



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Rizwan Patel

V

(1) David Stubbs

(2) Frank Lubura

(3) Adam Slater

(4) Andrew McInnes

(5) Jason Rose

(6) SSGC Limited

PRELIMINARY HEARING

Heard at: Birmingham

On: 19 April 2021

Before: Employment Judge Dean

Appearance:

For the Claimant: not in attendance

For the Respondent: Mr Charles Crow, of counsel

The Claimants application made on 19 April 2021 to postpone the hearing was refused and the decision was sent to the parties on 19 April 2021. 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. The claimant has made an application urgently by email to postpone the hearing scheduled to be conducted on the 19th April 2021. The claimant has sent in an email to the tribunal at 09.20 hours requesting a postponement due to the fact that his mother had been taken into hospital on 17th April. Subsequently the claimant telephoned the tribunal and spoke to a clerk and advised that he is still in attendance at Coventry Hospital and he had been there since his mother admission on the 17th April 2021. The claimant advised that his mother was unwell and that she has a heart condition and is being tested positive for Covid and that he has not been able to leave the as he reports that his wife does not speak English and his brother does speak English is fasting and is not fit to attend the hospital. The claimant advises he is not fasting because of his medical conditions and he is attending with his mother throughout. The clerk reported the claimant had informed her that he had also not had time to read the bundle.
2. In normal circumstances, for a postponement request the parties are reminded of the Presidential Guidance given by the President in 2013. On receipt of the claimant's email a response was caused to be sent to the claimant referring him to the Presidential Guidance and in particular to the provisions of the examples in Paragraph 1 which confirms that when a party or witness is unable for medical reasons to attend a hearing all medical certificates supporting that medical evidence should be provided in addition to an explanation to the nature of that health condition concerned. Where medical evidence is supplied it should includes a statement from a Medical Practitioner putting their opinion the applicant is unfit to attend the hearing and the prognosis of the condition and the indication of when that state of affairs may cease.
3. In this case the claimant has provided no such medical evidence as directed. Furthermore the claimant has not provided any medical evidence to support his statement that his brother is not fit to attend the hospital if, as the claimant suggests, his mother needs to be accompanied at hospital. In a normal course of events mindful that families have unfortunate things happen and would often wish to be in attendance with their loved ones in hospital, where supported by evidence the tribunal is

considerate of all the circumstances of the application. I am mindful that this is not a case in the normal run of complaints before a tribunal and request for a postponement. Mr Crowe has directed me to the history of this litigation and indicates that the application for a postponement has been identified by the person instructing him as not being entirely unpredictable. I have been referred to previous litigation that the claimant has engaged with other respondent's in similar circumstances. He refers in particular to a recent Judgment of Employment Judge Flood and her Judgement [Page 566 of the bundle] at Paragraph 8:

"The claimant applied twice for today's hearing to be postponed on 17 & 18 August 2020. The postponement application was refused because Employment Judge Hughes determined that the medical evidence provided did not demonstrate that the claimant was unfit to attend a hearing and because the respondent objected to the postponement application. The claimant did not attend today's hearing. It was scheduled to start at 9.30 a.m. I delayed the start of the hearing until 10.15 a.m. to wait to see if the claimant attended. No correspondence was received from the claimant other than the previous applications to postpone."

on that occasion before Employment Judge Flood rather than dismissing the claim because of the claimant's non attendance she proceed with the hearing in the absence of the claimant because it was in the interests of justice for the issues listed to be determined to be considered fully.

4. In this case I have been referred to the previous correspondence from the claimant when the claimant has previously made applications for adjournment that had been refused, most recently I have been referred to the claimants' application that was made and considered by Employment Judge Finley on the 14th April 2021 when the claimant had sought an adjournment to enable him to gain legal assistance from lawyers who are experts due to him having ulcerative colitis and inflammatory bowel disease.
5. I conclude that the claimant is well aware of the requirements for the tribunals to have access to medical information to support an application to postpone a hearing. Whilst I have every sympathy with the claimant's family predicament with his mother being unwell and quite possibly in hospital it is difficult to understand why, in such circumstances the

claimant is not able to make arrangements for his sibling or wife to be in attendance to accompany his mother in hospital during the period of time whilst he would be required to access a video hearing before the tribunal.

6. In the circumstances I am aware that the claimant has had sight of the tribunal bundle delivered to him by the means upon which he insisted more than 3 weeks ago since the 24th March 2021. The claimant was aware that his earlier requests for postponement for other reasons had been refused and that he was required to attend the hearing to progress the litigation. The claimant is well aware of the purpose of the hearing today and that the hearing has been longstanding. Whilst an alternative were I to grant a postponement would be to direct that costs be awarded against the claimant for the late postponement of today's hearing there is some doubt that the claimant would in those circumstances be in a position to discharge any costs that were awarded against him. The claimant himself is not unfit to attend the tribunal hearing that is being conducted by video and he has not put in place arrangements to attend.
7. In these unusual circumstances I consider the balance of convenience and the overriding objective and conclude in the circumstances it is right to refuse the latest application made by the claimant to postpone the hearing. I will continue to hear the application subject to the claimant's right to make an application for me to review the decision and reconsider it in light of any additional information the claimant submits to support the postponement on medical grounds that his attendance upon his mother was required to enable her to receive the suitable treatment at hospital meanwhile I will proceed with the hearing in the claimant's absence.

Employment Judge Dean

21 June 2021

