



EMPLOYMENT TRIBUNALS

PRELIMINARY HEARING BY TELEPHONE

Claimant: Mr William Lorrimer
Respondent: Royal Mail Group Limited

Heard at: By Telephone **On:** 1 April 2020

Before:
Employment Judge JM Wade

Representation

Claimant: no attendance by 2.30pm;
Respondent: Ms Young (trainee solicitor)

JUDGMENT

- 1 The claimant's unfair dismissal complaint is dismissed pursuant to Rule 47, him having failed to attend or be represented at today's preliminary hearing.
- 2 The respondent's costs application is refused.

REASONS

1. The claimant, a former postman, had presented a complaint of unfair dismissal, following his dismissal after significant absences in from 2017 to 2019. His claim referred to alcohol dependency and his recovery from that and a preliminary hearing was conducted on 3 January 2020 to clarify the complaints and give orders for preparation for a final hearing over two days (today and tomorrow).
2. On 23 March the respondent made an application to strike out the claim because a fair hearing could not take place: the claimant had complied with none of the case preparation orders and the respondent had done so, sending the claimant its witness statements in the case.
3. On 27 March the final hearing was converted to this telephone hearing because of Covid 19. On 31 March the parties were sent a revised notice of hearing re-timing the hearing to 2pm and providing new conference call arrangements which enable the hearing to be recorded.
4. Today the claimant did not attend either the previous first conference call line, nor the second; the Tribunal's clerk telephoned his mobile number; there was no reply to that number; the clerk left a message asking the claimant to join the hearing at 2.30pm (albeit late) because I too, had had practical difficulties in commencing the hearing on time. The claimant did not attend.

5. The possible judicial decisions in light of the claimant's non attendance today are:
 - 5.1. Consideration of adjournment of today's hearing to give further opportunity for him to attend.
 - 5.2. Dismissal today simply in circumstances of non attendance, pursuant to Rule 47 (that is without determining the merits).
6. I am not in position to strike out the claim and deal with the respondent's application (as I would have been absent the Covid 19 restriction on face to face hearings) - I cannot today see a practical means for this to be a public hearing, and to delay for that opportunity would involve further cost and expense.
7. The non attendance of a party puts other parties and the Tribunal to wasted costs and expense, and deprives other Tribunal users of those resources both judicial and administrative. Currently there is additional strain on those resources as a result of increased workload and Covid 19, with no prospect of that reducing, and likely increase.
8. Options 1 is not prejudicial to the claimant, it provides opportunity for him to attend on a future date (likely September onwards). However, it puts the respondent and the Tribunal to ongoing cost simply by his complaint being undisposed, or delay in its determination, when it might otherwise have been struck out today. Option 2 wastes little time and cost but deprives the claimant of pursuing his claim. However, there is less prejudice where, on the face of the claim and response, there are real difficulties with the complaint. My assessment of the merits is that the claimant will have real difficulties establishing and unfair dismissal in circumstances of hundreds of days of absence and a well established and staged attendance management procedure.
9. The balance of prejudice today lies against the claimant. I exercise my discretion to dismiss pursuant to rule 47 today (Option 2). Fairness to the respondent and other tribunal users requires a balance to be struck in the circumstances I describe. On this occasion the right balance lies in bringing these proceedings to an end for non attendance.
10. Ms Young properly made a costs application orally, saying the respondent's costs thrown away by today's preparation and attendance were approximately £500; it was made on the basis that the claimant was unreasonable in pursuing a claim with no reasonable prospects of success and in failing to comply with case management orders.
11. As to the first matter, if an Employment Judge had made a merits assessment at the January hearing and ordered even a very small deposit payable, unreasonable conduct in pursuit of the claim could properly have been levelled against this litigant in person. However, that was not done and orders were made for preparation. Certainly I accept that failing to comply with orders is unreasonable conduct, but I have no means today of hearing the reasons why the claimant has not done so, nor of why he did not attend today. I note he describes himself as a recovering alcoholic and matters may well have taken a turn for the worse for him, particularly in the current very difficult circumstances for the country. The Tribunal is usually a cost free jurisdiction for litigants in person and in all the circumstances it is not in the interests of justice to make such an order. The application is refused.

Employment Judge JM Wade

1 April 2020