



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr P Woollard

v

Design A Space Ltd

Heard at: Watford, by telephone

On: 22 October 2020

Before: Employment Judge Hyams

Appearances:

For the claimant: Not present or represented

For the respondent: Mr S Hoyle, Consultant

JUDGMENT

The claimant's claim of unfair dismissal is dismissed.

REASONS

- 1 The claimant originally claimed unfair dismissal and that he had been discriminated against because of his age. The latter claim was struck out after the claimant failed to comply with a deposit order made by Employment Judge R Lewis after a preliminary hearing in person on 14 March 2019. In the record of that hearing, the judge said that he was not going to make a deposit order in respect of the claim of unfair dismissal. However, he made a number of comments on that claim, and referred to the case of *Polkey*, i.e. *Polkey v A E Dayton Services Ltd* [1987] IRLR 503, [1988] ICR 142.

- 2 The hearing of the claimant's claims was listed at that preliminary hearing. It was to take place on 15 and 16 January 2020. At the claimant's request, without opposition from the respondent, the hearing of those dates was postponed because the claimant was at that time in pain prior to an urgent operation on his knee.
- 3 There was then a period during which the Covid-19 measures of 2020 were in place, and nothing material occurred. On 4 September 2020, however, the tribunal sent the parties (by email) a notice of a "preliminary hearing by telephone on Thursday, 22 October 2020 to relist the case." That preliminary hearing by telephone was listed to start at 10.00am. An hour was allowed for the hearing.
- 4 On 19 October 2020, Mr Hoyle sent the tribunal and the claimant a proposed agenda for the forthcoming hearing of 22 October 2020. On 20 October 2020, at 22:26, the claimant wrote to the member of the tribunal's staff who had sent the notice of hearing of 4 September 2020 and Mr Hoyle:

"Dear [member of staff]

In view that you have not responded to my last email to you where I explained that my mothers medical condition may effect my ability to attend this date and perhaps it may be better to reschedule, unfortunately I have to travel to Norwich to help care for my mother so I will be unable to be available for this hearing.

I have sent a copy of this email to mr s Hoyle so that he may be able to organise his diary accordingly .

Please can you advise who will be the sitting judge in this case for the management orders moving forward.

Many thanks".

- 5 Mr Hoyle then, at 10:27 on 21 October 2020, sent a response to that email, stating that the respondent's representative would be present at the hearing of 22 October 2020 unless the tribunal ordered otherwise, and among other things asserting that if the claimant did not attend the hearing then the respondent would make an application for the striking out of the claim.
- 6 The claimant then sent a response to that email of Mr Hoyle. He did so at 14:48 on that day, 21 October 2020. In that email, the claimant wrote this:

"10. I note mr Hoyles refusal to accept my mothers terminal illness as a valid reasons for rescheduling And is seeking expenses if i do not attend Tommorrow ,under no circumstances will i accept this as mr hoyle and

[named member of staff] from your own office have both received an email from me setting out my concerns and problems with this enforced date due to the final stages of my mothers liver cancer battle of which i have no choice but to be by her side.

11. My Hoyle states that no discussions have taken place with regards compensation but i would like to put on the record that i have indeed made a settlement offer To the respondent which equates to be a little over th 14 days pay that i should have received To have paid time off to seek further work the remainder is a small amount of compensation for putting me at a disadvantage
In this regard.”

7 The final part of the email was in these terms:

“Summary.

In my humble view the court must now decide on a few points of law with regards this matter.

1

am i not entitled to the same protections as are mentioned in the redundancy act than those employees mentioned in the Polk case received.

2 if not then what is the case study that enshrines this discrimination in employment law.

3

If i am equal to the employees in the Polk case then i should have been afforded the same Rights and protections and therefore i should have received the 14 day paid leave which is what we dispute.

4

If after considering these point and you find that i should have been treated the same then the only conclusion i can reasonably come to is that the Polk case is different to mine and therefore should not apply and normal compensation be applied.

Perhaps mr hoyle would like to elaborate why he feels I should be treated differently?

Lastly

Should the court wish to proceed with this case in my absence due to the issues already covered above then please feel free to do so as I have given

the courts all the information they require in this email to be able to make a decision , I will respect your decision but would like to make it clear that after this case is completed i reserve my rights to Seek a judicial review at the highest level not on the judge's decision but the way that this case seems to have been handled against me by not responding to any correspondence that I have sent you with regards this case either by email and recorded delivered signed for letters since the first preliminary hearing in 2019 which raises serious concerns to the fairness I have received in this case.

Please note I have sent a copy of this email to the respondent solicitor mr Hoyle. [named member of the staff of the] employment tribunal and the normal route direct to the Watford tribunal email address although I fully expect this corroborated to be ignored once again. Yours thankfully

Mr p f woollard”

- 8 I had not seen those emails when I started the hearing on 22 October 2020 at 10:00. I first telephoned the mobile telephone number that I had been given for the claimant, using the usual BT conference call facility, but the claimant did not respond to the invitation to join the hearing. I then called Mr Hoyle, who did so respond, and joined the hearing. I then called the claimant again, on the basis that he might have been unavailable for a short period of time. The claimant again did not respond. I then spoke to Mr Hoyle who told me about the emails to which I refer in paragraphs 4-7 above. I was about to adjourn the hearing so that he could forward them to my judicial email address when I looked at my email inbox and saw that they had been forwarded to me by a member of the tribunal’s staff at 09:59 and 10:00. I then saw that I had just (at 10:07) been sent an email by that member of staff, in the following terms:

“The claimant telephoned the office earlier this morning and asked me to let the judge know who is hearing the matter today that he is unable to take part in the hearing today as he is caring for his terminally ill mother”.

- 9 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 applied. That provides:

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”

- 10 In the circumstances, in my judgment it was right to dismiss the claims under rule 47 of the Employment Tribunals Rules of Procedure 2013 because the claimant

had failed to attend or be represented at the hearing of 22 October 2020 and for the following reasons.

10.1 The claimant was now apparently seeking to make a claim under section 54 of the Employment Rights Act 1996, without having previously stated an intention to do so and indicating that he may in fact be confining his claim to compensation for not being given time off to seek other work during his notice period.

10.2 Mr Hoyle told me that his instructions were that the claimant had not asked for time off to seek alternative work during his notice period. The ET3 (which was drafted on behalf of the respondent by its sole or main director) included these sentences:

“Paul Woollard was given 6 weeks notice, as per his contract, and given the option of working for several weeks longer than this.”

“During his period of notice, Paul Woollard did request information on how to appeal, which I gave him, but no appeal was received, nor did he request time off to seek new employment, as he had work lined up.”

10.3 The claimant’s first communication to the effect that he was not going to attend the hearing, set out in paragraph 4 above, was that he was going to have to travel to Norwich to “help care” for his mother. The second one, set out in paragraph 6 above, was that as his mother was dying of cancer, he had no choice but to be by her side.

10.4 While the hearing of today was listed for an hour, it was expressly for the purpose only of relisting the substantive hearing. I estimated in my own mind in advance that it was likely to take no more than 5 minutes to agree on dates for the relisting of the hearing. If there had been any other discussion about the case, then it would have been about possible case management orders to ensure that the case was prepared for trial.

10.5 The hearing was to be held by telephone. If the claimant was travelling to where his mother was, then he would need only to break his journey for a short period of time to participate in the hearing.

10.6 If the claimant was now in fact by his mother’s side, then he could equally take just a short break to participate in the hearing.

10.7 The claimant had taken the time and trouble to contact the tribunal by telephone at or about 10:00 on 22 October 2020, in order to say (as he

evidently did to a member of the tribunal's staff) that he was not going to participate in the hearing. He could have spent the same time participating in the hearing and, if there was a discussion about further case management orders, then it could (and would) have been kept brief and to the point.

- 10.8 In addition, the claimant had, despite the circumstances on which he relied as justifying his failure to attend the hearing, in the two days before the hearing taken much time and trouble to send several emails, including one long one, about the case to the tribunal and the respondent.
- 11 The claimant's remaining claim, of unfair dismissal, is accordingly now dismissed.

Employment Judge Hyams

Date: 22 October 2020

JUDGMENT SENT TO THE PARTIES ON

17/11/2020

Jon Marlowe

FOR THE TRIBUNAL OFFICE