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## EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Gates  
**Respondent:** Tesco Stores Ltd  
**Heard at:** East London Hearing Centre  
**On:** 31 May 2018  
**Before:** Employment Judge Housego (sitting alone)

### Representation

**For the Claimant:** Did not attend and was not represented  
**For the Respondent:** Mr J Feeney, of Counsel

### JUDGMENT

**The judgment of the tribunal is that the claim is dismissed.**

### REASONS

1. The claimant did not attend and was not represented. A letter giving notice of the hearing was sent to the claimant on 14 February 2018, by email. The file does not make clear whether the letter was also sent by post. I assume not, as that is to err on the side of the claimant.

2. I telephoned the claimant. He said that he had not received the notice of hearing. He had problems with his foot. An operation had gone wrong and had to be repeated. He had now had 3 operations and his little toe had been removed 2 weeks ago. He was due to go back to the hospital in 5 weeks. He could not work, walk or drive. He had written in February to ask for a postponement and not heard anything since. He had not thought to enquire what the position was as he had been

concentrating on his problems with his foot. Once that was sorted out he intended to pick up the case again.

3. I checked that the file had the correct address and email address for him, and he confirmed that they were correct.

4. I have considered the file. The hearing was first listed for 02 February 2018. On 29 January 2018 the claimant emailed the Tribunal, reproduced here:

“Hi it’s Peter gates, I can’t make this Friday as I have to go hospital for a operation and on Wednesday, please can we rearrange for a later time in may please.”

5. That application was granted and on 30 January 2018 the claimant was telephoned to say this was so. On 01 February 2018 a new hearing date of 20 February 2018 was set, and was emailed to both parties.

6. The claimant received this, as he emailed the Tribunal on 01 February 2018 and said:

“Hi, on the email I sent over saying I couldn’t make this Friday as I’ve got an op, when I spoke to the court they said put on there a date when I should be Ok.

I put may.

Please give me a call when you can.

Thanks Peter Gates”

7. On 01 February 2018 the Tribunal rang the claimant and said that he should supply some medical evidence and write to request a postponement. The claimant said that he had done so. He emailed the email (above) again at 17:03 on 01 February 2018.

8. On 05 February 2018 the claimant emailed the Tribunal:

“I’ve sent an email saying I couldn’t make the court date as ive an operation that’s gone wrong, can someone please call me on 0779xxx0061.

I would like to rearage the date in may please as it’s going to take me a long time to be fit again, thank you for all your help.

Thanks Peter Gates”

9. There is an email of 07 February 2018 from the claimant (the same email address to which the notice of hearing was sent). It attached a letter from the hospital and a Med3 form. It states (and the following is an exact replication):

“Hi my name is Peter, I had an operation on the 9th of January and the operation did not go to plan.. I’ve got to have me toe removed and should of had that done on 31th of January, but they couldn’t remove it as they had to cut a bone in my foot. The hospital are not sure when the are removing it it and have gave me a sick note for another month.

Please cane we postpone the court date to may..

That will give me the time to have the operation and the time to recover..

Thank you Peter Gates”

10. The respondent did not object, and a Judge agreed to the postponement.
11. On 14 February 2018 the Tribunal emailed the claimant (at the correct email address) the letter giving notice of this hearing.
12. The claimant’s last contact with the Tribunal was the email of 07 February 2018 (above) in which the claimant asked that the hearing date of 20 February 2018 be postponed to May 2018.
13. Rule 47 states:

“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.”
14. Given the use of the correct email address and the receipt of the other emails (and the one to the respondent was received so that it was definitely sent) on the balance of probabilities the email was received by the claimant but overlooked by him.
15. If it was not received by him, the claimant has a responsibility for the management of his claim. It would not have been reasonable of him to think that the claim was now postponed indefinitely, until he contacted the Tribunal to say he was fit. But that was not the impression he was under. He had asked several times for the hearing to be in May 2018. He had no reason to think that his request had not been granted. He had not attended on 20 February 2018, following his request to postpone the hearing from that day, and he must have known that it was postponed. When the hearing date of 01 February 2018 was postponed he got a new hearing date almost immediately afterwards. He must have appreciated that a new date would be set.
16. This hearing date is on the last day in May 2018. It can come as no surprise to the claimant that it was listed in May as that was what he had asked for. Nor had he written in to say that he was still unable to attend.

17. It is the duty of parties to assist in meeting the overriding objective, set out in Rule 2. It is not consistent with that objective for the claimant to think that he could simply leave his claim on ice until he contacted the Tribunal (as he now suggests), and it is inconsistent with his repeated request for a hearing date in May 2018.

18. The respondent has incurred the costs of attending the hearing and in briefing Counsel. I have to consider also fairness to them.

19. Taking account of all these circumstances I decide that even if the claimant did not receive notice of the hearing the claim should be dismissed under Rule 47.

Employment Judge Housego

12 June 2018