



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr M Pusbauer

LIDL Great Britain Limited

Heard: By telephone

On: 3 December 2020

Before: Employment Judge JM Wade

Appearance:

For the Claimant: No attendance

For the Respondent: Mr S Dad (solicitor)

JUDGMENT

The claimant's complaints of protected disclosure dismissal, protected disclosure detriment, unfair dismissal, discrimination on the grounds of religion or belief, race discrimination, harassment, victimisation and "other payments" are dismissed upon his failure to attend or be represented at today's preliminary hearing, pursuant to Rule 47.

REASONS

1 The claimant has not attended for a private case management hearing today, having presented a claim form on 1 October 2020 from which the complaints above can be discerned. The respondent's case is that he was dismissed on or around 4 June because of an allegation that he had said in February 2020, "that fucking monkey is useless" about a colleague, which was found by the respondent to be racially aggravated. The claimant secured new employment soon after his dismissal in the summer.

2 Having read the claim and response today, I was considering of my own motion deposit orders in relation to some of the allegations, not least because the claimant asserts few or no facts from which the Tribunal could conclude that race or religion played any part in the chain of events he relies upon. His victimization/protected disclosure case also relies upon there being something amiss with the February 2020 allegation made against him - he denies it and says it is one word against another. He accepts the allegation was made.

3 In his claim form the claimant asked the Tribunal to send him notices of hearing and communications by post. It has done so. On 27 November the respondent posted to him its agenda for today and sought comments. Yesterday he

emailed the respondent and it replied with a further copy of the agenda putting him on notice again of today.

4 At 11.30 when there was no attendance after 15 minutes I stood down the respondent's representative and asked our clerk to contact the claimant by telephone. The phone was not answered and a message was left providing further information for dialing in today. I directed the respondent to rejoin at 12.15 today, where again, there was no attendance.

5 Weighing the options available to me, they include a strike out warning to the claimant for him to show cause for his non attendance, an unless order, a postponement, deposit orders or a dismissal pursuant to Rule 47.

6 There is a fundamental right in the interests of justice to be heard before a claim is dismissed, or more accurately to have a reasonable opportunity to be heard. The claimant has had that opportunity unless there has been some unforeseen misfortune impacting his ability to attend today. I consider that unlikely, and more likely that he has chosen not to attend, not least in circumstances where his claims are not without difficulty.

7 The respondent has been put to cost and it has done all that it could have done to make today's hearing effective. The allegations the claimant makes against the respondent are serious and carry stigma - its witnesses no doubt bear the worry of that. I also take into account other Tribunal users who need their cases hearing and who are not well served by litigants who waste the Tribunal's time.

8 If misfortune has prevented attendance then the claimant has the opportunity to challenge this decision, and the prejudice to him is therefore moderated. In all the circumstances of the case it is in the interests of justice to dismiss the claims.

Dated: 3 December 2020

Employment Judge JM Wade