



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107530/2019**

**Held in Edinburgh on 17 October 2019**

**Employment Judge I Atack**

**Miss D Middleton**

**Claimant  
In Person**

**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 judgment dismissing the claimant's claims dated 6 September 2019 and sent to the parties on 11 September 2019 is revoked and that the case be continued to a further preliminary hearing on a date to be fixed.

### **Reasons**

#### **Introduction**

1. This was an application for reconsideration by the claimant of a judgment dismissing her claims of unfair dismissal and disability discrimination, due to her non-attendance at a preliminary hearing on 6 September 2019.

2. That preliminary hearing had been set for case management purposes. The judgment dismissing the claimant's claims was dated 6 September 2019 and sent to the parties on 11 September 2019.
3. On 13 September 2019 the claimant sent an email to the Employment Tribunal advising that she had not been able to attend the preliminary hearing due to medical reasons. That email was treated as an application for reconsideration under rule 71 of the first schedule of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, (the "rules").
4. The application was not refused in terms of rule 72 (1).
5. The respondent was asked to respond to the application and did so by email of 23 September 2019. In that email they stated they opposed the application and set out their reasons for opposition.
6. The parties were asked for their views on whether the application could be heard without a hearing. They agreed it could so proceed.
7. The claimant's basis for the application is that she was unable to attend the preliminary hearing on 6 September 2019 due to medical reasons. Specifically, she claimed she suffered from abscesses which caused her pain when she walked.
8. She claimed that her phone had been cut off and she was unable to walk, these being the reasons for failing to inform the Employment Tribunal she would not attend the preliminary hearing.
9. In response to questions posed to the claimant she provided further information.
10. It was her position that her abscesses can appear without warning and, if they do, she suffers from what she described as "agonizing pain". She stated she had been on a recent course of antibiotics for the abscesses.
11. She stated she realised on 5 September that she would be unable to attend on 6 September but could not contact the Employment Tribunal as her phone had

been cut off and she could neither make nor receive calls. She stated she does not have access to the Internet at her home.

12. She claimed to have no money to top up the phone.

13. In response to a question as to whether she could obtain a letter from her doctor confirming what she had stated about her being unable to attend due to a medical reason, she responded that it would cost her £20 to get a letter from her doctor and at present she did not have the money to do so. She stated she was in receipt of universal credit. Her position was that she would obtain the letter as soon as she could pay for it.

14. The claimant also alleged that she suffered from mental health issues, but these were not further specified.

15. The basis of the respondent's objection was that the claimant had notice of the preliminary hearing and was well aware that the issue of disability was disputed. They had prepared for the hearing on 6 September and had incurred costs in attending, which were wasted as a result of the claimant's failure to appear.

## **Decision**

16. Under rule 70 an Employment Tribunal has power to reconsider its judgment where "it is necessary in the interests of justice to do so".

17. It is clear that the "interests of justice" relates to the interest of justice to both sides.

18. In this case I was satisfied that the claimant had given a prima facie explanation for her non-attendance at the preliminary hearing on 6 September and for her failure to inform the Employment Tribunal in advance that she would not be able to attend. Although there was no corroboration of what she had stated I decided in the circumstances to take she had said at face value. There was nothing to suggest that what she was stating was untrue.

19. If the application was to be refused the claimant would not be able to pursue her claims, which would remain dismissed. On the other hand, if the application was to

be granted she would be put back into the position of being able to pursue her claims and of dealing with a new preliminary hearing at which the same issues would be discussed as had been intended for the preliminary hearing on 6 September.

20. The respondent on the other hand would suffer the disadvantage of incurring further expense in attending another hearing. That is the only prejudice they would suffer as it has not been suggested that their defence of the case would be disadvantaged by the granting of the application, such as, for example, evidence being lost or witnesses being unavailable.

21. Taking all matters into account I considered that in this case the interests of justice favoured revoking the judgment of 6 September and thereafter assigning a new date for a preliminary hearing to discuss the matters it had been intended to discuss at the preliminary hearing which had been fixed for 6 September 2019.

22. In her emails to the Employment Tribunal regarding her application for reconsideration the claimant has repeatedly referred to herself as being disabled. I would remind her that, as previously intimated to her, the respondent does not accept that she is disabled within the meaning of section 6 of the Equality Act 2010. Merely asserting that she is disabled is not sufficient and, given the respondent's position on the matter, is something which will have to be proved in due course. That can be discussed at the continued preliminary hearing. Nothing in this judgment should be read as indicating that the Employment Tribunal has accepted the claimant is disabled. That is something which will require to be decided at a future hearing.

**Date of Judgment: 19 October 2019**

**Employment Judge: Iain Atack**

**Entered Into the Register: 22 October 2019**

**And Copied to Parties**