



EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen Galloway

Respondents: Northwest Boroughs Healthcare NHS Foundation Trust

HELD AT: Liverpool

ON: 6 February 2020

BEFORE Employment Judge Aspinall

REPRESENTATION:

Claimant: did not attend

Respondent: Mr Williams, counsel

JUDGMENT on Reconsideration

The judgment of the Tribunal is as follows:

1. The Judgment promulgated on 1 November 2019 (the promulgated Judgment) is reconsidered under Rule 70 of the Tribunal Rules 2013 in the interests of justice and the Judgment is REVOKED.

Reasons

Background

2. The promulgated Judgment was made at an open preliminary hearing of the respondent's application to strike out the claimant's claims of unfair dismissal, breach of contract and disability discrimination on 9 October 2019. It struck out the claimant's claims.
3. The claims were brought by a Claim Form presented on 5 April 2019. The Response Form was presented on 30 May 2019.
4. The matter was listed for a preliminary hearing for case management to take place on 23 July 2019 which was postponed at the request of the claimant on medical grounds. The Postponement Order of E J Horne dated 22 July 2019

listed the hearing for 9 October 2019 and put the claimant on notice that the hearing was “to consider whether any part of the claim should be struck out on the grounds that it has no reasonable prospect of success”.

5. The claimant failed to attend on 9 October 2019. The hearing was adjourned whilst efforts were made to contact the claimant on the telephone number and email he had provided to the Tribunal. No contact was made. The hearing was resumed at 11.05 am and the respondent’s application to strike out was heard.
6. The claimant’s claims were struck out under Rule 47 by reason of the claimant’s non attendance. The hearing was concluded around 11.26 am. I directed in giving judgment that the claimant would be informed of his right to request a reconsideration.
7. At 11.41 am an email was received from the claimant offering apologies for non attendance for the following reasons 1) his father was discharged from hospital on 8 October and the claimant was having to care for him and 2) the claimant has university studies to undertake and 3) the claimant is engaged in other court proceedings for harassment and 4) his personal circumstances have affected his mental health and 5) he got his dates mixed up and thought the hearing was for the following week.

Relevant Law and Application

8. The relevant law on reconsideration is set out in Rules 70 – 73 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013.
9. A tribunal may reconsider a decision of its own volition or on the application of a party. The claimant’s email in this case at 11.41 is treated as an application for reconsideration. I decided given the proximity of the time of the email to the decision I had made that it was in the interests of justice to reconsider the decision.
10. Notice of reconsideration was sent to the parties on 6 December 2019. The claimant was put on notice that he should attend the reconsideration hearing and that he should prepare to argue the strike out application and the respondent’s application for costs.
11. The claimant has not attended today, the start of the hearing was delayed by half an hour to await his arrival and in accordance with good practice that received judicial approval in Southwark London Borough Council v Bartholomew 2004 ICR 358 EAT, a telephone call was made to the claimant and emails sent to the addresses he has used to correspond with the Tribunal. No response has been achieved.
12. I decided to proceed in the absence of the claimant today. The claimant has had notice of today’s hearing and has provided no good reason for non

attendance. The respondent has attended by counsel. It is in accordance with the overriding objective to deal fairly and justly with the reconsideration application that the matter should proceed in the claimant's absence.

Submissions on reconsideration

13. I have considered the claimant's email of 11.41 on 9 October 2019. That email is the only correspondence or representations the claimant has made to the tribunal on the reconsideration.

14. The respondent handed up a chronology. It had not prepared a Skeleton Argument so as to minimise its (and the claimant's,) exposure to costs. I heard submissions from the respondent today that the claimant had reasonable opportunity to attend the hearing on 9 October and chose not to do so, that the claimant has not provided a good reason for his non attendance on 9 October but has conflated a set of personal circumstances to attempt to have them amount to a good reason when in essence the reason is that he got the date wrong. The respondent referred to a previous request for an adjournment by the claimant in these proceedings and a commitment that the claimant made to provide medical evidence for that adjournment, which he then did not provide. The respondent submitted that it would not be in the interests of justice to vary or revoke the Judgment promulgated on 1 November 2019. The respondent submitted that if revoked, the application to strike out the claims will be heard again and given the claimant's non attendance again today the claims are likely to be struck out again.

Decision and reasons

15. My decision to REVOKE the promulgated judgment is made because if the email of 11.41 had arrived just twenty minutes or so earlier it is likely that the claims would not, at that point, have been struck out for non attendance under rule 47. It is likely that at that point an adjournment would have been granted.

16. Accordingly, today I revoke the promulgated judgment.

Employment Judge Aspinall
6 February 2020

JUDGMENT AND REASONS

SENT TO THE PARTIES ON
21 February 2020

FOR THE SECRETARY OF THE TRIBUNALS

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.