



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr A Pearce

**Respondent**

Department for Work and Pensions

v

**Heard at:** Watford, by telephone

**On:** 20 June 2022

**Before:** Employment Judge Hyams, sitting alone

**Appearances:**

**For the claimant:** Not present or represented  
**For the respondent:** Ms Jennifer Gray, of counsel

## JUDGMENT

The claimant's claim of unfair dismissal within the meaning of section 103A of the Employment Rights Act 1996 is dismissed.

## REASONS

- 1 In these proceedings, the claimant claims that he was dismissed unfairly (and only that; only the "unfair dismissal" box was ticked on the ET1 claim form). The only details of the claim before the tribunal by 20 June 2022 were as stated in box 8.2 of ET1 claim form, the content of which was in these terms (and these terms only):

"I was unfairly dismissed from work and suffered extreme stress and ill health during the process. Representatives have lied and covered up wrong doing i exposed and I have been sacked due to speaking up against fraud and illegal activity. I secured immediate employment but I am earning significantly less money - my mental health has taken a severe downward turn due to the way the department dealt with me throughout this process."

- 2 There was a preliminary hearing on 19 April 2022. At that hearing, (1) a further preliminary hearing to take place on 20 June 2022 was listed and (2) the claimant was ordered to provide further information. The further information

was specified in order number 3 of those made at the hearing of 19 April 2022, which was in these terms:

“3. The claimant must write to the Tribunal and the other side by 11 May 2022 with the following information:

3.1 An indication of whether the claimant wishes to pursue a claim of Public Interest Disclosure Detriment (‘Whistleblowing’) under s. 47B or s. 103A Employment Rights Act 1996.

3.2 If so, he must provide details of;

3.2.1 The qualifying disclosure (s.43B) which he asserts,

3.2.2 The detriment and/or dismissal which he asserts”.

3 The claimant did not do anything by way of compliance with that order. Nor did he send any further communication to the respondent or the tribunal before sending an email to the tribunal and the respondent at 09:19 on 20 June 2022, in the following terms:

“Morning,

I’m very sorry but I was diagnosed with corona virus last week and he have been very unwell and continue to be so. I was hoping I would feel better by this morning but unfortunately I am not.

Is it at all possible to postpone and reschedule, I apologise for the late notice and inconvenience caused to all parties

Adam Pearce”.

4 I caused an email to be sent to the parties in response, stating that the hearing (which was being held by telephone) was going to go ahead and that the claimant would have to attend the hearing and make an application for the postponement of the hearing.

5 I then called the respondent’s counsel to initiate the hearing. Usually, I call the claimant first, but I wanted to minimise the claimant’s attendance if he was indeed ill. I then called the claimant. He did not answer the call, so I commenced the hearing with Ms Gray present only. I discussed the case with her on the basis that if the claimant attended the hearing after all then I would recommence the discussion, and after about 20 minutes I called the claimant again. He again did not answer my call.

6 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 (“the 2013 Rules”) 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 In all of the above circumstances, I decided that the claimant’s claim of automatic unfair dismissal within the meaning of section 103A of the Employment Rights Act 1996 should be dismissed. That was because
  - 7.1 the claimant had not complied with the order which I have set out in paragraph 2 above;
  - 7.2 he had not given any explanation for his failure to do, or asked for any extension of time for doing so;
  - 7.3 it appeared therefore that he was not pressing that claim; and
  - 7.4 in the circumstances it appeared to me to be in the interests of justice that the claim was dismissed.
- 8 If the claimant had genuinely good reason for not attending the hearing of 20 June 2022, then he can apply for a review of my above judgment, but unless he (1) puts before me cogent evidence in support of his assertion that he was suffering from Covid-19 on that day and, when applying for such reconsideration, (2) complies with the order set out in paragraph 2 above, his application for reconsideration will be likely to have no chance of success and therefore will be liable to be dismissed.

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Employment Judge Hyams  
Date: 22 June 2022

JUDGMENT SENT TO THE PARTIES ON

1 July 2022

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FOR THE TRIBUNAL OFFICE