



EMPLOYMENT TRIBUNALS

Claimant
Mr E Botchway

v

Respondent
Croydon Youth Zone

WRITTEN REASONS

Background

1. The Claimant having failed to attend the Preliminary Hearing (Case Management) on 10 December 2019 without providing any information to the Tribunal for his non-attendance, the claim was dismissed that day under Rule 47 Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("Rules"). The decision was sent to the parties by email from the Tribunal on 12 December 2019.
2. On 10 and 11 December 2019, the Claimant emailed the Tribunal in a series of messages which have been treated as an application for written reasons and for reconsideration under Rule 70. The parties are **reminded** once more of the requirement under Rule 92 to copy the other side in to any communications with the Tribunal, otherwise that communication may not be considered. (Note that the reverse does not apply; the parties should not copy the Tribunal in to correspondence with each other and/or with ACAS).

Chronology

3. On 11 July 2019, the Claimant submitted a claim comprising complaints of disability or religious belief discrimination. He stated that he had attended an interview for a role (Youth Worker) with the Respondent, an organisation in Croydon. The interview took place on 1 July 2019 with Mr Preddie and Ms Blackford of the Respondent; on 2 July the Claimant had a call from Mr Preddie confirming that he had been successful and offering him the role. According to the Claimant, he was told that he would be working on Fridays, Saturdays and Sundays which were "ideal" for him. However, he indicated that he wanted to go to church on Sundays, to which Mr Preddie said he would see what he could do. The Claimant also said that he could be flexible if this could not be accommodated.
4. However, on the evening 4 July 2019, the Claimant received an email from Mr Catterall, the Respondent's Business Manager, informing him that there had been a change in operational circumstances and the offer was withdrawn. The Claimant says he did not open the email until 5 July as it

had been received after work hours. Thereupon the Claimant rang to speak to Mr Catterall but Mr Preddie answered and told the Claimant that there had been an error. Mr Preddie allegedly said that there had been a decision to make between the Claimant and another individual. The Claimant "pondered" on why the offer might have been withdrawn and thought perhaps it was because he had expressed the desire to go to church on Sundays.

5. The Claimant emailed Mr Catterall on 8 July and asked what operational changes there had been. Mr Catterall responded late that evening stating that the post was no longer available.
6. The Claimant appears to have contacted ACAS the following day (9 July) and the Early Conciliation certificate was issued on 10 July. As noted above, the Claimant lodged his claim on 11 July.
7. The claim form (ET1) was served at the address given by the Claimant, being sent out by post on 30 September. The response (ET3) was therefore due by 28 October 2019. The covering letter also listed a preliminary hearing (PH) for 2 pm on 10 December 2019.
8. The Respondent says, and I accept, that the address given by the Claimant is not the address from which it operates. Accordingly, it did not receive the claim form and was made aware of the dates via ACAS. Mr Catterall emailed the Tribunal on 14 November and asked for the information to be sent to him electronically; he said that he "presumed" there could be an extension for the PH on 10 December (he mistakenly referred however to 12 December). Mr Catterall followed this up with a further email on 21 November, in which he stated that the Respondent had been unaware of the claim until ACAS informed them of it on 31 October 2019.
9. The Tribunal responded on 27 November and indicated that no default judgment would be entered and enclosed a copy of the original paperwork. The email to the parties was sent at 16.44 that afternoon. At 16.55, the Claimant emailed the Tribunal and despite having been told that he should copy in the Respondent, did not do so. He nonetheless objected to any extension to the Preliminary Hearing, which he said would not be "fair". He re-sent this email to the Tribunal at 17.15.
10. On 4, 5 and 6 December, Mr Catterall emailed the Tribunal (also not copying in the Claimant despite the reminder to do so) and asked whether the PH had been postponed. He also asked for confirmation of the date, owing to the confusion between the listing for 10 and his earlier reference to 12 December, which had been mirrored in the Tribunal's acknowledgment of his email. The matter was referred to the Acting Regional Employment Judge, who refused the postponement request. Confirmation of the refusal was sent in a letter dated 9 December, which was emailed to the parties at 10.20 am on 9 December. I reproduce the relevant paragraph here:

"The Preliminary Hearing Case Management on 10th December 2019 at 2pm (as listed) will go ahead. Respondent can make its application for an extension of time then in person.

The case remains listed for hearing on **Tuesday 10th December 2019 at 2 pm for 2 hours**".

The Preliminary Hearing on 10 December

11. At 2 pm on 10 December, Mr Catterall, Mr Shelbourne (CEO) and Ms Akinfolarin (HR Adviser) were present at the Tribunal. The Claimant was not present. There had been no message from him. An attempt was made by the Tribunal administration to call the Claimant, but he did not answer his phone and there was no facility to leave a message.
12. I could see no reason why the Claimant should have failed to attend. He had objected to the Respondent's application, saying it would not be fair to postpone. Even if he had not received the message on 9 December (and I could see no reason why he would not have done so; he had received all previous emails and there had been no "bounce back" or error message from his address), he had no reason to assume that the postponement would be granted. In any case, if there had been any doubt in his mind as to whether the hearing had been postponed, I considered he could have rung the Tribunal to check, but he had not done so.
13. I noted that the Claimant had also, on the face of it, failed to comply with the Order to send to the Respondent the evidence supporting what he is claiming by way of remedy and how it is calculated, including any information about what steps he has taken to reduce any loss. This Order was sent out on 30 September and was the first of those to be complied with, and was to have been done by 28 October. None of the other Orders fell due by 10 December.
14. I also considered whether the Claimant might be physically hindered in some way from attending. I was mindful that he had ticked that he was claiming disability discrimination, although he had not specified any physical or mental impairment and indeed in answer to the question at 12.1 on the claim form "Do you have a disability?" he had ticked "No". I was also not aware of any public transport delays that he might have encountered in getting to Holborn from his home in Croydon.

Strike out

15. Accordingly, I proceeded with the hearing in the Claimant's absence, and struck out the claim by reason of his non-attendance.

After the Hearing

16. I gather that at some point after the hearing had ended and the Respondent's representatives had left the building, the Claimant rang the Tribunal and was told that the hearing was over. He also emailed at 16.12 on 10 December to say that he had "just" received the email sent the previous morning from the Tribunal refusing the Respondent's application to postpone the hearing. He was however advised that the judgment was in the process of being promulgated (i.e. sent out in writing to the parties) and that the accompanying paperwork would explain how to ask for reconsideration.
17. The parties are referred to the separate decision relating to the Claimant's request for reconsideration.

Case No: 2202627/2019

Employment Judge Norris

Date 6 January 2020

JUDGMENT SENT TO THE PARTIES ON

7 January 2020

FOR THE TRIBUNAL OFFICE