



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hunte
Respondent: Morrison Data Services Limited
Heard at: East London Hearing Centre
On: 23 April 2024
Before Employment Judge J Jones
Members: Ms S Harwood
Ms R Hewitt

Representation

For the claimant: Neither present nor represented
For the respondent: Mr Davis (Litigation Specialist)

JUDGMENT

The claim is struck out.

REASONS

1. The claim was listed for a final hearing to begin today, 23 April and continue on 24, 25 and 26 April. The hearing has been listed since Claimant failed to attend the hearing today.
2. The Tribunal telephoned the Claimant who informed the Tribunal clerk that he was in hospital. He did not provide any further information. The Claimant failed to clarify whether he was an inpatient or whether he had attended the hospital for a procedure or to collect medication. He did not tell the clerk when he expected to be out of hospital or the details of his diagnosis.
3. Prior to today, on 17 April, the Claimant wrote to the Tribunal to ask for the hearing to be postponed because he had sinus tachycardia. He stated as follows:-

“With regard to the above hearing scheduled for 23-26 April 2024 I very much regret to advise that I am unable to take part in the hearing at the present time on the advice of my doctor due to a serious heart problem – sinus tachycardia (above 100).

I saw the doctor yesterday who advised that there was no way I could attend the hearing until my condition has been treated and under control (what was thought to be panic/anxiety attacks has now developed into a serious heart condition). He will be writing to the Tribunal Office to confirm this (a copy of which I will email as soon as available).

I apologise and very much regret having to postpone the hearing at such short notice and after such a long time waiting for it to take place.”

4. On receipt of that letter, the Respondent wrote to the Tribunal and made an application to strike out the claim because of the Claimant’s application to postpone. In the application, the Respondent asked for an immediate strike out and dismissal of the Claimant’s claims pursuant to the overriding objective. The Respondent referred to the overriding objective and relied on Rule 37(1) of the Employment Tribunals Rules of Procedure 2013 (the Rules).

Law

5. The overriding objective is contained in Rule 2 of the Employment Tribunal Rules of Procedure 2013. It states that the overriding objective of the Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable – (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall cooperate generally with each other and with the Tribunal.
6. Rule 37 of the Rules states that at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or a part of a claim or response on any of the following grounds at Rule (37(1) -
 - “a) *that it is scandalous, vexatious and have no reasonable prospect of success*
 - b) *that the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable and vexatious*
 - c) *for non-compliance with any of these Rules or with an order of the Tribunal*
 - d) *that it has not been actively pursued*
 - e) *that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim and response (or the part to be struck out).”*

Rule 47 of the Rules states that if a party fails to attend or to be represented at the hearing, the Tribunal, 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.

Decision

7. The Claimant presented this Claim to the Employment Tribunal on 9 April 2022. He made complaints of discrimination arising from disability, failure to make reasonable adjustments, harassment and unlawful deduction of wages. There have been four case management hearings to assist the parties in getting this matter ready for hearing. The Claimant has attended those hearings and is running his case himself, as a litigant in person.
8. On 2 December 2022, the dates for this hearing were secured and a Notice of Hearing sent to the parties. The hearing was listed for 23, 24, 25 and 25 April 2024.
9. EJ Jones conducted a preliminary hearing with the parties in this matter which began on 25 September 2023 and concluded on 17 October 2023. In that hearing, the Judge clarified the issues in the case, the complaints that the Claimant wished to bring and made orders for the preparation of the case for the final hearing.
10. In addition, after a full discussion with the parties, it was the Judge's decision that the discrimination complaints had little prospects of success. As a result, the Judge made a deposit order in respect of the complaints of discrimination arising from disability, harassment and failure to make reasonable adjustments. The Claimant was ordered to pay £10 each, in order to be able to pursue those complaints. The Claimant paid the deposit order and notified the Tribunal in writing, on 20 March 2024, that he had.
11. Also on 17 October, the Tribunal made an Unless Order to get the Claimant to provide further details of his unlawful deduction of wages complaint. The Unless order also ordered the Claimant to provide his medical evidence since a big part of his case was that he was a disabled person at the relevant time.
12. On 14 April the Claimant wrote to the Tribunal to inform us that he was ready for the hearing. The Respondent sent 9 witness statements to the Claimant on 16 April. The following day, 17 April the Claimant made the application for postpone this hearing.
13. The Claimant did not attend today's hearing. Today would have been the first day in the four day listing for the start of the final hearing. When the Tribunal clerk called the Claimant to ask why he was not in the hearing, he told the clerk that he was in hospital and directed him to his email of 17 April. Although when he was called, the Claimant told the clerk that he was in hospital, the Tribunal does not know what he was doing there and whether that related to his ability to attend today's CVP remote hearing. We had no medical evidence from the hospital or the Claimant in respect of his attendance in hospital today. This was a four day listing, so the hearing could have started tomorrow but the Claimant did not enquire whether this was possible or when else it could be heard.

14. Although the Claimant wrote to the Tribunal on 17 April, he did not provide any medical evidence to support his statement that he has a heart condition, which he expected would prevent his attendance at this hearing. In the history of this claim, the Claimant has relied on a few health conditions as making him a disabled person in accordance with Section 6, Equality Act 2010, but to date there has been no reference to any heart problems. His email of 17 April is the first time that his heart has been referred to in these proceedings.
15. The Claimant did not respond to the Respondent's email of 18 April resisting his application to postpone. The Claimant also never wrote to the Tribunal again to find out whether his application for postponement had been granted.
16. It is this Tribunal's judgment that the Claimant has failed to engage with these proceedings.
17. The Tribunal also has in mind that this case has already been assessed as a case with the three main complaints having little reasonable prospects of success. A deposit order was made on 17 October 2023.
18. It is now 2 years since this claim was brought by the Claimant. Some of the allegations are of things that were said to the Claimant. There is a very real danger that if the Claimant's application is granted, the witnesses' memories may have faded by the time of a new hearing. London East Employment Tribunals are very busy. At present, new claims are being listed for final hearing in the autumn of 2025. If this case were to be postponed, it is unlikely that it can be listed for hearing before 2025. If that happens, the Tribunal would be being asked to deliberate on allegations that would by then be 3 or 4 years old. This would not be in the interests of justice.
19. The Claimant did not provide a witness statement for this hearing. However, he did provide a document described as a disability impact statement, in which he also set out his claim for unlawful deduction of wages, harassment, failure to make reasonable adjustments and discrimination arising from disability. It is likely that the Claimant meant this document to be his witness statement in these proceedings.
20. We considered whether we can proceed with this hearing, in the Claimant's absence. Although that is allowed by Rule 47 (see above), we considered that as this was the Claimant's case, but he was not here, we needed more information about his case, which only he could provide. This is especially so in regard to disability status. when the Respondent does not accept that the Claimant is a disabled person for the purposes of the Equality Act 2010. He would have to give oral evidence on the substantial nature of the impairment, and other matters.
21. Taking all the above into consideration, the Tribunal concludes that although it is a drastic act to strike out a discrimination case, this Claimant has not pursued his claim, he has not attended hearings and not kept the Tribunal informed on his ability to attend hearings.
22. The Claimant has provided no evidence to support his application for postponement, either on 17 April or today.

23. It is therefore this Tribunal's judgment that the case should be struck out because, the manner in which the proceedings have been conducted has been unreasonable and vexatious – the Claimant could have made an application for postponement before 17 April and could have provided medical evidence to support it. It is also this Tribunal's judgment that the claim should be struck out because the Claimant has not actively pursued his claim- he did not respond to the Respondent's application for strike out and did not ask today for the case to b postponed or provided medical evidence in support of his application for postponement. The Tribunal also has in mind the age of the allegations in this case and the likelihood that any postponement would mean that the case would not be listed before 2025. For all those reasons, it is this Tribunal's judgment that it is no longer possible to have a fair hearing in respect of this claim.
24. This claim is dismissed. The hearing fixed for **24, 25 and 26 April 2024** is vacated.

Employment Judge J Jones
Date: 23 April 2024