



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S N Ahmed

**Respondent:** Nottingham Healthcare NHS Foundation Trust

**Heard at:** Nottingham

**On:** Monday 18<sup>th</sup> and Thursday 21<sup>st</sup> September 2017

**Before:** Employment Judge Heap

**Members:** Mrs. C Brown  
Mr. D J O'Dowd

## Representation

**Claimant:** Did Not Attend

**Respondent:** Mr. M Brewer - Solicitor

# JUDGMENT

The claim is dismissed under the provisions of Rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 upon the non- attendance of the Claimant at the hearing.

# REASONS

1. This claim was issued as long ago as 11<sup>th</sup> June 2015. Since that time, there have been two unsuccessful attempts to hold a substantive hearing. The first of those came before us in December 2015. At that time, we adjourned the hearing on the application of the Claimant on health grounds. Our reasons for that were as set out in our Orders made at the time and therefore are not rehearsed here. Following that adjournment, the hearing was relisted for eight days commencing on 18<sup>th</sup> September 2017. That day was to be a reading day and the parties were not required to attend. We were due to commence hearing the evidence in the case at 10.00 a.m. this morning, as 19<sup>th</sup> and 20<sup>th</sup> September were days when the Tribunal was not due to sit.

2. However, during the course of yesterday the Tribunal received an application from the Claimant for what he referred to as a postponement of the hearing today. In this regard, the Claimant telephoned the Tribunal seeking a postponement on medical grounds. He was, quite rightly, informed

by the clerk that he spoke to that he would need to provide medical evidence and a letter from a medical practitioner to support his application. The Claimant did not provide that evidence but followed up his telephone call with an e-mail timed at 12:13 pm. In that e-mail, in short terms, the Claimant indicated that he believed that he was suffering from Norovirus. He requested a postponement of the hearing which was due to commence at 10:00 am today on the basis of that condition.

3. Upon that application being referred to me I refused the application and caused the Claimant to be sent a letter both by post and by e-mail timed at 14:07 dealing with that refusal. That letter made it clear that the postponement application that the Claimant had made was refused and that if he wished to renew the application, then medical evidence would be required. In this regard, in accordance with the relevant Presidential Guidance, the letter required the Claimant to provide medical evidence by not later than 9:30 a.m. this morning if his application was to be renewed.

4. That medical evidence was to set out that the Claimant was prevented from attending the hearing as listed; the condition which he was suffering from and which prevented his attendance and the prognosis/duration of that state of affairs. That medical evidence has not been forthcoming. Instead, the Claimant telephoned the Tribunal at approximately 9:20 a.m. this morning to inform the clerk to whom he spoke that at some stage paramedics had attended his house and had taken him to his General Practitioners surgery. He further said that he had now been told he could be suffering from Gastroenteritis, Norovirus or a perforated appendix. He indicated that he had a medical certificate but was unable to supply it today. No explanation was given as to why he was unable to supply the medical certificate but he indicated he would supply it as soon as possible, although no time frame was provided for that.

5. Although we have no written application before us, we have taken the note of the Claimant's call as a renewed application for an adjournment of these proceedings. It is strongly opposed by Mr. Brewer on behalf of the Respondent. Having heard from him and considered the matter carefully ourselves both before and after his representations, we have no doubt in the circumstances that that renewed application should be refused.

6. We say that on the basis that the Claimant was informed yesterday, and he would also have been aware from the Orders that we made in December 2016 when he made his earlier postponement applications, of the need to supply medical evidence to support any postponement or adjournment application. That is embodied in the Presidential Guidance, a document which we had previously drawn to the Claimant's attention, and the requirement for supporting medical evidence is a matter which we consider essential in this case and therefore we see no reason not to follow the Presidential Guidance on this occasion.

7. The Claimant was told quite clearly yesterday, and in good time before the hearing today, what supporting evidence was required. That was to be a letter from his General Practitioner whom he told the clerk today that he had in fact already seen. Indeed, the Claimant also says in fact he has a medical certificate but he has not provided it despite the Order that I made yesterday. No reason has been given for the fact that that medical certificate has not

been supplied before the hearing this morning, despite it apparently being in the Claimant's possession. We therefore have nothing before us to substantiate the Claimant's contention that he is again prevented by reason of ill health from attending the hearing today. Particularly, we have nothing to satisfy us on the question of what condition or conditions he is in fact suffering from, why any such condition prevents him attending the hearing and the duration of that state of affairs.

8. We must set all of that against the backdrop of the matter generally and in this regard we have taken the following matters into account:

9. Firstly, there is force in the submission made by Mr. Brewer that it would appear unlikely if the Claimant is suspected of having a perforated appendix that he would not have been admitted to hospital. Such a condition would be a serious matter indeed but the Claimant was not it seems on his account given to the clerk this morning, taken to hospital let alone admitted. That is a particular curiosity which causes us concern, particularly in light of the failure to provide medical evidence to support the application. It casts doubt on the legitimacy of the information that the Claimant has supplied to us for non-attendance which we cannot therefore accept without evidence from a medical practitioner in support.

10. Secondly, we have in mind the refusal, or at the very least complete failure, of the Claimant in recent times to confirm to the Respondent whether or not he intended to attend at this hearing. He has been asked that question on a number of occasions but has never provided confirmation of his intention to attend. That again is a curious feature of this matter given that before the application yesterday, the Claimant had not suggested that he was prevented either by ill health or other reason from attending. The timing of his application when viewed against the failure to answer the simple question of whether he was going to attend the hearing today is therefore a matter of some concern to us.

11. Furthermore, there is the Claimant's own later failure to confirm his attendance to the Tribunal, a matter which it appears flowed from the request for confirmation of attendance from the Respondent. In this regard, the Claimant did not suggest that he was unable to attend but remarked in correspondence that he would confirm the matter of his attendance either on Monday afternoon or by no later than this Tuesday morning after a consultation at the Queens Medical Centre ("QMC"). That confirmation was never forthcoming and the Claimant does not suggest that the condition(s) that he now contends are to blame for his non-attendance today had anything to do with his consultation at the QMC. Indeed, his correspondence appears quite the opposite.

12. Thirdly, we take into account the fact that there had been a previous last minute adjournment of a substantive hearing on health grounds, albeit at that time with regard to different medical conditions. That application was also made following the reading in day at the December 2016 hearing. Again, the timing of this further application in view of the history of the matter is therefore one of concern. Again, we take into account here the fact that the Claimant was well aware of the need to provide medical evidence to support a postponement application but none has been provided. No good reason has been given as to why that has not been supplied, particularly in

view of the fact that the Claimant himself contends that he already has a medical certificate in his possession.

13. Finally, this was a claim which was issued as long ago as 11<sup>th</sup> June 2015. It is already at risk of becoming stale, if indeed it has not already. If there is a postponement of this hearing then two things are inevitable. The first of those is that it cannot be heard by this existing Tribunal due to the retirement later this year of one of the members on the panel. It would therefore require a fresh panel who would again need to spend time reading into the papers.

14. The second issue is that the current listing for multi-day cases is now running well into next year. It will therefore be at least the third anniversary of presentation of the claim before it can possibly be heard. There is in this regard the risk of the matter becoming stale and the cogency of the evidence being affected, but also the question of the emotional investment in this matter for the considerable number of witnesses who have attended on two separate occasions to give evidence for the Respondent. There is also Mrs. Djatis who appears, reluctantly it seems to us, as a witness for the Claimant under the terms of a Witness Order. Many of those witnesses have had allegations of discrimination levelled at them. Those are serious and worrying matters and we must also balance the position of those witnesses and the fact that they are entitled to expect a fair and expedient hearing in mind when considering how to deal with this claim today.

15. There is therefore in our view a very distinct question as to whether a fair hearing of this matter is still possible, either on account of the Claimant's ill health/intention to attend a hearing or otherwise with regard to the cogency of the evidence before us. Indeed, we have significant doubts whether a hearing, let alone a fair hearing of this matter, will in fact ever take place. We have in mind in that regard an earlier medical report from the Claimant's own General Practitioner which raised some questions over his ability to participate at any stage.

16. It seems to us in view of those matters that this is a case which must now be disposed of one way or the other without further delay and the renewed but still unsupported application for an adjournment of the hearing is therefore refused.

17. This brings, however, the question of whether we should dismiss the claim under Rule 47 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 or whether we should hear the claim in the Claimant's absence. We are satisfied as a Tribunal that we should adopt the former course. In this regard, we have reminded ourselves that the initial burden of proof is on the Claimant in all of the complaints which he brings. We have read his witness statement and it does not particularly assist us in many areas of which he complains in relation to allegations of discrimination. Indeed, many of the complaints that he advances are not even touched upon in either witness statement that he has provided during the course of the claim. In view of that and the cost to the public pursue, we do not consider it proportionate or in accordance with the overriding objective to require all of the attending witnesses for the Respondent to give evidence before us. We have already seen and considered their witness statements during the course of our reading in. The primary burden of proof rests upon the

Claimant and on the basis of the Claimant's witness statements and the documents before us, that burden it appears to us will certainly not shift without the Claimant here to give live evidence. That is not least in respect of the matter of disability which remains a live issue in relation to a number of the Claimant's medical conditions but in respect of which his witness evidence is all but silent.

18. Therefore, having taken into account all available explanations and evidence, or perhaps more accurately lack of it, that we have from the Claimant for his absence, we are entirely satisfied that the proper course in these circumstances is that the claim should be dismissed under Rule 47 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 and for those reasons this claim is now at an end.

---

Employment Judge Heap

21<sup>st</sup> September 2017

JUDGMENT SENT TO THE PARTIES ON

21<sup>st</sup> September 2017

FOR THE TRIBUNAL OFFICE