



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr. Courtney Shaw**

v

**(1) SERCO**

**(2) Sandwell M.B.C trading  
as Templink**

**Heard at: Birmingham**

**On: 11 March 2024**

**Before: Employment Judge Wedderspoon**

**Members : Mrs. S. Fritz  
Mrs. S. Bannister**

**Representation:**

**Claimant: No attendance**

**Respondent (1): Mr. Ian Moss**

**Respondent (2): Mr. Carr, Counsel**

## JUDGMENT

1. The claimant's application to postpone the final hearing is refused.
2. The claim is dismissed.
3. By 4p.m. on 18 March 2024, the claimant is ordered to show cause why he should not pay the second respondent's costs of attendance at the Tribunal on 11 March 2024.

## REASONS

1. By claim form dated 17 February 2021 the claimant brought proceedings against both the first and second respondents for unfair dismissal, race discrimination, notice pay, holiday pay and parity of pay pursuant to the Agency Worker Regulations 2010. The claim was subject to a preliminary hearing before Judge Hindmarch on 3 October 2022. A list of issues was prepared, and case management directions were provided. On the first day of the final hearing listed on 24,25,26 July 2023 before Employment Judge Dean the case was postponed to 11,12, and 13 March 2024 because the claimant was served late with the file of documents and was unable to prepare his case. The claimant was present at the July 2023 hearing and was aware of the resumed hearing dates.
2. The claimant failed to attend the first day of the resumed hearing. The second respondent had been in correspondence with the claimant about the bundle of documents but received no response from the claimant. On 28 January 2024 the second respondent requested the claimant to confirm

whether he intended to attend the final hearing listed for 11 March 2024. The claimant did not respond.

3. By 10.05 a.m. on the first day of the three day final hearing the claimant had not attended the Tribunal or communicated with the Tribunal or the parties to say that he was not attending. The Tribunal clerk contacted the claimant by telephone on three occasions but there was no answer. The Tribunal clerk contacted the claimant by email on 10.18a.m. stating "You have a hearing at the Employment Tribunal this morning. Could you confirm if you will be attending the hearing please." The claimant replied at 10.33 a.m. stating that he has a solicitor but was informed on Thursday of last week that he needed to pay a fee for a barrister and had been in contract with Stuart Pleags and ACAS about this. He was told that Mr. Pleags would be back on 18 March. He requested that he should get more time and wanted his paperwork back "to get his stuff together". This was the first time the Tribunal and the other parties had heard from the claimant that he wished to postpone the final hearing of the case.
4. Both respondents requested that the claimant's postponement application be refused and that the case be dismissed. The claimant had not informed either side he wished to postpone the case despite attempts by the second respondent as to whether he wished to proceed. There was nothing exceptional about attending the Tribunal in the absence of a legal representative. The claimant bore the burden of proof of establishing his claims and he was not here to do so. The second respondent requested costs for their attendance today on the basis that it was unreasonable to fail to attend and fail to notify the Tribunal and the other parties he was not attending.
5. Pursuant to rule 30A of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 ("the 2013 Rules") where a party makes an application for postponement of a hearing less than seven days before the date on which the hearing begins the Tribunal may only order the postponement where (a) all of the parties consent to the postponement and (i) this is practical and appropriate for the purposes of giving the parties the option to resolve their disputes by agreement or (ii) it is otherwise in accordance with the overriding objective; (b) the application was necessitated by an act or a mission of another party or the tribunal; or (c) there are exceptional circumstances.
6. Pursuant to Rule 47 of the 2013 Rules if a party fails to attend or 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. The overriding objective of the 2013 Rules reminds the Tribunal that it must 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 the proceedings (d) avoiding delay so far as compatible with proper consideration of the issues and (e) saving expense.

8. Pursuant to rule 76 (1)(a) of the 2013 rules a tribunal may make a cost order would you consider whether to do so where it considers that a party has acted unreasonably in the way that the proceedings have been conducted. Tribunal is satisfied that a party has conducted proceedings is unreasonable, it has a discretion as to whether to award costs and if it does so has a discretion to order up to £20,000 cost award or if in excess of £20,000 to refer this to the county court for taxation (see Rule 78 of the 2013 Rules).

Postponement application

9. The Tribunal refused to postpone the final hearing. The respondents did not consent, and the application was not necessitated by an act or omission of the respondents or the Tribunal. Further the Tribunal was not satisfied there were exceptional circumstances for the postponement application. Despite attempts by the second respondent to contact the claimant prior to trial to discuss the contents of the final bundle and seek confirmation that the claimant was intending to attend the final hearing, as far back as January 2024, the claimant did not engage with the second respondent or respond to its reasonable enquiries.
10. The claimant made an application to postpone the hearing following the Tribunal clerk requesting his confirmation of attendance at 10:18 a.m. on the first day of a three day listing. The claimant's explanation at 10.33 am that last Thursday he became aware he was required to incur counsel's fee for attendance and needed more time to prepare was not "exceptional circumstances" within the rules. The Tribunal regularly has litigants in person that appear before it and are willing and do make reasonable adjustments to the Tribunal procedure to assist those unfamiliar with the legal process. The claimant's very late application to postpone the hearing has caused the second respondent to incur costs of the attendance of legal representation and witnesses. The Tribunal concluded that the reasons put forward by the claimant are not exceptional and dealing with the case fairly and justly it was not in accordance with the overriding objective to adjourn the case to another day. This was the second listing of the final hearing; the claimant had the final bundle of documentation since last July 2023; the case now dates back to a dismissal in October 2020. Judicial and Tribunal resource is scarce and it was not in the interests of justice to adjourn this case to another three days.

Non attendance

11. The Tribunal determined to dismiss the claim. The claimant having failed to give notice that he was not attending the hearing until after the hearing had commenced at 10.33 a.m. on the first day of the listing, the Tribunal determined that the claimant had failed to attend the final hearing. Pursuant to Rule 47 of the 2013 Rules the Tribunal has a discretion as to whether to dismiss the claim or proceed in the absence of the party. The Tribunal determined pursuant to the overriding objective it was in the interests of justice to dismiss the claim. There is a dispute between the parties as to whether the claimant is an employee; whether he has a right to bring an unfair dismissal complaint and whether he was discriminated because of his race. The claimant bears the evidential burden of establishing a prima facie case in respect of his discrimination complaint and must provide evidence to establish his employee status. The claimant

had not attended to establish a prima facie case. In the circumstances the Tribunal found that it was not in the interests of justice to hear the case in the claimant's absence and the claim was dismissed.

#### Costs

12. A failure of a party to attend the final hearing and make a postponement application (not on exceptional grounds) following the commencement of the hearing amounts to unreasonable conduct of the proceedings in accordance with Rule 76 (1)(a) of the 2013 Rules. The failure to communicate with the Tribunal or parties that a claimant is not intending to attend at a late stage causes other parties involved in the litigation to incur costs and is a waste of valuable Judicial and Tribunal time; other cases could have been heard by the Tribunal. In the circumstances the claimant must by 4 p.m. on 18 March 2023 show cause (that is provide reasons) as to why he failed to attend the first day of the hearing and why he failed to apply to postpone the final hearing at such a late stage. The Tribunal will consider the claimant's reasons and decide on the papers whether it should exercise its discretion for the claimant to pay the second respondent's costs of the attendance on the first day of the final hearing.

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11 March 2024

**Employment Judge Wedderspoon**

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