



EMPLOYMENT TRIBUNALS

Claimant: Ms Bryce

Respondent: Department of Work and Pensions

JUDGMENT

The claims of:

1. Indirect discrimination based on the respondent's refusal to postpone the disciplinary hearing on 5 July 2020;
2. The claim for failure to make reasonable adjustments; and
3. The claim for breach of s 10 EReA 1999;

are struck out.

REASONS

1. The claimant was ordered to pay a deposit of **£130** in relation to **each** of those claims following a preliminary hearing held on **13 May 2021**. The Order was sent to the claimant on **14 May 2021**. The claimant failed to pay this deposit by the date specified in the order (21 days from the date the order was sent to the parties, i.e. 4 June).
2. According to the Bristol Finance Support Centre, the claimant paid an amount of £260 on 7 June 2021. The claimant has not indicated to which claims this payment is intended to relate. No explanation has been provided as to why the payment was made late, nor has any application for an extension of time been made by the claimant.
3. Rule 39 of the Employment Tribunal Rules of Procedure 2013 provides that 'If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out'. The use of the word 'shall' appears to allow no exercise of discretion.
4. Given the indication in **Arvunescu v Quick Release (Automotive) Ltd UKEAT/0135/16/DA** that a strike out under rule 39 does involve the exercise of judicial discretion, I have considered all the circumstances and in particular the relevant factors below.
3. In the absence of any explanation from the claimant or any application to extend time, I consider that the balance of prejudice favours the respondent and the interest of justice favour striking out the claim. The deposit order makes clear the date by which

payment has to be made, and the consequences of not making the payment by that date. The purpose of a deposit order is to discourage the pursuit of claims with little prospects of success. Although the claimant will not be able to pursue her claim if it is struck out, the claimant could have avoided this simply by paying the deposit by the specified date. She has failed to do so, without explanation. If the claim is not struck out despite the claimant's failure to pay the deposit by the specified date, the respondent will incur the costs and inconvenience of defending a claim with little prospects of success. I have taken account of the fact that the delay is short, but I also take into account the need to enforce compliance with time limits.

2. The complaints of (i) indirect discrimination based on the respondent's refusal to postpone the disciplinary hearing on 5 July 2020; (ii) The claim for failure to pay reasonable adjustments and (iii) the claim for breach of s 10 ERelA 1999 are therefore struck out under rule 39(4) of the **Employment Tribunals Rules of Procedure 2013**.
3. The hearing fixed for **28 and 29 September 2021** will not take place and the claimant will be entitled to a refund of the deposit paid late.

Employment Judge Buckley

Date: 16 June 2021