Case No: 2602214/2021

EMPLOYMENT TRIBUNALS

Between:

Mrs Daniella Stamper	**and**	1) Belfield Group Limited 2) Belfield Furnishings Limited
Claimant		**Respondents**

Record of a Closed Telephone Preliminary Hearing at the Employment Tribunal

Held at: Nottingham **On**: 14 February 2022

Before: Employment Judge P Britton (sitting alone)

Representation

For the Claimant: **Mr N Bidnell-Edwards, Counsel**

For the Respondent: **Mr Paul O'Callaghan, Counsel**

Judgment

The claim is dismissed upon withdrawal against the first Respondent and continues against the second Respondent.

CASE MANAGEMENT SUMMARY

Introduction

1. The claim (ET1) was presented to the Tribunal on the 10 September 2021 it had been prepared for the Claimant by her Solicitors, Lawson West LLP. It was

stated to be against the two Respondents. In respect of each there was an ACAS early conciliation certificate. The Claimant then aged 31 had been employed by the Respondent between 17 February 2016 and 30 April 2021 as a Design Manager when was dismissed from that employment: cross referencing to the response (ET3) the stated reason was said to be redundancy.

2. Stopping there the claim is in time and obviously ACAS early conciliation compliant. The claims brought were as follows:

2.1 Unfair dismissal pursuant to s98 of the Employment Rights Act 1996 (the ERA).

2.2 Discrimination by reason of pregnancy/maternity pursuant to section18 of the Equality Act 2010 (the EqA).

2.3 Disability discrimination obviously also pursuant to the EqA. The disability relied upon was auto-immune hepatitis. The discrimination claims in relation to material events were pleaded as being unfavourable treatment because of something arising in consequence of the disability pursuant to section 15; indirect discrimination pursuant to section 19 and failure to make reasonable adjustment pursuant to S20-S22.

3. The claim was fully particularised. There is no need for me to therefore to address at this juncture the scenario.

4. The response (ET3) was prepared by the inhouse legal counsel of what is clearly a large group of companies. First it was stated that the Claimant was employed by the 2nd Respondent Belfield Furnishings Ltd. In the run up to today the Respondent has provided some disclosure, and particularly by reference to a potential strike out application, inter alia on that issue of who is the employer. This disclosure included the contract of employment. Suffice it to say, that Mr Bidnell-Edwards on behalf of the Claimant accepts that on the basis thereof that the correct Respondent is Belfield Furnishings Ltd. Accordingly by consent the claim is dismissed upon withdrawal against the current 1st Respondent Belfield Group Ltd.

5. Turning to material events as pleaded by the Respondent, suffice it to say, that it denies that any part of the reason for making the Claimant redundant was by reason of her disability or because she had taken maternity leave and therefore post her return there was a desire to dismiss her because she inter alia might be possibly going to have another child in due course. This is a core allegation in the ET1. There was a genuine redundancy reason. So, clear triable issues for the Tribunal to determine.

6. Not on the agenda today for reasons I shall come to is to whether or not the Respondent concedes that the Claimant is a disabled person for the purpose of material events starting circa 20 December 2020.

7. Upon serving out the claim upon the Respondents the case listed for a 3 day hearing to take place before a Tribunal at Nottingham commencing on 26 June 2023. Standard directions where made. Inter alia the first direction required the service of a schedule of loss by 1 November 2021 and the second discovery by 27 December 2021.

8. On 4 November 2021 the Respondent wrote into the Tribunal applying for an Unless Order for non-compliance with the first of these directions by the Claimant or in the alternative a Strike Out and/or a Deposit Order. Circa that time the Claimant's Solicitor had written in asking for extra time to file said schedule of loss it appears because the fee earner responsible had been on annual leave. Before that could be dealt with by the Tribunal the schedule of loss was duly served copying into the Tribunal on 9 November.

9. On 18 November the Respondent requested detailed further and better particulars of the schedule of loss and on 2 December the Claimant's Solicitors asked for extra time to deal with that because they would need to get instructions. Suffice to say that they complied and as far as I can see fully with the request on 3 December including a substantial number of enclosures.

10. On 6 January the Respondent made a second application for strike out this time on the basis that the Claimant had failed to comply with discovery by the deadline of 27 December 2021. I of course note that this direction made no allowance for the fact that this compliance date was a bank holiday. I would only observe that the erstwhile practice certainly in terms of these directions before they were auto generated was that the Christmas week was taken out of orders in terms of being a period during which there should be compliance. In any event on 5 January the Claimant's Solicitors replied that they had now complied and that the delay had been occasioned because their offices had been shut over the Christmas period. From what I can see from the papers before me the Respondent was not satisfied with that explanation and therefore was repeating that it required a hearing to determine whether the claim should be struck out in its entirety or a deposit ordered payable because of non compliance by the Claimant with the Tribunal's orders. Stopping there, Rule 39 of the Tribunals 2013 Rules of Procedure does not permit for the making of a deposit order in terms of non-compliance. There is provision for strike out under Rule 37 (1)(c).

11. It was directed at that stage that these issues would be dealt with at today's Case Management Hearing which had been listed back upon service out of the ET1. Turn it around another way, today was not converted to an open preliminary hearing to deal with the strike out application and as per Rule 56 it cannot be dealt with other than at an open preliminary hearing whereas today is a closed hearing.

12. On 18 January 2022 the Respondent submitted a further application for a deposit order on the merits of the claims. This would therefore be pursuant to Rule 39 (1) in that the Tribunal can make a deposit order in relation to the claim or parts thereof if it considers the same to have little reasonable prospect of success.. Now that could be dealt with today in a closed preliminary hearing

because an order for deposit does not necessarily have to be made in an open preliminary hearing. But on the other hand, it is not at all clear from the paperwork that I have got before me that it was on the agenda so to speak as an actual application for the purposes of today.

13. The last thing that needs to be said is that in any event the parties then jointly wrote into the Tribunal on 21 January via the Respondents Solicitor saying they both were agreed to participating in Judicial Mediation and therefore requesting a stay of the current proceedings. This had not been actioned by the Tribunal in the run up to this case management hearing. Staying proceedings would obviously include the Respondents strike out applications dated 4 November 2021 and 5 January 2022 and the application for a deposit order dated 18 January 2022.

14. Before me this was discussed. It became clear that in relation to the strike out application viz non-compliance with the Tribunals directions that the Respondent did want that adjudicated upon before any Judicial Mediation Hearing. Now I can obviously see sense in that in terms of if the Respondent has a degree of confidence that the claim may very well be struck out, then why therefore engage in Judicial Mediation until it has been determined. For the Claimant, Mr Bidnell-Edwards made very clear to me that he thought the application was completely lacking in merit given that there had never been any Unless Order made in terms of non-compliance. That the period of non-compliance was very short That there were extenuating circumstances, the obvious example being the Christmas week, and that therefore the application was never going to succeed. The problem then becomes that even if there is merit in that submission can I actually refuse to list the hearing for strike out that being the current application of the Respondent. Having looked closely at the Rules of Procedure I am with Mr O'Callaghan that I have no discretion. I have to therefore list the strike out application. Of course, if Mr Bidnell-Edwards is correct and the application fails and was lacking in merit in the first place i.e., because there is no evidence of contumelious delay by the Claimant's Solicitors and the jurisprudence is to the effect that in circumstances such as this a claim should not be struck out, then obviously the Respondent may very well be at risk of the costs of that application. Having said that, however, I clearly have to list the same and which I am doing including making directions Both parties are, however, wanting Judicial Mediation but that cannot take place for the reasons I have really now gone to until the application for strike out has been determined unless of course the Respondent now abandons it.

15. Post this hearing on 15 February the Respondent withdrew all the applications for strikeout thus the directions I made relating to the preliminary hearing are otiose. It follows that the Orders that continue related to the Judicial Mediation. I am not going to make any directions to the mainstream hearing which is of course long away other than that the outstanding current directions are stayed. They can be revisited should the Judicial Mediation fail.

16. Against that background I come to my orders.

ORDERS
Made pursuant to the Employment Tribunal Rules 2013

1. The claim against the 1st Respondent is dismissed upon withdrawal. The claim continues against the 2nd Respondent.

The Judicial Mediation

2. There will be a Judicial Mediation to be heard by this Judge **on Wednesday 25 May 2022**. It will **start at 9.45am, with a time estimate of 1 day and be heard via Cloud Video Platform:** at the request of the parties the following directions apply:

2.1 **By Friday 1 April 2022** the Claimant's Solicitors will send the Respondents Solicitors its proposed bundle index.

2.2 **By Thursday 14 April 2022** the Respondents Solicitors will reply thereto.

2.3 **By Friday 29 April 2022** the Claimant's Solicitors will have prepared and sent to the Respondents Solicitors the finalised bundle for the purposes of the Judicial Mediation.

2.4 **By Friday 13 May 2022** the Claimant's Solicitor will send the Respondents Solicitors the revised schedule of loss together with the Claimant's list of expectations.

2.5 **By Friday 20 May 2022** the Respondent will have served its counter schedule and its list of expectations upon the Claimant.

2.6 **Not later than 4.00pm 23 May 2022** the Claimant's Solicitors will have delivered to the Tribunal the above documentation for the use of the Judge at the Judicial Mediation. This can be in pdf format.

2.7 Joining instructions for the Judicial Mediation will be sent in due course.

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Employment Judge P Britton

Date: 28 February 2022

Notes

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an "unless order") providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management': https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/

(v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so".* If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Order sent to Parties on

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