



EMPLOYMENT TRIBUNALS

Claimant: Miss S Gordon

Respondent: River Island Clothing Company Limited

Heard at: East London Hearing Centre

On: Wednesday 30 September 2020

Before: Employment Judge Barrowclough (sitting alone)

Representation

Claimant: Did not attend and was not represented

Respondent: Mr G Anderson (Counsel)

JUDGMENT

Upon hearing counsel for the Respondent, and the Claimant not attending or being represented, IT IS ADJUDGED:

- 1 That the Claimant pay the Respondent's costs in the sum of £1,111.20, arising out of her failure to participate in the Preliminary Hearing of her claims on 20 July 2020 without reasonable cause, such costs to be paid by the Claimant to the Respondent no later than 28 October 2020;
- 2 That the Claimant's claim number 3200645/2020 be struck out for non-compliance with Tribunal rules and orders made and on the basis that the claim has not been actively pursued, pursuant to Rule 37(1)(c) and (d) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1 By the Tribunal's letter dated 11 August 2020, the Closed Preliminary Hearing listed for 30 September 2020 at 2.00pm was converted to an Open Preliminary Hearing to be conducted by telephone.

2 Mr Anderson of counsel and his instructing solicitor Mr Drake attended on the telephone hearing; the Claimant did not attend and was not represented.

3 Mr Anderson clarified that the sole remaining complaints being advanced by the Claimant under claim number 3201375/2019 were five alleged separate breaches of the duty to make reasonable adjustments, pursuant to Section 20 Equality Act 2010. Those five complaints had all been struck out by the Tribunal in a judgment dated and sent to the parties on 9 August 2020, arising from the Claimant's failure to pay deposits in relation to each such allegation. Accordingly, all complaints contained in the Claimant's first claim (3201375/2019) had now been determined.

4 Mr Anderson went on to expand on the Respondent's claim for costs, which is set out in an email to the Tribunal dated 4 August 2020, arising from the aborted case management Preliminary Hearing on 20 July 2020. The reasons why that hearing was largely non-effective are set out in Employment Judge Gardiner's minute of the hearing. In summary, the Claimant said that she could only attend that hearing very briefly and for a short period because she had an urgent conflicting medical appointment at hospital, which it was important that she should attend, since she had various underlying health conditions which rendered her vulnerable in the Covid-19 pandemic. In the postponement order following the Preliminary Hearing on 20 July 2020, the Tribunal had ordered the Claimant to provide a full explanation with supporting documents confirming the details of that hospital appointment by no later than 3 August 2020. The Claimant had failed to comply with that order, and had not at any stage presented any such explanation and/or supporting evidence.

5 Additionally, the Claimant had been warned by the Tribunal in its letter of 11 August 2020 that she might not be able to rely on any such evidence at this hearing if she continued to fail to disclose it. Finally, Mr Anderson submitted that the Claimant had lied in informing the Tribunal on 20 July 2020 that she had in fact paid deposits of £20 in respect of three of the allegations of failure to make reasonable adjustments, whereas it was now known that no such deposits had been paid by the Claimant.

6 In the circumstances, Mr Anderson submitted that in failing to provide any evidence of any conflicting appointment with the hearing on 20 July 2020, failing to comply with Tribunal orders to do so, misleading the Tribunal in relation to whether or not any deposits had been paid, and in failing to attend the current hearing without any reasonable excuse or reason the Claimant had not only failed to progress her claim, but had also behaved unreasonably in her conduct of the proceedings, in breach of Rule 76 of the Employment Tribunal (Constitutions and Rules of Procedure) Regulations 2013.

7 I accept Mr Anderson's submissions and accordingly consider it appropriate to make a costs order against the Claimant.

8 In its email to the Tribunal of 4 August 2020 (copied to the Claimant) the Respondent sets out the basis of its application for costs in the total sum of £1,111.20, inclusive of VAT. Those sums represent the costs incurred in instructing counsel to attend the hearing on 20 July 2020, together with the costs of the Respondent's solicitor attending on that telephone hearing. The sums claimed were supported by a fee note and a time print out. In my judgment the sums claimed are reasonable and were reasonably

incurred, and I order the Claimant to pay a total of £1,111.20 by way of costs to the Respondent.

9 In relation to the Claimant's second claim (3200645/2020) the complaints advanced therein are (a) disability discrimination and (b) arrears of pay. In the Respondent's solicitor's email to the Tribunal of 4 August 2020, the Respondent had applied under Rule 37(1)(c) and (d) of the Employment Tribunal Rules to strike out this claim on the basis that the Claimant had failed to comply with the orders made by the Tribunal at the hearing on 20 July 2020, and had also failed to actively pursue or progress the claim. The Tribunal, in its letter to the parties dated 11 August 2020 and when converting this to an Open Hearing had confirmed that one of the items to be considered today was whether the Claimant's claim should be struck out for unreasonable conduct and her failure to comply with orders.

10 Mr Anderson submitted that the Claimant had failed to attend the Tribunal hearing of 20 July 2020 without reasonable cause and, as now appeared, had then advanced a palpably false and dishonest reason for her failure to do so, which amounted (as the Tribunal had already found) to unreasonable conduct. In addition, the Claimant had failed to pursue her second claim in any way, and had failed to attend this particular hearing, with no reason for her non-attendance and non-participation being advanced. He invited the Tribunal to strike out the Claimant's claim in its entirety pursuant to the aforementioned rules.

11 Once again, I accept Mr Anderson's submissions. In my judgment, the Claimant has failed to take any steps to pursue her claim, and has in fact failed to participate fully or at all in either of the interlocutory hearings held by the Tribunal to progress her claim. Accordingly, I will strike out claim number 3200645/2020 in its entirety.

**Employment Judge Barrowclough
Date: 2 October 2020**