



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr C Whyte**

**v**

**Dacorum Borough Council**

**Heard at:** Watford

**On:** 9 January 2018

**Before:** Employment Judge Bedeau  
Members: Mrs S Goldthorpe  
Mrs S Johnstone

## **Appearances**

**For the Claimant:** Did not attend nor represented  
**For the Respondent:** Mr J Davies, Counsel

## **JUDGMENT**

All claims against the respondent are dismissed under Rule 47 Employment Tribunals (Constitution and rules of Procedure) Regulations 2013, as amended, as the claimant failed to attend the hearing and gave no reason for his absence.

## **REASONS**

1. The claimant presented his claim form to the tribunal on 30 November 2016, in which he claimed against the respondent that he had been unfairly dismissed; that he had been discriminated for a reason arising in consequence of his disability; and that there had been a failure to make reasonable adjustments.
2. In the response, presented to the tribunal on 9 March 2017, it is averred that as regards the claimants claimed disabilities of carpal tunnel syndrome and a shoulder injury, they are not admitted. In relation to the substantive claims, they are denied.
3. The parties attended a preliminary hearing held on 9 May 2017 by Employment Judge Heal who clarified the issues in respect of the three claims and gave case management orders made. Of significance is the

order in respect of witness statements. The parties were ordered to mutually exchange witness statements on or before 2 October 2017. The case was listed for a four-day hearing to start today.

4. The claimant had been represented up until 21 December 2017, by Thompsons solicitors. Thereafter, they gave the claimant's contact details to the tribunal and to the respondent's legal representatives. A copy of the email was also sent to the claimant.
5. On 3 January 2018, the respondent's representatives applied to strike out the claimant's claims or, alternatively, an unless order. The issue being that they had informed the claimant on 2 January 2018, that they were in a position to exchange witness statements and invited him to contact them urgently. No response was received from him. If the tribunal was not minded to make a strike out order, but was prepared to make an unless order, it asked that the claimant should be ordered to exchange witness statements by 4pm Thursday 4 January 2018. On that day that respondent's representative emailed the tribunal stating that statements were not exchanged and that the claimant was informed that it was prepared to exchange witness statements by 12 noon the following day, 5 January 2018. They wrote that if statements could not be exchanged by the extended date the respondent would then be concerned about the lack of adequate time available to prepare for the hearing today.
6. The application came before Regional Employment Judge Byrne on 8 January who gave instructions that it should be considered by the tribunal at the start of the hearing.
7. The claimant sent an email dated 3 January 2018, at 5:19pm, to the respondent's representatives, stating that he had witness statements in his possession but had no idea how to conduct employment tribunal proceedings and was waiting legal advice.
8. Mr Davies, counsel on behalf of the respondent, informed the tribunal that on Friday 5 January 2018, a servant or agent of the respondent attended at the claimant's home address and formally served on him its witness statements and another bundle of documents. The claimant told the representative at the time that he had in his possession draft witness statements which would be served. However, they were not served.
9. At 10am this morning the claimant was not present in the building. The tribunal gave the clerk instructions at 10:05am when the claimant did not appear, to contact him using the contact details on the tribunal's file. The clerk informed the tribunal at 10:15am that she had rung the number on the file but her call was not answered. She had also checked all recent email correspondence sent to the tribunal but none was received by the tribunal from him.
10. The current position being that the claimant failed to exchange his witness statements and failed to attend this hearing without giving a reason.

11. The tribunal checked its file and the only relevant documents are the claimant's claim form; the preliminary hearing case management summary and orders; his schedule of loss, sent to the tribunal on 1 June 2017; emails dated 7 and 29 June 2017 from Thompsons solicitors stating that they were chasing the claimant's medical records; and, finally, the email dated 21 December 2017 from the claimant's legal representatives coming off the record. There is no document that might explain his absence and his failure to comply with the order in respect of the exchange of witness statements.
12. Mr Davies applied to the tribunal for the claims to be dismissed under Rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.
13. Rule 47 in relation to non-attendance of a party states:

“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 enquiries that may be practicable, about the reasons for the party's absence.”
14. In the case of Cooke v Glenrose Fish Company [2004] ICR 1188, the Employment Appeal Tribunal held that in relation to an absent party, that the tribunal should consider contacting the absent party to ascertain the reason, or reasons, for their non-attendance. That judgment has now been incorporated in Rule 47.

## Conclusion

15. Having considered the history of the case as set out above, we have come to the conclusion that the claimant had deliberately absented himself from the hearing without an explanation. He was aware that he had to serve his witness statements on the respondent and had consistently failed to do so. Notwithstanding that the time for exchange had been varied on more than one occasion. He knew about the hearing and failed to inform the tribunal that either he was unable or unwilling to attend. We further conclude that he had not actively pursued his claims to a final hearing.
16. For all those reasons, we have come to the conclusion that his claims against the respondent should be dismissed under Rule 47.
17. Mr Davies applied for the respondent's costs. In light of this we ordered the following:

## ORDERS

18. The respondent shall serve its costs application together with a costs schedule on the claimant with a copy sent to the tribunal by not later than **4pm 23 January 2018.**

19. The claimant shall reply to the respondent's costs application and shall set out a statement of his means, namely his current earnings; his monthly outgoings; any savings; the value of any property/ies he owns and the equity in those property/ies, by not later than **4pm 6 February 2018**, on the respondent's legal representatives with a copy sent to the tribunal.

**CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

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Employment Judge Bedeau

Date: 1/2/2018

Sent to the parties on: .....

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For the Tribunal Office