



EMPLOYMENT TRIBUNALS

Claimant: Miss Paula Frankland

Respondent: The Royal Wolverhampton NHS Trust

Heard at: Birmingham

On: 8 August 2019

Before: Employment Judge Britton

Representation

Claimant: In person

Respondent: Mr Farrar, Solicitor

ORDER

The Unless Order that came into effect on 29 April 2019 with the consequence that the Claimant's disability discrimination claim was struck out is set aside pursuant to Rule 38(2) on the basis that it is in the interests of justice to do so.

REASONS

1. In exercising my discretion to set aside the strike-out Order, I have taken into account the Claimant's explanation for the delay, which I have accepted was innocent and unintentional. She appears to have been completely in the hands of her Solicitor whom she was instructing at that time. It is not clear to me exactly how the relationship between the Claimant and her Solicitor manifested itself, because it is not the Tribunal's place to delve into the minute detail. However, on the basis of the explanation that the Claimant did provide to me, it did appear that there were grounds to suspect at the very least that the Claimant may have not been kept informed of what was required by the Tribunal and what was needed in order to comply with the Unless Order and by what date.
2. I have also taken into account the extent of the non-compliance. The failure to comply with the Unless Order in substance was the Claimant's failure to ensure that her medical records arrived with the Respondent's representative by 29 April 2019, even though they were posted to the Respondent's Solicitor prior to that date, and likewise her failure to ensure that the Impact Statement was received by the

Respondent's representatives prior to that date. It is agreed between the parties that the Impact Statement was received by the Respondent's Solicitors one day late, on 30 April 2019. The Impact Statement on reading it does appear to me to be materially deficient in that it did not address the question of the impact of the Claimant's alleged disability upon her ability to carry out day-to-day activities. However, as indicated above, I am satisfied that the Claimant was entirely in the hands of her representative in this regard.

3. In my judgment, it would not be in the interests of justice to visit the consequences of any delay or default that there may have been on the part of the Claimant's representative upon her in relation to these proceedings.
4. I have had careful regard to the overriding objective and I am mindful of the need to avoid delay and ensure that, amongst other things, the case is dealt with fairly and justly. In my assessment, the principle requirement at this stage is to determine whether it is still possible for there to be a fair trial and for there to be a proper consideration of the proceedings. In my view, notwithstanding the Claimant's failure to comply with a procedural step, notably on a second occasion, a fair trial is still possible.
5. I have taken into account the extent to which the Claimant's default and the ensuing delay, is likely to prejudice the Respondent and in my view the balance of the prejudice is in favour of allowing this application. If the application is not allowed, the Claimant will be deprived of pursuing a potentially valuable discrimination complaint whereas the prejudice to the Respondent, may be addressed by consideration being given to making an Order for costs.
6. Although the Respondent's representative did seek to persuade me that there would be prejudice to the Respondent in terms of delay because of the risk that the memories of witnesses would fade, this point was not made with any specific reference to any particular witness and was put to me as a generic observation. I am mindful, however, of the fact that in this case, the Respondent has already prepared the matter for trial, albeit to deal with an unfair dismissal claim but, as observed previously, by my colleagues who have dealt with the Case Management of this matter, and, as appears from the pleadings in any event, the factual material that is relevant to the unfair dismissal claim will in many respects overlap with the factual material that will be relevant for the Tribunal to take into account when dealing with a disability discrimination complaint.
7. In view of my overall assessment and taking into account the interests of justice, and the overriding objective, the sanction of striking out the claim is not proportionate and therefore the order is set aside.

Case No: 1301281/2018

Employment Judge Britton

15 August 2019