



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Birchall

**Respondent:** Thomas Sagar Insurance Limited

**HELD AT:** Manchester

**ON:** 24 April 2017

**BEFORE:** Employment Judge Sherratt

## REPRESENTATION:

**Claimant:** Ms K Moss, counsel

**Respondent:** Ms A Stokes, solicitor

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. At a preliminary hearing held on 15 November 2016 the parties agreed that if the question of the claimant's disability was not conceded following the provision by the claimant of a section 6 statement and copies of relevant medical records there would be a joint medical report prepared to assist the Tribunal.
2. The question of disability was not conceded.
3. The respondent made an application to the Tribunal on 28 March 2017 in relation to the instruction of the joint expert because although the parties had agreed upon the medical expert to be instructed they had not been able to agree the whole of the contents of the letter of instruction.
4. The respondent's application suggested that the claimant's impact statement had not identified the effects of her condition at the time of the alleged discrimination and the effects described were not reflected in documentation held by the respondent and their experience of the claimant at the time. As a consequence the

respondent had prepared a statement which was considered to contain key information to be provided to the expert as a part of the joint instructions.

5. The respondent also disputed the relevant period that was to be considered by the expert when considering the question.

6. The respondent provided the Tribunal with the draft letter of instruction to the expert showing their proposed amendments and contended that the claimant was being unreasonable in refusing to agree to any of them.

7. They sought an order that the joint letter of instruction contain a statement that the relevant period was from 10 November 2015 to 13 May 2016 for the expert to consider the question of impairment and its effects, that there was reference to the guidance in Schedule 1 to the Equality Act in respect of the condition being long term, an instruction that given the claimant's condition had not lasted 12 months at the end of the relevant period the expert should make his assessment as to whether the condition was likely as at the end of the relevant period to last 12 months and all evidence following the end of the relevant period being disregarded and finally that the witness statement of the respondent's Susan Meadows and the documents referred to therein should be supplied.

8. The claimant's solicitors wrote to the Tribunal on 29 March setting out why they did not agree with the respondent's contentions providing a copy of an email to the respondent's solicitors giving what was described as a "full summary" of their position. It would appear that the claimant's counsel was involved in the settling of the communication.

9. The Tribunal has today considered those applications and has made orders in respect of them.

10. The respondent referred to costs in the correspondence passing between the parties. The claimant put the respondent on notice that she would apply for costs if the Tribunal agreed with her. Both sides therefore anticipated the possibility of costs applications.

11. The claimant's counsel has applied for an order that the respondent should pay the costs incurred by the claimant in responding to the application on the basis that having made the application, which both parties agreed was necessary, the respondent has thereafter taken an unreasonable stance in not agreeing with the views of the claimant as set out in correspondence prior to the hearing. The claimant, she submitted, succeeded on changes to the letter of instruction and in respect of the reduction of the content of the bundle of documents going to the expert most particularly the removal of a witness statement on behalf of the respondent.

12. For the respondent it was submitted that they were compelled to make the application. Two of the four matters within their application had been agreed just prior to the hearing. The hearing could not be postponed as the other matters needed to be dealt with before the expert could be instructed. The claimant had agreed to amend her section 6 statement because it had insufficient detail in it.

Some of the respondent's amendments had been agreed. There should be no order for costs.

13. In my judgment one of the reasons why the respondent's application was necessary related to the way in which the claimant's impact statement under section 6 of the Equality Act 2010 had been drawn up. This was a statement from a claimant legally represented from the outset. In such circumstances the statement might reasonably have been expected to deal with all relevant matters from section 6 of the Equality Act 2010 and the Guidance. It was accepted on behalf of the claimant that a new statement was needed and I made provision for it.

14. Given that that was one of the main reasons for the application and given that there has been some measure of agreement today, it does not seem to me that the whole of the costs incurred should be put upon the respondent when the claimant was in some way at fault herself. However, I can see that on the basis of the concessions made and/or matters discussed today that the claimant has come out with some success with regard to the wording of the letter of instruction to the expert and the content of the bundle of documents being supplied to the expert. I find that the respondent was not acting reasonably when not agreeing to the removal of these items in advance of the hearing given the clear statement of the claimant's position in writing prior to the hearing..

15. It therefore seems to me to be a fair thing to do to order the respondent to pay a contribution to the costs incurred by the claimant. Those costs were said to be £2,450 plus VAT. It seems to me that a fair thing to do to reflect the fact that the stance might have changed on the basis of the correspondence is to order the respondent to pay £1,000 plus VAT which is £1,200.

Employment Judge Sherratt

7 July 2017

REASONS SENT TO THE PARTIES ON

11 July 2017

FOR THE TRIBUNAL OFFICE

[AF]