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EMPLOYMENT TRIBUNALS

Claimant:	**Mrs L Williams**
Respondent:	**Hope Superjobs Limited**

Heard at:	**East London Hearing Centre**
On:	**Thursday 13 September 2018**
Before:	**Employment Judge Prichard**
Members:	**Ms S Campbell** **Mr L O'Callaghan**

Representation

Claimant:	Mr A McKenzie, Deptford Law Centre
Respondent:	Mr B Hendley, advocate, Avensure Limited Manchester

JUDGMENT

It is the unanimous judgment of the tribunal that this case must be adjourned. It is not part-heard and can be heard by any panel, Wednesday to Friday 22 - 24 May 2019 at the East London Hearing Centre starting at 10.00am.

REASONS

1   This case is in a lamentable state of preparation. It is utterly culpable that Mr Hendley and Ms McKenzie did not realise what a poor state of preparation it was in. They should have jointly applied for a postponement before the day of the hearing and not cause this major waste of time and resources for their clients and the tribunal.

2   The claimant worked for Hope Superjobs on a zero hours contract. She was an employee. The respondent places carers in their clients' homes, getting continuity of carer as far as possible. The claimant lives in Lewisham and most of the work that was allocated to her was in South London.

3	The respondent is based in Ilford where they have clients of a different sort, including young clients. Most of their work is local to their office in Ilford, which is why the case is being listed at East London although the claimant did not work in Ilford. The clients that she was dealing with were either funded by local authorities or under the NHS continuing care scheme. There was a significant number of end of life cases. Other clients had serious disability issues.

4	The claimant worked for the respondent from 14 August to what she says was 3 December 2017. The respondent's account is that she is still employed.

5	The claimant told the respondent's Simone Edwards, with whom she had a chatty personal relationship, that she was pregnant. She has now given birth to a baby boy on 24 April 2018, two weeks early. It was her second child she already has a six year old child. She is currently on maternity pay and has no shifts. The respondent says that she was offered shifts but did not do them. There is a major dispute of fact here.

6	When the case first started this morning for an unfortunate reason before a different judge, which had to be changed, Judge Brown advised the parties that they should send in screen shots of text correspondence between the parties, and that they should submit comprehensive strings of texts, not just selections.

7	The hearing of evidence started this morning. I have seen strings of texts on the phones of Simone Edwards and of the claimant. There is a huge amount of text correspondence which is probative and relevant evidence and without which the tribunal will not be in a position to give a well-informed judgment. Both parties are in breach of the duty of disclosure in tribunal proceedings.

8	The respondent asserts that they were subject to a bombardment of texts and phone calls. Whether that is truly so depends on the content of the texts. You cannot see the content of a phone call, but you can see the fact of it from records. Perhaps texts were so frequent because the respondent refused to answer reasonable enquiries, thus making the claimant impatient. The tribunal will not be able to make a sound judgment without seeing the content of the texts and the phone records.

9	The most comprehensive text records seem to be on the claimant's phone from what I have seen. I looked at her phone and the texts go back to August. The earliest text I can see on Simone Edwards phone was 4 November. The best selection of texts would therefore have to come from the claimant's side.

10	The tribunal works with paper exhibits. You cannot just bring in a phone. There will be six people who need to look at these texts simultaneously, and they must be on paper. One way to do this is to compile screen shots and printouts without gaps, and then photocopy them. Thus, there would have to be slightly overlapping separate screen shots.

11	Alternatively, I have seen it done more easily with some quite cheap third party software which will transcribe strings of texts off a phone, without losing the content, times, or dates. That is probably cheaper and easier when dealing with volumes like this.

12   The bundles which were given to the tribunal were in a shocking state. Some were in a random order. Some bundles were missing some pages. None of the pages were numbered. When we started to try to number ours we realised that there was a mixture of single and double-sided sheets, and in a different order as between the bundles. Overall, it is clear that the bundles contained about one quarter of the available relevant disclosable evidence.

13   Having talked to the representatives, I feel I need to give this basic advice. Experience shows that one needs to compile a single master bundle, number the pages (not too near the edge of the page), and <u>then</u> do the bulk photocopying.

14   There is a duty of disclosure on both parties. These texts, and available phone records are disclosable in these proceedings. It has not been done. There is no time within this listing window for it to be done. It is a big task.

15   The parties should have recognised this and made a joint request for a postponement stating the poor state of preparation frankly. A postponement would have been granted.

16   This all came about in part because Simone Edwards replied to the ET3 without telling anybody else there at the respondent about the case, in particular Marlene Joseph. Mr Hendley picked the case up not because he was informed by either of them about it, but from the tribunal press list. That list does not give an advocate more than 2 weeks' notice of an impending case. He then approached the respondent and offered his services, but he is based in Manchester and does not seem to have made enquiries or found out what he needed to do.

Employment Judge Prichard

14 November 2018