



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107530/2019

Held in Edinburgh on 6 September 2019

Employment Judge I Atack

Miss D Middleton

**Claimant
Not Present and Not
Represented**

Mitsubishi Electric Air Conditioning Systems

**Respondent
Represented by
Mr A Munro, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims of unfair dismissal and of disability discrimination are dismissed.

REASONS

1. In this case the claimant has brought claims of unfair dismissal and disability discrimination.

2. This was a preliminary hearing fixed for case management purposes. Parties had been advised of the date and time of the preliminary hearing by letters from the Employment Tribunal dated 5 July 2019.
3. Following the submission of the ET3 by the respondent letters were sent to both parties on 13 August 2019 advising that the case would proceed as per the letter of 5 July. The letter of 13 August also informed the claimant, on the instruction of Employment Judge Gall “that disability is a matter of dispute, it may be helpful for her to consider prior to the preliminary hearing whether she wishes to authorise release of relevant medical records to the respondents. This would be with a view to persuade the respondents that she was at the relevant time disabled in terms of the Equality Act 2010. This could be discussed at the case management preliminary hearing”.
4. Both parties had completed and returned their respective Agendas for the preliminary hearing.
5. When the case was called at 10 o'clock the claimant was not present. I instructed the clerk to try to ascertain the reason for failure to appear at the appointed time. The clerk tried 4 times to contact the claimant between 10 o'clock and 10.30 but was unable to do so.
6. At 10.30 I had the case called again. The claimant was still not present.
7. In the absence of the claimant Mr Munro requested me to dismiss the case in terms of Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

8. Rule 47 provides that if a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claims 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 reason for the party's absence.
9. The respondent does not accept that the claimant has a disability within the meaning of section 6 of the Equality Act 2010. In this case in view of the absence of the claimant I did not consider it was possible to proceed with the hearing as the matters which should be discussed at a case management preliminary hearing are not capable of being discussed due to her absence.
10. I raised with Mr Munro the possibility of simply fixing a preliminary hearing to decide the question of the claimant's disability status but he was against that course of action. Mr Munro submitted that the claimant had been advised in the letter of 13 August to consider whether she wished to authorise release of the relevant medical records but nothing had been heard about that.
11. I accepted that this is the claimant's case and she was not present to pursue it. If I simply continued the case to a further preliminary hearing to deal with the question of disability status then that would undoubtedly involve the respondent in further expense which might prove to be unnecessary.
12. In the circumstances having considered all the information available to me and taking into account the fact that the claimant could not be contacted I decided to dismiss both of the claimant's claims.

13. The claimant is entitled if there is a reasonable explanation for her non-attendance to apply for a reconsideration of this judgment within 14 days of its being sent to her, in terms of Rule 71.

Date of Judgement: 6th September 2019
Employment Judge: I Atack
Date Entered in Register: 11th September 2019
And Copied to the Parties