



EMPLOYMENT TRIBUNALS

Claimant: Ms P Hylton
Respondent: Citizens Advice Waltham Forest Limited
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 6 July 2021
Before: Employment Judge Burgher
Members: Ms T Jansen
Ms P Alford

Appearances

For the Claimant: Did not attend
For the Respondent: Mr Griffiths (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

The Claimant did not attend the hearing. Her claims are dismissed pursuant to rule 47 of the 2013 Employment Tribunal Rules.

REASONS

Procedural history

First claim 3202627/2019

1. The Claimant presented her first claim to the Tribunal on 13 November 2019. The ET3 in respect of this claim was submitted on 24 December 2019. A preliminary

hearing to consider the issues and consider case management orders took place before EJ Moor on 1 May 2020. It was clarified that the Claimant brings complaints of direct race discrimination or harassment related to race and unlawful victimisation. A full merits hearing was listed for 24, 25 and 26 March 2021.

2. By letter dated 13 May 2020 the Claimant sought to amend her claim to add a further protected act.

3. By letter dated 19 May 2020 the Claimant informed the Respondent that she did not have internet access and requested that all post be sent by mail to her home address.

4. The Respondent acknowledged the Claimant's request for correspondence by post in its letter to the Tribunal dated 3 June 2020, which also objected to the amendment application. The Respondent corresponded by post since this date.

5. The Claimant subsequently entered into email correspondence with the Tribunal and the Respondent by email from the hello@a****.co.uk email address. She made applications and for specific disclosure and responded to the Respondent's objection to any amendment.

Second claim 3200752/2020

6. On 16 March 2020 the Claimant presented her second claim following being dismissed by the Respondent. She claimed unfair dismissal and asserted that her dismissal was race discrimination and unlawful victimisation. Unfortunately, this claim was not processed by the Employment Tribunal Service until 31 October 2020. The ET3 in respect of this claim was submitted on 26 November 2020.

7. A preliminary hearing in respect of the second claim took place before EJ Lewis on 8 February 2021. The first and second claims were combined. Paragraph 9 of EJ Lewis' case management summary stated:

9. The parties agreed that it would not be possible to hear both claims on the forthcoming dates in March, it was agreed that the three day hearing on March would be vacated and the case re listed for five days **on 6 - 9 July and 13 July 2021**. It is likely that the hearing will take place by CVP. We discussed the requirement for a CVP hearing. The notes on CVP hearings are to be sent to the Claimant so that she can test whether she can successfully join a CVP hearing, if not then the hearing will need to be a hybrid hearing with the Claimant attending the tribunal to use its CVP facilities.

8. A notice of hearing was sent to the parties on 12 February 2021 confirming the full hearing date. In particular:

8.1 It was stated that the hearing will take place by CVP;

8.2 A CVP link was sent to the parties;

8.3 The parties were informed that before the hearing they should allow plenty of time to ensure that their IT equipment is functional. If in doubt

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they were requested to call technical support on the number provided. They were required to notify the Tribunal **as soon as possible** if they had any concerns on their ability to join the hearing;

8.4 Guidance on ensuring a good internet connection and testing internet connection speed was provided;

8.5 It was stated that if there were any issues or queries then the parties were required to contact the Tribunal.

9. The Claimant did not inform the Tribunal of any issues about attending by CVP or raise any concerns about being able to participate in this format at the time.

10. On 18 February 2021 the Claimant corresponded with the Tribunal from a pyramidsolutions email address. This email address stated that it did not accept or monitor emails. She specified the further matters that needed to be incorporated in the list of issues.

11. By email dated 22 February 2021 the Claimant applied to amend her claims. She repeated her application by email dated 2 March 2021 and made extensive requests for written answers and specific disclosure.

12. By email dated 4 March 2021 the Claimant applied for a witness order. EJ Lewis responded to the Claimant's applications by letter dated 6 March 2021. The Claimant sent further emails on 5 and 8 March 2021 repeating requests and providing a schedule of loss.

13. The Respondent objected to the Claimant's applications and the Claimant sent a further email to the Tribunal on 11 March 2021 responding to the objections. The Claimant sent further emails to the Tribunal on case management matters on 12 and 26 March and 9 and 13 April 2021.

14. On 15 April 2021 EJ Massarella ordered a further preliminary hearing to take place. This took place on 17 May 2021 before EJ Russell who considered outstanding matters and made consequential orders.

15. The Claimant sent emails on case management matters on 4, 7, 11, 13, 17, 21, 24 and 26 May and 4, 18 and 25 June 2021. The Claimant's email of 25 June 2021 stated that she was not ready to exchange witness statements as ordered.

16. The Respondent applied for an unless order for exchange of witness statements by letter dated 30 June 2021.

17. In none of the above emails sent by the Claimant, nor at the preliminary hearing on 17 May 2021, did the Claimant indicate that there may be a problem with her attending the hearing by CVP. However, on 2 July 2021 at 15:12 the Claimant sent the Tribunal the following email.

Dear Sir/Madam

I am the Claimant in the above case.

I am litigant in person. I write respectfully to inform the Employment Tribunal; I do not agree with the Respondent's bundle. Unfortunately, they have not included documents that I will be relying on at the hearing, these documents were sent to them 26 April 2021 (with a numbered index). The Respondent's representatives have, stated that the documents are not relevant.

Due to cost and time constraints, I will aim to send or bring documents I will be relying on to the Tribunal before or at the hearing scheduled 6 July 2021.

I will be attending the Tribunal in person as I do not have reliable digital access.

The Respondent's representative has a copy of my witness statement, I am waiting for the Respondent's witness statements which their representative said I would receive today. I have not yet received the Respondent's witness statements.

I have sent a copy of this email to the Respondent's representative

18. The hearing was due to commence on 6 July 2021 at 10am. However, at 9.30 the Claimant telephoned the Tribunal and informed the Tribunal clerk that she would not be attending the CVP hearing. She stated that she was self-isolating due to COVID-19 and would be unable to attend the Tribunal. The Claimant was informed that the hearing was a CVP hearing and that she would be able to access the hearing from home. The Claimant then stated that she did not have any digital access at all to be able to participate.

19. The hearing commenced at 10.30 after further enquiries were made with the Claimant. The Claimant stated that she had initially intended to access the hearing by using her friend's internet access and this was no longer possible because the Claimant was now self-isolating. The Tribunal considered this to be inconsistent with the Claimant's email on 2 July 2021 where she stated that she did not have reliable internet access with no reference to a friend.

20. The Tribunal outlined the chronology at the hearing. Mr Griffiths, on behalf of the Respondent, submitted that it would not be appropriate to adjourn the hearing due to the prejudice to the Respondent, its witnesses and costs arising. He submitted that the case should either be heard in the Claimant's absence or dismissed pursuant to rule 37 of the Employment Tribunal rules. He stated that the Respondent was ready to proceed, its witnesses were in attendance and there was no reasonable basis for the Claimant to suggest that she did not have digital access. He stated that the Claimant specifically refused to have documents sent to her by post and required all documents to be sent by email. However, this submission seemed to be contrary to the practice of the Respondent and the Tribunal sending the Claimant's documents by post.

21. Following Mr Griffiths' submissions the Tribunal adjourned and sought further clarification from the Claimant as to when, if at all, she would be able to attend this hearing. The Claimant informed the Tribunal clerk at 11.00 that she would not be able to attend the hearing but would make enquiries as to whether she could get a dongle

or whether she could make contact with her friends in her bubble to try and get a laptop or smart phone to see if she could attend the hearing.

22. When considering most appropriate way to proceed the Tribunal considered rule 47 of the Employment Tribunal rules which states:

Non-attendance

47. 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 reasons for the party's absence.

23. The reasons given for the Claimant not being in attendance are that she does not have any digital access and that she is now self-isolating. The Tribunal is sceptical about the reasons provided in view of the procedural history, the timing of the Claimant's notification and the implication in the Claimant's email of 2 July 2021 that she was not properly prepared to proceed because she does not have all the documentation.

24. In any event neither of the Claimant's reasons have not been evidenced, they have simply been asserted at a very late stage.

25. Given the detailed procedural history that has occurred and the clear terms of the notice of hearing dated 12 February 2021, the Tribunal conclude that the Claimant's very late indication, on 2 July 2021, of potential inability to attend CVP due to not having reliable digital access was unreasonable. This seriously undermines the credibility of the reason given for her non-attendance. Further, no details or evidence has been provided when the Claimant became a contact case to self-isolate or why she only contacted the Tribunal on the morning of the hearing to state this. Finally, her failure to make any prior enquiries regarding using the equipment of people in her bubble before stating that she was not attending is conspicuous.

26. The Tribunal did not consider that it was appropriate to hear the claim in the Claimant's absence. We concluded that consideration of the fact sensitive matters would be academic in her absence.

27. The Tribunal is sceptical of the reasons for the Claimant's non-attendance, there are inconsistencies between her email of 2 July 2021 and the explanations that have been provided to the clerk on the morning of the hearing. The Claimant's inability to attend CVP has been notified at an unreasonably late stage. There are also continuing issues concerning the parties cooperation in preparation for the hearing and in view of the numerous emails the Claimant was sending regarding case management matters. The Tribunal is not confident that these would be resolved by any further case management orders.

28. In these circumstances we conclude that the Claimant's claims should be dismissed due to her non-attendance pursuant to rule 47 of the Employment Tribunal rules. We do so on the grounds that the Claimant has not provided sufficient detail of evidence of the reasons for her non-attendance and there are inconsistencies

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undermining the credibility of the reasons advanced. A 5 day listing, that other cases could have been listed against has now been wasted. The Claimant is, of course, entitled to apply to the Tribunal to reconsider its judgment with a fully evidenced application addressing the concerns the Tribunal have about the credibility of the reasons she has advanced.

Employment Judge Burgher

7 July 2021