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# THE EMPLOYMENT TRIBUNAL

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**BETWEEN**

**Claimant**

**and**

**Respondent**

**Mr J Chinyangarara**

**Northern Commercials  
(Mirfield) Limited**

**Held at London South**

**On 27 March 2019**

**BEFORE: Employment Judge Siddall (Sitting Alone)**

## **Representation**

**For the Claimant: No attendance and No Representation**

**For the Respondent: Mr A Smith, General Manager**

## **JUDGMENT**

The decision of the tribunal is that the claim that the Respondent failed to permit the Claimant to bring a companion to a disciplinary hearing in breach of section 10 of the Employment Relations Act 1999 is dismissed.

All claims brought by the Claimant now having been either withdrawn or dismissed, the proceedings under the above case number are now at an end.

## **REASONS**

1. The Claimant initially brought a number of claims against the Respondent in relation to his dismissal on 9 August 2017, including claims for race discrimination, victimisation, harassment, unlawful deduction from wages, failure to pay notice pay and for holiday pay. By the time of this hearing, all of these claims had been either dismissed or withdrawn. There was one remaining matter to consider: whether the Respondent had failed to allow the Claimant to be accompanied at the disciplinary hearing which led to his dismissal. The position in relation to the claims was clearly set out in a letter to the Claimant from the tribunal dated 19 March 2019. That letter also advised him that a three-day hearing due to start today would be reduced to a three hour hearing, to deal with the one remaining claim.
2. The Claimant did not attend the hearing today. At 10am I asked the clerk to check the offices and check to see if we had received any message from him. At 10.25am the Claimant had not arrived and the clerk advised that no message had been received. Mr Smith had attended on behalf of the Respondent and I decided to proceed in the Claimant's absence under rule 47.
3. The Respondent had supplied a bundle of documents and a witness statement for Mr Smith which I read before the hearing commenced.
4. Mr Smith gave evidence for the Respondent. He was aware of the duty to allow an employee to be accompanied. His evidence was that the Respondent had re-arranged the hearing so as to allow the Claimant to bring a companion. He was not able to produce a copy of a formal letter inviting the Claimant to the disciplinary hearing which took place on 8 August. However he referred me to a letter that he sent by email to the Claimant on 7 August which noted that the Claimant had failed to attend a previous hearing (fixed for 3 July) and so it had been re-arranged for 8 August. The letter states: 'you have had sufficient time to arrange either a work place colleague or trade union official to be in attendance at the hearing'. Mr Smith concludes 'I would therefore ask that you email me by no later than 8 August 2017 @ midday to confirm you attendance at the hearing and details of your chosen companion'.
5. The Claimant attended the meeting on 8 August 2017 but did not bring anyone with him. Following the meeting, he was dismissed.

6. On the basis of this evidence I find that the Claimant was aware of his right to bring a companion to the disciplinary hearing. The Respondent arranged a second date for the hearing in order to give the Claimant the chance to attend with a colleague or trade union representative. Mr Smith's letter of 7 August confirms the Claimant's right to bring a companion with him.
7. Section 10 of the Employment Relations Act 1999 states that if an employee makes a reasonable request to be accompanied at a hearing, the employer must permit the worker's companion to attend and participate.
8. There is no evidence that the Respondent refused to allow the Claimant to bring a companion with him. In fact the disciplinary hearing was re-arranged to give the Claimant a further opportunity to find someone to go with him. There is no evidence to support an assertion that the fact that the Claimant eventually attended the hearing on 8 August unaccompanied was due to the actions of the Respondent.
9. In all the circumstances I find that the Respondent's actions did not amount to a breach of section 10 of the 1999 Act.
10. As all the claims brought have now been either dismissed or withdrawn, this case is at an end.

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Employment Judge Siddall  
Date: 27 March 2019