



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Ms M Dimitrova

v

(1) Hilton UK Hotels Ltd
(2) Mr G Bahia

Heard at: Watford, by telephone

On: 17 June 2020

Before: Employment Judge Hyams

Representation:

For the claimant: Not present and (see below) not represented

For the respondents: Ms C Taunton, of counsel

JUDGMENT

The claimant's claims are dismissed.

REASONS

- 1 The claimant's claims were due to be heard over a 5-day period starting on 29 June 2020. However, the claimant had failed completely to comply with a number of directions which had been given for the purpose of preparing the case for that trial. As a result, the respondent applied for and, on 11 June 2020, the tribunal listed a hearing to take place on 17 June 2020. The purpose of the hearing was "To consider the respondent's application for a strike out of the claimant's claim".
- 2 That hearing was, as a result of the Covid-19 pandemic and the practical and legal difficulties arising from holding a hearing in public, necessarily held via

remotely, i.e. not in person. In the event it occurred by telephone and I conducted it.

- 3 The claimant did not participate in the hearing. She had instructed a firm of solicitors to act for her originally, and they had presented her claim form and were named in the claim form as her representative. That firm was Lock and Marlborough, Solicitors. Mr Edward Lock of that firm participated in the hearing of 17 June 2020, but he did so without instructions. He had, he told me, attended only because he thought that something like rule 42 of the Civil Procedure Rules 1998 applied to employment tribunal proceedings. He told me that his firm had been acting without instructions for about a year: the last time he had received instructions from the claimant was May 2019, he said. He had, he told me, sent every communication from the tribunal to the claimant but he had heard nothing from the claimant in response since May 2019. He told me also that he had written to the claimant a few weeks ago saying that she should respond and that if she did not do so then the firm would come "off the record". He had heard nothing from the claimant in reply.
- 4 There was in the file no copy of any written communication from the claimant herself to the tribunal about the hearing, or about why she had not complied with the directions which had been intended to prepare the case for trial.
- 5 It was the respondent's position that the trial could not fairly proceed on 29 June 2020. I was minded to agree with that position, if only because the trial would almost certainly have had to be postponed even if the Covid-19 pandemic had not occurred and a trial could have taken place in person without any difficulty.
- 6 In those circumstances, I concluded that rule 47 of the Employment Tribunals Rules of Procedure 2013 applied. That provides:

"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."
- 7 I considered that it was correct to say that Mr Lock had attended the hearing otherwise than as the claimant's representative. In my judgment he was attending only in order to avoid any kind of breach of duty as a solicitor on his or his firm's part. Certainly, he was attending without instructions. On both bases he was not representing the claimant, whether one read rule 47 literally or purposively, or both.
- 8 In the circumstances, in my judgment it was right to dismiss the claim under rule 47 of the Employment Tribunals Rules of Procedure 2013 because (1) the claimant had failed (apparently without good reason) to attend or arrange for

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representation at the hearing of 17 June 2020 and (2) it seemed clear to me that the claim was not being actively pursued.

Employment Judge Hyams

Date: 19 June 2020

JUDGMENT SENT TO THE PARTIES ON

26/06/2020

.Jon Marlowe

FOR THE TRIBUNAL OFFICE