



EMPLOYMENT TRIBUNALS

Claimant: Ms R Kausar

Respondent: Asda Stores Limited

HELD AT: Manchester

ON: 28 June 2019

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Did not attend and was not represented

Respondent: Mr B Harwood-Ferreira, counsel

JUDGMENT AT A PRELIMINARY HEARING

The claim is dismissed under rule 47 of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. Rule 47 of the Employment Tribunal Rules of Procedure 2013 is one of a group of rules appearing under the heading, "Rules common to all kinds of hearing." It provides:

"If a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claim...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."

2. A preliminary hearing of this claim took place in public on 1 May 2019. The hearing was adjourned part-heard to today. The parties were informed of the

date of the re-listed hearing before they left the building. The date was subsequently confirmed in writing in a case management order and notice of hearing both sent to the parties on 20 May 2019. The claimant e-mailed the tribunal on 20 May 2019 asking for the hearing to take place by telephone. She did not give a reason. In reply, the tribunal informed the claimant on 29 May 2019 that the request for a telephone hearing was refused because the hearing was due to take place in public. The parties then each prepared a case management agenda form for today's hearing.

3. Yesterday, 27 June 2019, at 9.41pm, the claimant e-mailed the tribunal again, simply stating that she would be unable to attend the hearing. Again, no reason was given. Unfortunately, her e-mail did not include the case number or the claimant's own name, so the e-mail could not be linked to the case file. At 8.19am this morning a member of the tribunal's administrative staff replied to the claimant, asking for the case number. Thirty-three minutes later the claimant e-mailed the tribunal with the case number, but adding:

“Wasting my time in playing mind games.

I want to withdraw”

4. At the hearing the respondent was represented by counsel. By 10.15am the claimant had not arrived. I decided to start the hearing.
5. There was nothing on the file to indicate any reason for her inability to attend, other than her latest e-mail indicating that she may have simply given up. I thought about asking the tribunal staff to make further enquiries of the claimant by telephone, but the tone of the claimant's e-mail strongly suggested that she did not want to be bothered by the tribunal asking her for further information. There seemed to me to be no reason why I should not dismiss the claim under rule 47.
6. I also considered whether it would be appropriate to dismiss the claim under rule 51 in the light of the apparent withdrawal by the claimant. I thought it preferable not to do so. In my opinion, the phrase, “I want to withdraw” was unambiguous on its face, but it was arguable that the meaning was clouded by the context. The claimant's e-mail appeared to have been sent in haste in response to the tribunal asking her for further information. The phrase, “Wasting my time in playing mind games” indicated that her expressed wish to withdraw might possibly have been venting her frustration in the heat of the moment, rather than informing the tribunal of an irrevocable decision to withdraw her claim. Under rule 51, once a claim is withdrawn it cannot be revived. I therefore thought it better not to adjudicate either way on whether the claimant had withdrawn her claim, but to leave that point for further argument if the claimant applies for reconsideration of the judgment.

Employment Judge Horne

28 June 2019

SENT TO THE PARTIES ON

18 July 2019

FOR THE TRIBUNAL OFFICE