



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Monica Garcia Barreiro

v

ASDA Stores Limited

Heard at: London Central (in person and via video)

On: 24 February 2022

Before: Employment Judge P Klimov, sitting alone

Representation:

For the Claimant: Not present or represented

For the Respondent: Miss T. Hand (Counsel)

JUDGMENT

All claimant's claims are dismissed.

REASONS

1. On 27 July 2020, the claimant brought complaints of: (i) failure to provide a statement of initial employment particulars (s.1 Employment Rights Act 1996 ("ERA")), failure to provide itemised pay statement (s. 8 ERA), unauthorised deduction from wages (s.13 ERA), failure to make reasonable adjustments (ss.20, 21 Equality Act 2010("EqA")), discrimination arising from disability (s.15 EqA), automatic unfair dismissal (without specifying grounds), wrongful dismissal/breach of contract. The claim form contained only headlines of various claims but did not provide any particulars or any background information. The claim form was such that it could not be sensibly responded

to. However, it appears, it was not rejected by the tribunal under Rule 12 of the Employment Tribunals Rules of Procedure (the “**ET Rules**”).

2. On 13 October 2020, the claimant sent her Particulars of Claims. These were deficient in several respects. In particular, they did not specify: (i) what disability the claimant claims she has, (ii) what less favourable treatment the claimant complains about, (iii) what provision, criterion or practice she relies upon, (iv) what substantial disadvantage she relies upon, (v) details of reasonable adjustments she claims should have been implemented, (vi) on what basis the claimant claims automatic unfair dismissal, (vii) alleged breaches of contract.
3. The respondent presented a response denying all the claims and seeking further particulars of claims. The respondent also avers that the claim form should have been rejected under Rule 12 of the ET Rules, and the Particulars of Claims were presented out of time and therefore the tribunal does not have jurisdiction to consider the claimant’s claims.
4. The case was listed for a case management preliminary hearing on 18 November 2021, which due to lack of judicial resources had to be postponed until 24 February 2022, starting at 14:00. The joining instructions were sent to the parties on 23 February 2022.
5. The claimant has been represented in these proceedings from the start by Mr Tarek Timraz. Mr Timraz provided his email and telephone details to the Tribunal and indicated that he preferred to be contacted by email.
6. The respondent’s counsel joined the hearing. Neither the claimant nor her representative joined the hearing. After waiting a few minutes, I asked my clerk to call Mr Timraz. The clerk tried to call Mr Timraz several times without success. He finally got hold of him at 14:30 and told him to join the hearing. Mr Timraz said to the clerk that he was not near a computer and therefore could not join by video. I told the clerk that Mr Timraz could join the hearing by phone. The clerk passed instructions to Mr Timraz how to join the hearing by phone. Mr Timraz told the clerk that he was going to join the hearing, but still did not do that.
7. At 14:45 I asked the clerk to call Mr Timraz again and tell him that if he did not join the hearing by 14:50 the hearing will proceed in his absence and the claimant claims may be dismissed for non-attendance. The clerk passed that information on to Mr Timraz, who told the clerk that he was going to join the hearing. He did not join the hearing at 14.50. He did not call the clerk back to explain why he did not join the hearing.
8. I started the hearing at 14:51 and invited Ms Hand to make submissions. She told me that her instructing solicitors had tried to contact the claimant and her representative in advance of the hearing. Their contact attempts were not responded to. She told me that it appeared that the claimant and her representative were engaged in the process. Ms Hand suggested that an unless order could be made by the tribunal requiring the claimant to explain the non-attendance within 14 days.

9. I decided that in the circumstances where:

- a. the claimant was represented in the proceedings,
- b. her representative clearly knew of the hearing,
- c. the claimant was breach of the tribunal's order by her representative failure to join the hearing,
- d. the tribunal made several attempts (by phone and email) to contact her representative,
- e. her representative was told by the clerk on two occasions to join the hearing,
- f. on both occasions he told the clerk that he was going to join the hearing, but still failed to do so,
- g. he did not attempt to call back to explain why he was not able to join the hearing,
- h. the tribunal waited for him to join the hearing until 14:51,
- i. at 14.56 he still did not join the hearing or made any attempts to contact the clerk

it was appropriate and in accordance with the overriding objective to exercise my powers under Rule 47 of the ET Rules and dismiss the claimant's claim for non-attendance.

10. The tribunal has finite resources, and if the claimant and her representative are not engaged in the process and demonstrate total disregard to the Tribunal's orders and disrespect to the Tribunal and the respondent, it is appropriate for the tribunal to use its case management powers under the ET Rules robustly, thus facilitating access to justice for all applicants.

Employment Judge P Klimov

24 February 2022

Sent to the parties on:

24/02/2022.

For the Tribunals Office

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