



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Andrea Cook

**Respondent:** The Crown Prosecution Service ("CPS")

## RECORD OF A PRELIMINARY HEARING

**Heard at:** London Central (in public; by video)

**On:** 4 March 2024

**Before:** Employment Judge Havard

### Appearances

For the Claimant: No appearance.

For the Respondent: Mr S Healy, Counsel.

## JUDGMENT

Following the Claimant's failure to attend or to be represented at this hearing, it is the judgment of the Tribunal that the Claimant's claims are dismissed.

## REASONS

1. This was a preliminary hearing in public.
2. By a claim form dated 26 May 2023, the Claimant issued proceedings claiming discrimination because of race, disability, sexual orientation and religion and belief. She claims that she applied for a job with the Respondent and was rejected on these grounds as an applicant.
3. Whilst it was considered the bases of her claims were not clear, the Respondent served a response and the case was listed for a Case Management Hearing ("CMH") by video on 17 August 2023.

4. Shortly before that hearing, the Claimant applied for a postponement. The reason for the application would seem to be based on the Claimant's wish to seek legal advice. Her application was refused and the hearing went ahead on 17 August 2023 in the Claimant's absence.
5. Taking account of the range of claims being pursued by the Claimant, directions were given, in the Claimant's absence, which were designed to assist the Claimant in providing further particulars of each claim. In turn, this would assist the Tribunal and the Respondent in understanding the way in which the Claimant was pursuing her claims.
6. In that case management order ("CMO") of 17 August 2023, it was directed that a further CMH would take place on 14 December 2023. Notice of the hearing on 14 December 2023 was sent out on 17 August 2023.
7. In the period between the two case management hearings, the Claimant attempted unsuccessfully to modify the directions given on 17 August 2023 save for the date for compliance which was extended.
8. In October and November 2023, certain medical evidence was disclosed together with a short impact statement. Otherwise, there had not been compliance with the directions made at the CMO on 17 August 2023.
9. On 6 December 2023, the Respondent applied for a preliminary hearing to determine disability and to consider striking out/ordering deposit(s) in respect of the claims for non-compliance with the August CMOs and/or on the basis that they had no, or little, reasonable prospect of success.
10. On 6 December 2023, the Claimant responded to say that she was seeking representation and also applied to strike out the Respondent's defence.
11. During the evening of 13 December 2023, the Claimant sent emails to the Tribunal stating that she was unable to attend, explaining that she was a litigant in person, even though she is a qualified barrister, and she was seeking legal advice. She also made reference to the fact that she had difficulty in hearing and was in severe pain.
12. The Claimant failed to attend the hearing on 14 December 2023. It was concluded by the Tribunal that the Claimant had no reasonable excuse for not attending. Further, it was found that the Claimant had failed to comply with the directions made by the Tribunal on 17 August 2023.
13. By a series of directions given by the Tribunal on 14 December 2023, the Claimant was given a further opportunity to comply with the directions made on 17 August 2023. It was also directed that a preliminary hearing would take place in public on 4 and 5 March 2024 to determine the following issues:

*1.1. Whether any or all of the Claimant's claims should be struck out pursuant to Rule 37(a) or (c), on the basis that:*

*1.1.1. They are vexatious and/or have no reasonable prospect of success; or*

1.1.2. *The Claimant has not complied with orders of the Tribunal.*

1.2. *Whether the Claimant should be ordered to pay deposit(s) as a condition of continuing to advance specific allegation(s) which have little reasonable prospect of success, pursuant to Rule 39.*

1.3. *Whether the Claimant should be permitted to amend her claim, in particular to add disabilities not referred to in the ET1.*

1.4. *What further case management orders should be made, if appropriate.*

14. Whilst a notice of hearing was sent out to confirm the date of the preliminary hearing on 4 and 5 March 2024, unfortunately, the CMO of 14 December 2023 was not sent to the parties until 28 February 2024. Nevertheless, there had been correspondence between the Claimant and the Respondent regarding the hearing and efforts being made to agree a bundle to be used at the hearing.

15. On 27 February 2024, the Claimant sent an email to the Tribunal. The specific detail of the Claimant's condition has not been included:

*"I'm requesting that this is postponed until I can instruct counsel on the basis I'm signed off unwell.*

*This is very important in the interests of justice as I am otherwise being forced into something that I am not comfortable or able to do, I have ..... which is like chthonic in severity and I am frail at present I need three months to recover and prepare my own case with counsel.*

*I'm very concerned about this case and the fact is that the parties aren't limited to those disclosed by the respondent I need a private order to be made in this case.*

*If it is not granted my extension please explain why as a frail person I just cannot attend and I have no money because I'm signed off and because this case the bullying going with it and the fact that comments are spread about be rather than accommodating reasonable adjustments. Thank you for your time."*

16. By an email of 29 February 2024, the Respondent objected to the postponement application.

17. On 29 February 2024, the Claimant sent an email saying:

*"As I have had no reply, I can only say I withdraw this claim and will not be attending any other hearings in connection to this case, I wish to reserve the right*

*to bring it in the future when I am no frail but as there has been no adjustments I assume you are not going to be able to. I confirm I am not going"*

18. On 1 March 2024, the Tribunal wrote to the parties and, in his decision on the Claimant's application for an adjournment, Employment Judge Woodhead stated as follows:

*"The Claimant has not set out, or provided satisfactory medical evidence to support, a postponement of the hearing. She has for many months been saying that she needs to instruct counsel. I note that she is herself a barrister. Her application for postponement is therefore refused."*

19. Nevertheless, although the parties had been aware of the hearing on 4 and 5 March 2024, EJ Woodhead took into account the fact that the CMO of 14 December 2023 had only recently been sent to the parties. He therefore converted the two-day preliminary hearing to a 3 hour preliminary hearing, in public, via CVP, and stated as follows:

*"It shall be at the absolute discretion of the Judge at the preliminary hearing for case management on Monday to decide what issues are determined but the parties should come prepared to discuss the following:*

1. *Has the Claimant withdrawn her claim pursuant to her email of 29 February 2024?*
2. *If she has withdrawn her claim pursuant to that email, should the claim be dismissed on withdrawal?*
3. *If the claim has not been withdrawn what further case management or other orders are appropriate?*

***The Claimant should make careful reference to the following Tribunal Rules (which can be found on the internet easily with a search for "The Employment Tribunal Rules of Procedure contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 No. 1237 as amended"):***

- *Withdrawal - Rule 51 (End of Claim) and 52 (Dismissal following withdrawal)*
- *Rule 47 (Non-attendance)."*

20. On 1 March 2024, the Claimant sent a further email indicating her wish to withdraw her claim.

21. On the morning of the hearing, I was provided with emails that had been sent by the Claimant, to include one that arrived at 9.06 a.m., stating that she was unable to attend. The Claimant suggested that she was unwell and that she needed time

today to get back to normal as she had been sick and so could not come into court.

22. However, the Claimant had not provided any medical evidence in support, such as a note from her GP to confirm that she was unfit to attend the hearing.
23. At the hearing, Mr Healy invited me to conclude that the Claimant had withdrawn her claims and that they should therefore be dismissed. I concluded that, whilst the Claimant had said as much on two occasions, the way she had described the basis on which she was withdrawing her claims was equivocal.
24. However, for a third time, the Claimant had failed to attend a hearing. I note that the Claimant's application for an adjournment had been refused by EJ Woodhead and that part of his reasons for refusing the Claimant's application was due to the lack of medical evidence. I also note in her email of 27 February 2024 set out above that the Claimant refers to the fact that she is, "signed off". If that is so, the Claimant had more than enough time to obtain an appropriate certificate from her GP to confirm that she was not fit to attend. I also take account of the fact that the hearing was to take place remotely. There was no need for her to attend in person.
25. In considering the overriding objective, I must be fair to both parties. The current position is that, due to the Claimant's failure to comply with directions previously given, this claim has made very little progress.
26. I have also taken account of the clear warning included in the order and correspondence of EJs Segal KC and Woodhead respectively. Indeed, EJ Woodhead makes specific reference to Rule 47 in his email of 1 March 2024.
27. I also asked if it was possible for the Tribunal to call the Claimant on the morning of the hearing but unfortunately, the Claimant had not provided a phone number.
28. Taking account of all the information available, both in terms of the history of non-attendance and the emails in the lead up to today's hearing, I have reached the conclusion that, due to her non-attendance at the hearing today, the Claimant's claims must be dismissed.

Employment Judge Havard

4 March 2024

Sent to the parties on:

20 March 2024

For Tribunal Office: