



EMPLOYMENT TRIBUNALS

Claimant: Dr A Abdel Bari

Respondent: East Lancashire Hospitals NHS Trust

JUDGMENT

The Judgment of the Employment Tribunal, a decision having been made without a hearing based upon the papers, is that:

- The claimant's application to strike out the respondent's response is refused.

REASONS

1. The claimant has applied to strike out the respondent's response. The application was first made in a document emailed on 2 November 2021, but has since been repeated in further emails including emails of 16 and 28 November 2021;

2. The grounds for striking out a response are limited, as it is a draconian sanction which would prohibit the respondent from defending the claims brought. The grounds to strike out a claim are limited to those described in rule 37 of the rules of procedure;

3. In order to determine the claim, evidence will need to be heard. It cannot be said that the response has no reasonable prospects of success. It is clear from the claimant's correspondence that he does not believe that the response has merit, but what has been stated falls a long way short of demonstrating that it has no reasonable prospects of success. The merits of the claim and response will need to be determined at the final hearing when all the evidence has been heard;

4. If the application was based upon the respondent's conduct of the proceedings (and that is not entirely clear), the claimant has not shown that the conduct has been scandalous, vexatious or unreasonable. There has been some delay in some patient documents being provided, which the respondent relates to the need for the patient to be informed. That does not constitute unreasonable conduct. In any event, it remains entirely possible for the case to be fully prepared for the final hearing in March 2023 and the records are best addressed with the use of case management orders.

Employment Judge Phil Allen
6 December 2021

JUDGMENT SENT TO THE PARTIES ON

10 December 2021

FOR THE TRIBUNAL OFFICE

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