



## EMPLOYMENT TRIBUNALS

**Claimant**

Miss P. Lawrence-Mathison

v

**Respondent**

London United Busways Limited

## PRELIMINARY HEARING

**Heard at:** London Central

**On:** 30 January 2020

**Before:** Employment Judge Goodman

**Appearances**

**For the Claimant:** did not attend

**For the Respondent:** Mr. E. Nuttman, solicitor

## JUDGMENT

The claims are dismissed under rule 37(d) of the Employment Tribunal Rules of Procedure 2013 because not actively pursued.

## REASONS

1. This matter came before me to consider the respondent's application that the claimant's complaints be struck out because presented out of time, alternatively, that they have no reasonable prospects of success.
2. The claimant did not attend today, and no message has been received as to her whereabouts or intentions.
3. The claims were presented to the tribunal on 8 July 2019. The parties were notified on 14 October 2019 of a preliminary hearing on 18 December, and a final hearing of four days starting 21 April 2020. They were also given written case management directions.
4. The respondent responded to the claim on 11 November 2019, disputing liability and asserting that the claims were all out of time.
5. Employment Judge Baty directed that their applications to dismiss the claim on time grounds should be heard at the preliminary hearing on 18 December. However, the claimant did not attend that hearing, listed before Employment Judge Joffe. When telephoned by the clerk to check if she was on her way, the claimant said she was at hospital. Employment Judge Joffe then postponed the

hearing to be relisted for today. She ordered the claimant to send to the tribunal, by 15 January, a letter from her GP or some similar report of what condition caused her to be at hospital, and to tell the tribunal if she wanted to withdraw the claim, or if pursued, whether the medical condition affected her ability to attend the final hearing. At the same time, she ordered the respondent to send her, by 20 December, the written submissions, list of issues and agenda that they had prepared for the hearing. Her written record of the hearing, including the orders, was sent to the parties on 19 December 2019.

6. The respondent sent her the submissions, list of issues and agenda on 20 December, as ordered. The claimant has not commented or responded, whether to the respondent or to the tribunal. Nor did she write anything to the tribunal by 15 January about the condition that had taken her to hospital on 18 December.
7. On 16 January the respondent wrote the claimant a reminder. She did not reply.
8. On 21 January 2020, the respondent's solicitor emailed the tribunal asking for an unless order to strike out the claim, as they could not prepare for the preliminary hearing without knowing the medical position. It was copied to the claimant. The tribunal staff did not refer it to any judge, so no unless order was made.
9. However, it did prompt the claimant to write to the tribunal two days ago, on 28 January, saying:

*"I have tried to obtain a medical letter from my GP detailing the illness I had just prior to Christmas. Unfortunately I am not in the financial position to obtain a letter that cost over £100 just to detail the fact that I had gastroenteritis which causes no long-term issues".*

10. Against this background, I conclude that the claim is not actively pursued, for the following reasons:

10.1 If the claimant was at hospital on 18 December, the hospital will have sent her GP a discharge summary. She can get a copy of that from the practice manager on request and for no charge. She does not need to pay her GP to write a letter to say she was at hospital and why. She suggests that a letter is not needed because the symptoms do not continue. This overlooks that the tribunal wants to know what took her to hospital on 18 December and stopped her attending. There must be a strong suspicion that she was not at the hospital on 18 December.

10.2 If having to pay for a letter prevented her getting the tribunal what was wanted by 15 January, she could have written to the tribunal by 15 January to say so. The tribunal could have told her to ask for the discharge letter. She only wrote after the respondent had applied for an unless order, and even then it took another week to do so.

10.3 If she wanted to continue with the claim, she would have attended today. She has not told the tribunal or the respondent that she was not coming. If

she was intending to come but has been held up, she could have emailed, as she did two days ago.

- 10.4 Had she commented on the respondent's written submissions, in person or in writing, the tribunal could have decided the point in the light of her explanation why the claim was late, but she has been entirely silent on this. That failure to comment also suggests the claim is not actively pursued.
- 10.5 I have considered whether to make some kind of unless order. However, the claimant has now not attended two hearings, and has not complied with an order. The chances are that the claim would still not progress, the respondent would be put to further expense. Given the need for a preliminary hearing to decide the time points and clarify the issues in the many claims made, the final hearing in April would have to be put off until October at the earliest.
- 10.6 I have considered in outline the merits of the claim, which has some bearing on whether it is dismissed now.
- 10.6.1 First is whether the tribunal has jurisdiction if the claims were presented late. It is disputed whether the claimant's employment ended when she resigned with notice, or whether the respondent dismissed her by refusing to accept a later retraction of notice, but whichever it was, the effective date of termination of employment was 1 March 2019, the expiry of her notice. It seems she resigned because she received less bonus than others and felt unappreciated. She had three months from that date to present a claim for unfair dismissal, and any discriminatory course of conduct must have ended by then at the latest.
- 10.6.2 She went to ACAS for early conciliation, which stopped the clock for the duration of the certificate. Day A was 1 April 2019, Day B was 1 May 2019. She had until 1 July at the latest to present her claim. She did not do so until two weeks later. No explanation has been given of any factors which prevented her from acting in time.
- 10.6.3 The test is whether it was not reasonably practicable for the unfair dismissal and holiday pay claims, and the burden is on the claimant. No factors are known why it was not practicable. As she had been to ACAS she will have known where to find advice on dates and time limits. For the Equality Act claims, the test is whether it is just and equitable to extend time. Nothing is known of the claimant's circumstances and why she was late, so the tribunal cannot conclude it is just and equitable to extend time.
- 10.6.4 Finally, she might argue that an adverse decision on 26 June on an appeal against a grievance decision, whether about the bonus, or about their refusal to suspend her while the grievance was heard, was detriment in a victimisation claim, the grievance being a protected act. However, there is nothing in the grounds of claim to suggest that the claimant complained in her grievance of any breach of the Equality Act. On what is known, which of course does not include any clarification or explanation from the claimant, this claim might be in time, but has little reasonable grounds of success.

10.6.5 Whether out of time, or with little merit, her claims, on what is known, have little reasonable prospect of success, something which I weigh when deciding whether the claims should be dismissed for not being actively pursued.

10.7 In the light of the overriding objective to deal with cases justly and fairly, I conclude that the claimant does not seriously or actively pursue her claims, and it is better that they are dismissed now before the respondent incurs further expense.

11. If there is a genuine explanation for the claimant's absence on 18 December and today, she can write with details and supporting evidence to ask for reconsideration of the decision.

12. For the avoidance of doubt, there will be no hearing on 21-24 April 2020.

Employment Judge Goodman

Date: 30 Jan 2020

JUDGMENT and REASONS SENT to the PARTIES ON

31/1/2020.....

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FOR THE TRIBUNAL OFFICE