



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Stephen Mutinyu

**Respondent:** Rethink Mental Illness

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Cambridge (in private)

**On:** 22 January 2019

**Before:** Employment Judge S Moore (sitting alone)

### Appearances

For the claimant: Did not attend and was not represented

For the respondent: Mr J Bryan, Counsel

## JUDGMENT

- (1) This was a preliminary hearing listed to determine the question of whether the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 at the date of his dismissal on 25 January 2017 on the grounds of his inability / unwillingness to work night shifts and on the grounds of his long periods of absence, and whether he was a disabled person in the months preceding the dismissal.
- (2) At a preliminary hearing on 22 August 2017 the matter was listed for an open preliminary hearing on 29 January 2018 to determine the question of whether the claimant was at the relevant times a disabled person. However, on 1 December 2017 the claimant's representatives emailed the tribunal to request that the preliminary hearing listed for 29 January 2018 be relisted because it was the anniversary of the date on which the claimant's father passed away and the claimant believed he would not be able to participate at the hearing due to the stress of the coincidence of dates. The preliminary hearing was therefore postponed and relisted for 5 July 2018.

- (3) On 6 February 2018 the claimant's representatives informed the tribunal that they were no longer representing the claimant and requested that all future correspondence be sent to the claimant directly.
- (4) On 4 July 2018 the claimant contacted the tribunal to say that he had received a call about the hearing and that he had not been aware it was taking place. He requested that the hearing be rescheduled to enable him to seek advice. The matter was therefore relisted for 22 January 2019 and that relisting was sent to the claimant by notice dated 26 July 2018.
- (5) At the hearing of 22 January 2019, the claimant did not attend. The telephone number which appeared on the file was contacted but there was no ring tone. The respondent's solicitors had another contact telephone number for the claimant which the clerk telephoned on three occasions. Although the telephone rang on two of those occasions, the ring tone abruptly terminated. There has been no communication from the claimant to the tribunal, stating that he has been delayed, making a request for an adjournment or of any other nature.
- (6) The respondent's counsel made an application that the case be dismissed. He relied on rule 47 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, schedule 1. Rule 47 is sub-headed nonattendance and provides,  
  
*"If a party fails to attend or to be represented at the hearing the tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so it shall consider any information which is available to it after any enquiries that may be practicable about the reason for the party's absence."*
- (7) Mr Bryan handed a letter to the tribunal dated 8 January 2019 which had been sent to the claimant by recorded delivery by his instructing solicitors reminding the claimant of the hearing today. The letter stated that the writer thought it would be useful to remind the claimant of the details of the hearing and that the hearing was listed to consider the issue of disability. It also indicated that the respondent's solicitors had previously sent the claimant a copy of the bundle that would be referred to at the hearing.
- (8) Further, I was also shown a copy of the electronic signature indicating receipt of that letter on 9 January 2019. It had been signed for at 10:31 am at the claimant's home and the signature of the signer had the initials 'SM', the same initials as those of the claimant.
- (9) Mr Bryan submitted that it was not appropriate for me to proceed to consider the issue of the claimant's disability in the absence of the claimant and nor would it be proportionate to adjourn the hearing again. The last occasion that the respondent had heard anything from the claimant was in July 2018 and therefore he did not even appear to be actively pursuing his case. It was therefore disproportionate to put the respondent to additional cost when there was no guarantee it would recover its costs, even with a costs order. To date the

respondent had spent over £10,000 defending the claim. There was work in progress of over £800 and Counsel's fees of over £2,000 had been incurred.

- (10) I accept the respondent's submissions.
- (11) It is apparent that this matter has been adjourned twice before, firstly in January 2018 and then again in July 2018. Both of those adjournments were at the claimant's request. As regards the information which is available to me this morning, there is no information as to why the claimant has failed to attend. However, because the respondent's solicitor sent a letter reminding the claimant of the hearing, that letter was sent by recorded delivery, and there is evidence it was received by the claimant at his home, I can infer that the claimant was, or should have been, well aware of today's hearing date. However, the claimant has made no contact with the tribunal to indicate a reason for his non-attendance, still less supplied any medical evidence to support any application for a further adjournment.
- (12) I do not consider it would be feasible for me to determine whether the claimant is a disabled person or not without hearing any evidence from him. Although there is a witness statement from the claimant in the bundle, which is dated November 2017, it is not even signed. Further, given that the claimant does not appear to be taking active steps to pursue his claim, and the respondent is incurring considerable costs which it has little hope of ever recuperating, I do not consider that it would be proportionate to adjourn the matter and to prolong the litigation any further. In this respect I note that the respondent is a charity and that it has already incurred considerable wasted expenditure.
- (13) I therefore accept the respondent's application that this case be dismissed and order that it be dismissed accordingly.
- (14) I also record that it is the respondent's current intention to make an application for costs against the claimant. I indicated at the hearing that any such application must be made in writing so that the claimant has a proper opportunity to respond to it.

#### Other matters

- (15) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:  
[www.judiciary.gov.uk/publications/employment-rules-and-legislation-practicedirections/](http://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practicedirections/)
- (16) 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)...*". **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.**

- (17) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (18) If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.

## ORDERS

### Made pursuant to the Employment Tribunal Rules of Procedure

#### 1. Dismissal

The claim is dismissed in its entirety.

#### 2. Other matters

- 2.1 The above order was made and explained to those present at the preliminary hearing.
- 2.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 2.3 **Public access to employment tribunal decisions**  
All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 2.4 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 2.5 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-8.**

**Case Number: 3325016/2017**

**Employment Judge S Moore 21.02.19**

**Sent to the parties on:**

.....21.02.19.....

For the Tribunal:

.....