ Cadney listed a further CMPH for 29 October 2021 to consider the following matters:
 1. An application by the claimant to amend her original claim to include further factual allegations of race discrimination and perceived disability discrimination which extended beyond those which were identified in the original claim form and particulars of claim.
 2. An application by claimant to amend her claim to rely on allegations which were not contained in the original claim form, but which were included in the first Particulars of Claim document (harassment related to the protected characteristic of sex and indirect discrimination);
 3. An application by the claimant to add further claims not identified in the original claim form or the first Particulars of Claim (age discrimination/whistleblowing).
 4. A strike out application by the respondent.

Fourth Particulars of Claim – 30 July 2021

15. On 30 July 2021, the claimant filed a further 56-page Particulars of Claim document. Just one paragraph of that document (para 71) sought to explain, in terms which are not at all clear or specific, why the claimant had resigned.
16. Despite the warning from EJ Cadney on 30 July 2021, the claimant wrote to the respondent maintaining her refusal to provide permission for the respondent to process medical data but suggesting that she would

disclose the medical documents that were in her possession that were referred to in the fourth iteration of her claim. However, the claimant did not supply the respondent with those documents prior to the date for the service of its amended response.

17. Consequently, on 30 September 2021, when the respondent filed its amended Grounds of Response, it made a formal application for strike out of the claimant's claims which related to medical matters. Specifically, it sought strike out of any claim which related to medical matters, including the respondent's officer's concerns about the claimant's health, its actions in referring the claimant to occupational health, and the claimant's interactions with occupational health or occupational health's interactions with her line managers.

Second CMPH – 29 October 2021

18. A further case management hearing took place before EJ Cadney on 29 October 2021, although there is no record of that case management hearing on the tribunal file but some details are contained in subsequent correspondence. These are that:

1. The claimant was ordered to disclose all OH / medical material in her possession by 23 December 2021.
2. The respondent was ordered to notify the claimant and the tribunal by 31 January 2022 whether it would
 - i. seek further OH / medical evidence; and/or
 - ii. seek to strike out those parts of the fourth Particulars of Claim relating to OH and / medical matters; and/or
 - iii. plead an amended GoR (in light of material disclosed by the claimant).

19. The claimant did not comply with the orders and so on 31 January 2022 the respondent formally applied to strike out the claims on the grounds that the claimant had acted unreasonably on 14 August 2020 in withdrawing consent for the respondent to access the claimant's medical records and without access to those medical records the respondent was unable to take instructions or properly prepare a response to the claims.

20. Following further correspondence about the claimant's compliance or otherwise with the earlier orders, EJ Cadney directed, on 13 April 2022, that a further Preliminary Hearing be listed.

Third CMPH – 8 September 2022 (finding of unreasonable behaviour and costs ordered against the claimant)

21. The hearing was conducted by EJ Midgeley, by CVP. It was listed for three hours, to determine the claimant's applications to amend the claim and the respondent's application to strike out the claims. The listing of three hours was insufficient and so the parties agreed that the appropriate course was for EJ Midgeley to hear and determine the strike out application and the re-list the matter for a further preliminary hearing to determine the amendment application and list the final hearing.

22. The claimant did not have access to the bundle as she was trying to join the hearing using her mobile phone from France (where she was studying). In consequence (a) her connection repeatedly dropped out and (b) she could not look at the documents on her phone. She was given extra time to read documents and the EJ shared his screen with her at times.
23. During the hearing of the respondent's strike-out application, the claimant clarified that she was now prepared to permit the respondent access to her medical data, contrary to her position at all stages prior to that point. She suggested that she had initially withdrawn her consent for her medical documents to be released to the respondent because she wanted to review it before it was disclosed.
24. EJ Midgeley found that the claimant's conduct in withdrawing consent to access her medical data and then granting it "at the eleventh hour" during her response to the strike out application was unreasonable behaviour. He concluded that a fair trial was still possible and a sanction short of strike out was appropriate and so ordered that the claimant should pay the respondent's costs of seeking disclosure of the documents, including the preliminary hearing in October 2021, the application in January 2022, and those connected to the issue of strike out at the preliminary hearing in September 2022, and the wasted costs of the amended response to the claims which related to the medical documents.
25. The parties agreed that there should be a further preliminary hearing with a time estimate of two days at which the following could be considered:
 1. The amendment application.
 2. Any application for deposit order.
 3. Listing of the final hearing.
 4. Case Management more generally.
26. The claimant was directed to identify in a schedule, covering all of the Particulars of Claim, each factual allegation she was pursuing as a claim, which Particulars of Claim and in which paragraph therein it was first identified, what legal claim was made about it, and which protected characteristic the claimant relied on, if any. The respondent would then add a column and next to each allegation identify which it accepted where within the original claim or particulars of claim, which were new and required permission to amend and which consisted of new claims based on previously pleaded factual allegations. The deadline for this was 28 October 2022, giving the claimant six weeks in which to comply.

Case Management Order (including Unless Order) – 4 November 2022

27. The claimant failed to provide the schedule as directed and so the case was referred back to EJ Midgeley. On 4 November 2022, he ordered as follows:
 1. *The case management hearing is listed for one day by video on 23 December 2022. It will commence at 10am (notice of which is attached).*

2. **UNLESS** the claimant sends a completed version of Schedule A to the respondent and the Tribunal by 18 November 2022 the claimant's application to amend will be dismissed and the claims will be limited to those identifiable from the ET1 and the document served with it. In that event, the case management hearing will be used to identify what those claims and list them for a final hearing.

3. ...

4. In the event that the claimant does not comply with the unless order, the respondent must prepare a list of the claims identified in the ET1 and the attached document, complying with its duty to the Tribunal and following the guidance in the 'reasons below' by 9 December 2022.

28. EJ Midgely set out his reasons as follows

1. By a claim form presented on 8 July 2020 the claimant presented claims in relation to events occurring between 2019 and July 2020.

2. The claims have been subject to three case management hearings to clarify the legal claims and factual allegations; they are yet to be clarified in a manner which permits the respondent to understand the case it must meet and for a final hearing to be listed. The practice within the region is for a case to be listed for a single case management hearing to identify the claims before the case is listed for any final hearing.

3. The claimant has indicated that she will not be available to attend a final hearing until May 2023, some four years after many of the events in question, because she has academic studies in the intervening period. The reality is that until the claims have been clarified, which at best will occur in December 2022, a final hearing cannot be listed. If the claims are clarified in December 2022 it is likely that the final hearing will be more likely to be listed towards the end of 2023 if not in the beginning of 2024. There is a very real risk therefore that a fair hearing of the oldest allegations may not be possible.

4. The claimant has a lengthy history of failing to comply with case management orders. She appears to regard the Tribunal proceedings as being of secondary and subsidiary status to her academic studies in France, which she treats as the priority, affording her studies precedence over her duty to comply with case management orders. Most recently she suggested that she would not read emails between 1 and 31 October 2022 because she was on holiday.

5. The claimant has been found to have acted unreasonably in relation to her failure to permit the respondent access to medical documents including internal occupational health reports and records which are relevant to the allegations she makes, or seeks to make by amendment. The question of whether costs should be awarded

against the claimant in consequence will be determined on 15 December 2022¹.

- 6. The claimant has, therefore, been found to have failed to comply with the overriding objective to deal with cases without delay, and in a manner proportionate to their value, complexity and cost. The claimant appears to believe that Tribunal proceedings must be directed in accordance with her wishes and availability, that she can direct their extent, timing and nature to best meet her convenience. That is a complete misconception.*
- 7. Most recently the claimant has failed to comply with a case management order which was necessary to understand her claims and to permit the case management hearing in December to be effective. She has provided no explanation for that failure, and has made no application to vary the case management order.*
- 8. Further failure to comply with case management orders and/or delay is no longer permissible. The claimant has reached the last chance saloon.*
- 9. The claimant is therefore afforded one final opportunity to comply with the case management order, failing which the application to amend her claim will be dismissed and she will be limited to the claims which can reasonably and objectively be identified from the document attached to her ET1 form, which is a grievance. That document will not be read so as to infer knowledge or detail from the further iterations she subsequently submitted, but will be limited to the legal claims identified on the ET1 and the factual allegations contained in the grievance.*
- 10. The question of whether a fair hearing of the allegations (whether limited as above or more broadly) is still possible given the delay, remains a live one.*
- 11. Lastly, given the need for a case management hearing to be listed before May 2023, there is only one date on which both the claimant and the respondent's counsel can attend. Consequently, the hearing can only be listed for one day. The legal claims will be identified and any further hearing listed within that allocation. In so far as the issue of amendment needs to be determined, it will also be addressed within that listing. The claimant must therefore prioritise compliance with these Orders above her studies. A very generous further period of compliance of 14 days has been permitted to that end.*
- 12. The claimant has been permitted a total of ten and a half weeks since the case management hearing on 6 September 2022 to comply. No further extension will be permitted.*

¹ It appears that a decision to award costs in principle had already been made and the outstanding issue was as to the amount of those costs.

29. On 7 November 2022, the claimant sent an email to the tribunal and the respondent to acknowledge the above, stating:

I have acknowledged your correspondence. I do apologise as I should have emphasised on the fact that I will still be in university on the 23/12/22 until 1pm (British time). I would be very grateful to the tribunal if the time slot could be revised.

This was the last item of correspondence which the tribunal has received from the claimant and I was told by Mr Berry that this was same for the respondent.

Events before the present hearing

30. On 25 November 2022, the tribunal sent an email to the parties as follows (neither of whom could attend the hearing on 23 and 24 December):

UPON the claimant and the respondent's counsel being unable to attend the hearing listed on 23 December 2022

AND UPON the only available date to list the hearing being 16 January 2023

IT IS ORDERED THAT:

1. The hearing on 23 December 2022 is vacated and relisted on 16 January 2023.

2. The claimant must seek permission from her course to attend on that date, providing them with a copy of EJ Midgley's Orders in this case to that end.

31. Meanwhile, the claimant failed to comply with the Unless order by the deadline of 18 November. No explanation was offered and no extension of time had been sought by the claimant. Consequently on 9 December 2022, the respondent submitted to the tribunal and the claimant a List of Claims which it had prepared based on the ET1 and the accompanying document. It received no response from the claimant.
32. The respondent had also prepared a bundle for today's hearing and a draft agenda. I understood from Mr Berry that the claimant had not downloaded a copy of the bundle from the link provided. The claimant had also not responded to the draft agenda when sent a copy by the respondent's solicitor.
33. A link to join the hearing via CVP was sent to the claimant and the respondent on 13 January.

The hearing today (16 January 2023)

34. Shortly before the CVP hearing was due to commence, as the claimant did not appear on the list of attendees, I asked the clerk to try to contact her. He attempted to call the mobile phone number on file (in the ET1) and

received each time a message that the number was unobtainable. I was informed that the claimant had not provided any alternative telephone number.

35. He also sent an email to the claimant before the hearing was due to begin enquiring as to her whereabouts in view of the hearing today. He did not receive a reply.
36. I was satisfied that the claimant would have been aware of the hearing from the emails she received from the tribunal on 25 November 2022 and 13 January 2023.
37. I started the hearing at 10am. The claimant had not joined. I explained the position to Mr Berry and asked when those instructing him had last heard from the claimant, which was the 7 November 2022 email set out above.
38. I explained that I was minded, in view of the history above, to consider dismissing the claim under Rule 47 but was prepared to give the claimant one final opportunity to join the hearing. Mr Berry was in agreement with this.
39. I adjourned the hearing and directed the clerk to email the claimant as follows, marked "Urgent":

Employment Judge Cuthbert has asked me to write to you as follows:

You were informed of today's hearing on 25 November 2022 and sent the hearing link on 13 January 2023. You have not attended the hearing or contacted the tribunal or respondent to explain your absence. A member of tribunal staff has attempted to call you on the number on file but this is "not recognised". He has also emailed you earlier today.

The hearing has been adjourned until 11am to allow you one final opportunity to join and if you have not done so by then, a decision will be made under Rule 47 about your non-attendance, which may be to dismiss your claim in view of the procedural history and your non-attendance today.

The email was sent at 10.22.

40. The tribunal received no response to the email and I resumed the hearing at 11am.

Consideration and decision

41. I had regard to Rule 47 of the 2013 Rules of Procedure which provides as follows:

47. 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.

42. I also had regard to the overriding objective in Rule 2:

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

43. In the circumstances, which I have summarised in some detail above, I decided to dismiss the claim, particularly given:

- a. the length of time that the proceedings have been underway, 2½ years, and the lack of progress to date, which is in a significant part due to default, obfuscation and delay on the part of the claimant. The matters relied upon by the claimant in her original claim now occurred quite some time ago, between 2018 and 2020;
- b. the claimant's previous non-compliance with orders, which has already been found on one occasion to have amounted to unreasonable conduct and resulted in an order for costs against her. She was in particular given clear and stark warnings about her conduct of the proceedings in the correspondence from EJ Midgeley of 4 November 2022, which she has evidently not heeded;
- c. that the claimant was trained as a solicitor and so ought to be aware of the importance of complying with tribunal orders and directions;
- d. the claimant's failure to comply with the recent Unless order, intended to help better particularise her claims, and she has offered no explanation for this failure;
- e. the claimant's failure to engage with the respondent in advance of the hearing today (in furtherance of the overriding objective) to try to cooperate in agreeing issues and directions; and

- f. the claimant's failure to attend the hearing today, for which she offered no explanation or apology.
44. Accordingly, the claimant's claim was dismissed at the hearing under Rule 47. I informed Mr Berry of my decision, in view of the history of the claim, and that full reasons would follow.

Employment Judge Cuthbert

Date: 16 January 2023

Judgment & Reasons sent to the Parties: 26 January 2023

FOR THE TRIBUNAL OFFICE