



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Rybak

Respondent: Forza Foods Limited

Heard at: Leeds **On:** 8 August 2017

Before:
Employment Judge JM Wade

PUBLIC PRELIMINARY HEARING

Representation

Claimant: No appearance
Respondent: Ms B Worthington (solicitor)

JUDGMENT

- 1 The claimant's complaint of disability discrimination is dismissed.
- 2 The claimant's complaint of constructive unfair dismissal is dismissed pursuant to Rule 47.

REASONS

1 Employment Judge Lancaster ordered that the claimant provide further particulars of her disability discrimination complaint by 3pm on 31 July 2017. Those particulars were today not on the Tribunal file and had not been provided to the respondent (a further requirement of the order). His order said this: "the above Order is an **Unless Order**" made pursuant to Rule 38. Unless it is complied with by the date and time specified the claim of disability discrimination shall be dismissed without further order.

2 Today the claimant did not attend. She did not attend the hearing before Employment Judge Lancaster on 18 July 2017 but on that occasion sent an email apologising for her non attendance and attributing that to a stomach upset and nerves. Her resignation arose in circumstances of disciplinary proceedings concerning her leaving work early and certifying absence by reason of a stomach upset, when in fact she had flown to Poland and was not unwell.

3 At 10.03 this morning Mr Liddle our clerk telephoned the claimant's mobile

telephone and left a message enquiring as to any reasons for her non attendance. The voicemail message to him was that the claimant was on another call. He then checked to make sure that call was not to the landline of the Tribunal and that there were no emails or other communication giving reasons for her absence.

4 I read out Rule 47 which 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. The claimant had been warned this hearing may proceed if she did not attend. The respondent indicated that it may apply for costs in these proceedings.

5 I consider that efforts have been made to enquire as to the whereabouts of the claimant; that without information there is the possibility that she has experienced some catastrophe preventing her attendance. I also weigh in the exercise of my discretion that this is the second hearing at which she has not attended to progress her claim, and that she has failed to comply with an Order, and that the respondent has been put to expense. I also consider that the overarching merits of the claim on the claimant's pleaded case, and undisputed facts, are weak.

6 I consider it is in the interests of justice to dismiss the claim for non attendance, rather than to proceed and determine its merits in the absence of the claimant. That has the advantage of minimising the time spent by the Tribunal, and therefore costs of both the respondent and the Tribunal. That is in accordance with an aspect of our overriding objective.

Employment Judge JM Wade

Date 8 August 2017