



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Turley

**Respondent:** Royal Mail Group Limited

**Heard at:** Carlisle **On:** 22 March 2017

**Before:** Employment Judge Holmes

**Representation:**  
Claimant: Mr M Kingston, lay representative  
Respondent: Mr J McArdle, Legal Executive

## JUDGMENT ON POSTPONEMENT

It is the judgment of the tribunal that:

The Hearing of the claim be postponed to **11 and 12 July 2017 at 10.00 a.m. at Carlisle**. The matter is considered part – heard and will be resumed by the same Employment Judge.

### REASONS

1. The claimant was represented by Mr Kingston, a lay representative, and the respondent by Mr McArdle. The respondent had been delayed by a major traffic incident on the M6, and hence the bundle and witness statements were not available to the tribunal until 10.35.
2. The parties had indicated to the tribunal in correspondence that two days may be required for the hearing, but the tribunal had declined to re-list it, suggesting that the hearing would have to go part – heard.
3. The bundle runs to some 395 pages. The respondent will call two witnesses, the dismissing officer and the appeal officer, and the claimant has three witnesses, two of whom were involved in the process as representatives, and whose evidence is likely, if not as substantial as the claimant's own, to take some time.
4. The claimant had, prior to the hearing made a complaint in correspondence to the tribunal that the respondent had not given disclosure of certain documents which the claimant contended were relevant, and should have been disclosed. The tribunal had not

ruled upon this application, as it could be seen, for specific disclosure. The details of the documents in question were set out in an e-mail from the claimant dated 5 March 2017.

5. The Employment Judge called the parties in at 10.35. He was then provided with the bundle, and the witness statements. He explained the procedure to Mr Kingston, and the likely order of witnesses. It was explained how the hearing would go part heard, and how it may be more convenient to call the claimant's witnesses before he gave evidence to save them coming back on the next occasion. That would be, of course, if the respondent's witnesses had completed their evidence. The Employment Judge also raised the issue of the allegedly missing disclosure, and ascertained that save for one item, this remained an issue. Mr McArdle was not in a position to expand upon the respondent's position until he had taken instructions, but the documents had not been disclosed by the respondent.

6. The Employment Judge explained how he would need to read the witness statements and the documents in the bundle that were referred to in them. Further, in the meantime, the respondent's position on disclosure could be clarified, and after sufficient reading to enable him to determine their potential relevance, the Employment Judge could then rule upon whether the further documents sought by the claimant should be disclosed by the respondent, and what consequences that may have. The parties were accordingly released whilst the Employment Judge read.

7. The parties were called back in at 1.00 p.m. The Employment Judge had not completed his reading by that time, but felt able to consider the issue as to the documents. He discussed this issue with the parties' representatives. The respondent's position was that the documents were not relevant, they had not been before the dismissing or the appeal officer, and disclosure would be resisted. Mr Kingston for the claimant pressed for them, and gave his reasons why he considered them relevant to issues affecting the fairness of the dismissal. He agreed that they had not been before the dismissing or the appeal officers, but considered that they should have been, as they were relevant to the issues being considered.

8. The Employment Judge went through the listed documents, and Mr Kingston agreed that they all fell into this category. The Employment Judge discussed with him how it may well be part of the claimant's case that, whilst they were not before either of the officers, they should have been, and this may go to adequacy and thoroughness of the investigation, and the reasonableness, in the absence of sight of these documents, of the conclusions reached. It was a matter for the respondent if it wished to suggest that sight of these documents would have made no difference, had they been considered, but, as the respondent resists their disclosure, it would appear not to be so arguing. The Employment Judge explained how Mr Kingston could put to the respondent's witnesses their failure to consider, or seek out these documents, and they can deal with those points in their evidence. On that basis Mr Kingston did not press for their disclosure, and, with the caveat that things can change during the course of a hearing, and documents may become relevant that did not appear to be so, the tribunal made no ruling for disclosure.

9. That said, and whilst not mentioned in the hearing, it may be prudent for the respondent, if the documents are available, to have at least one set of them at the next hearing in case they become relevant, and the tribunal does decide it needs to see them, or some of them.

10. That discussion took the tribunal to 1.30 p.m, and the Employment Judge had not yet read the claimant's evidence, which he considered was necessary before cross – examination of the respondent's witnesses could commence. He raised with the parties how much time would then be available for the evidence to commence, and how likely it would be that any witness (the respondent calling its evidence first) would be concluded in the time that remained. He invited the parties to consider how they wished to proceed.

11. The parties took the view that , rather than wait for the tribunal to conclude its reading, start the evidence and come back for another single day (which, it seemed to the Employment Judge may well have to be two days, as it would be unlikely that all the remaining evidence and submissions could be concluded in just one day) it was preferable not to start the evidence, but to re-list for two days, before the same tribunal, when the evidence could start at the very beginning of the first day.

12. The Employment Judge agreed, and has re-listed the hearing , on a part heard basis, as he then went on to conclude his reading, for two further days on 11 and 12 July 2017 at Carlisle.

Employment Judge Holmes

Dated : 23 March 2017

JUDGMENT SENT TO THE PARTIES  
ON

28 March 2017

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FOR THE TRIBUNAL OFFICE