



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Montaque  
**Respondent:** ABM Facilities Services UK Limited  
**Heard at:** East London Hearing Centre  
**On:** Wednesday 2 December 2020  
**Before:** Employment Judge R Barrowclough  
**Members:** Mrs G Forrest  
Mr M Wood

## Representation

**Claimant:** Did not attend and was not represented  
**Respondent:** Mr A O'Neil (Solicitor)

# UNANIMOUS JUDGMENT

**The Claimant's claim is dismissed upon her non-attendance at the full merits hearing of her claim without reasonable cause.**

# REASONS

1 The Claimant initially advanced a number of complaints in her ET1 claim, which was presented to the Tribunal on 18 February 2019, and in which she seeks compensation in excess of £2,999,999.00. A number of those complaints were dismissed on withdrawal by the Claimant at an earlier preliminary hearing on 5 December 2019, and the sole remaining complaint to be determined by the Tribunal at the full merits hearing before us was an allegation of direct race discrimination, in respect of which a deposit order had been made at that earlier hearing. In summary, the Claimant alleges that the Respondent treated her less favourably because of her race in summarily dismissing her for fighting at work with a colleague, who was not so dismissed; albeit she was an agency worker rather than an employee, and her contract was apparently terminated immediately after the incident.

2 The hearing before us, commencing on Wednesday 2 December 2020 and listed with a two day time estimate, was in fact the third time the Claimant's case had been listed for final hearing. On the first such occasion it was postponed due to the coronavirus pandemic. On the second occasion, the hearing was reluctantly postponed by Employment Judge Russell and the hearing dates of October 1 and 2 were vacated, due to the last minute unavailability of the Claimant's designated representative, Mr Ishmael

Kumi, direct access Counsel, and the claim was relisted to be heard on December 2&3. We understand that Mr Kumi withdrew and ceased to represent the Claimant following the October postponement.

3 On 24 November, one week before the commencement of the postponed full merits hearing the Claimant, who then gave as her home address a property in Hitchin, submitted a request for a further postponement. In her letter to the Tribunal, the Claimant gave as the reason for her request the fact that she was unwell, and enclosed two doctors' notes, dated respectively 29 September and 22 October, certifying that she was not fit for work by reason initially of "*mental health and recent bereavement*" and subsequently "*stress*". It is worth noting that in both certificates the Claimant's home address was given as being in Stevenage rather than Hitchin. Secondly, the Claimant sought the transfer of these proceedings from the London East to the Watford Employment Tribunal. Thirdly, the Claimant raised criticisms about the conduct of the Respondent's solicitors in their dealings with her claim. Finally, the Claimant requested that in future the Tribunal should correspond with her by post only, rather than by email as well, and also refrain from telephoning her.

4 The Claimant's letter of 24 November was put before Employment Judge Crosfill as a matter of urgency, and the Tribunal's reply setting out his instructions was a letter dated 25 November. Once again in summary, the Claimant's requests were refused. It was pointed out that any application to postpone the full hearing made on medical grounds should be supported by evidence that a party is unable to attend the Tribunal, in accordance with Tribunal presidential guidance (to which a link was provided); and that that is not the same test as is required in fitness for work certificates, as provided by the Claimant, as the Court of Appeal had held in *General Medical Council v Ijaz Hayat [2018] EWCA CIV 2796*. It was also noted that the Claimant had been well enough to attend the full merits hearing listed in early October, notwithstanding the existence of her earlier medical certificate, since the reason for postponement had been the unavailability of her representative. Accordingly, the Claimant's fitness for work certificate did not amount to evidence that established that she was not well enough to attend the hearing. Finally, the Claimant's request had been made within seven days of the final hearing, and so a postponement would only be granted in exceptional circumstances which, in the learned Judge's view, had not been established in the Claimant's case; but that it was open to her to renew her application if she obtained medical evidence, by way of a report or otherwise, to show that she was unable to participate in a hearing, despite adjustments being made to accommodate her ill health.

5 The Tribunal's letter of 25 November was mistakenly posted to the Claimant at the address in North London which she had originally provided in her ET1 claim form. However, it was also sent to the Claimant by email at 4.21pm on 25 November, to the email address which she had provided to the Tribunal and from which she had previously corresponded.

6 The Respondent's solicitors then wrote to the Tribunal on 27 November, taking issue with and seeking to refute the various allegations raised against them by the Claimant in her letter of 24 November, annexing evidence in support of their client's position and their own conduct. Subsequently, on 30 November, Mr Chrysogonous Ebeh, who had acted as the Claimant's representative at an earlier stage in these proceedings (including at a preliminary hearing in October 2019) and who is apparently an RMT trade

union representative, telephoned the Tribunal requesting a copy of the Tribunal's letter of 25 November. Whilst the Tribunal noted that Mr Ebeh was no longer the Claimant's representative, and indeed that in her letter of 24 November the Claimant had indicated that correspondence should not be sent to him on her behalf, it is clear that Mr Ebeh did in fact see the Tribunal's letter, since at 00.50 a.m. on 1 December 2020 Mr Ebeh wrote to the Tribunal by email, copying in the Claimant and a number of others. It is plain from Mr Ebeh's email that both he and the Claimant were then aware of the Tribunal's decision to refuse the Claimant's application for a further postponement and for a transfer of her case to the Watford Employment Tribunal, since Mr Ebeh there stated that he would not be attending the hearing on 2/3 December as a witness, although he had made a witness statement which had been served on the Claimant's behalf, and also that the Claimant was still unable to attend the hearing due to her illness (although no supporting evidence was provided). Finally, Mr Ebeh indicated that in accordance with the Claimant's instructions, the Respondent's solicitors were not being copied into his email.

7 The Claimant herself followed up Mr Ebeh's email by renewing her request for a postponement of the full hearing in her own email of 1 December timed at 4.53pm. Once again, a number of recipients were copied into that email, including Mr Ebeh, the Respondent at their general correspondence email address, and others, but not the Respondent's solicitors. The Claimant's email essentially repeats what she had stated in her 24 November request, criticising the Respondent's solicitors and also staff at the East London Tribunal, reiterating her refusal to have any further dealings with the Respondent's solicitors and that she remained unwell. Attached to the Claimant's email was a further fit note from her GP Surgery (the Stanmore Medical Group). Once again, the Claimant's address is given as being in Stevenage. The certificate covers the period from 9 November to 9 December 2020, although it was signed on 30 November, the reason provided for unfitness to attend work being "*mental health and stress*". The Tribunal notes that this certificate was therefore obtained by the Claimant after she became aware of the Tribunal's refusal of her earlier postponement request based upon broadly similar fit notes, and of the Tribunal's requirement for "*medical evidence by way of a report or otherwise that shows that she is unable to participate in the hearing, despite adjustments being made to accommodate her ill health*". In our judgment, the medical certificate signed on 30 November does not amount to such evidence.

8 Finally, Mr Ebeh wrote to the Tribunal once again by email at 10.04 hours on the morning of 2 December, as the Tribunal hearing was due to commence. Mr Ebeh criticizes the Tribunal for apparently sending him a copy of the letter dated 25 November, as he had requested, and for failing to respond to the Claimant's email of 1 December and the attached further medical certificate. Once again, and apparently on the Claimant's instructions (although he had ceased to be the Claimant's representative on the record many months earlier), Mr Ebeh did not send a copy of his email to the Respondent's solicitors.

9 Neither the Claimant nor anyone on her behalf in fact attended the Tribunal for the full merits hearing on the morning of 2 December 2020. At our request, our clerk telephoned the Claimant at 10.30am on the number she had previously provided to ascertain whether or not she or anyone else would be attending, and if so whether or not she/they had been delayed. There was no answer, and no answerphone message facility was available. No telephone call or message was received by the Tribunal later in the day from the Claimant or on her behalf.

10 Accordingly, the case was called on for hearing. Present were Mr Andrew O'Neil, the Respondent's solicitor, together with his witness Mrs Maguire. Bundles and witness statements had already been lodged with the Tribunal, but Mr O'Neil's initial application was that the Claimant's claim be struck out or alternatively dismissed in the Claimant's absence without reasonable cause or excuse. The Tribunal provided Mr O'Neil with copies of the three emails sent by the Claimant and/or Mr Ebeh on 1 and 2 December, which he had not previously seen, and Mr O'Neil took the Tribunal through the relevant chronology of events since the date of the Claimant's letter to the Tribunal of 24 November. Mr O'Neil submitted that the Claimant was plainly aware not only of this hearing, but also of the Tribunal's refusal to postpone it; that she had been advised of the need to provide full medical evidence by way of a report or otherwise of any inability on her part to attend the Tribunal, and of her opportunity to present such evidence, but had failed to do so; and that the existence of an earlier medical certificate or fit note for a broadly similar condition had not prevented the Claimant from being able to attend the hearing listed in early October. He also pointed out that the Claimant had failed to respond to or deal with the issue of costs which had been raised by the Tribunal in its letter to the parties confirming the postponement of that earlier hearing. Finally and for the avoidance of doubt, Mr O'Neil made plain that, for the reasons set out in his lengthy letter to the Tribunal of 27 November together with attachments, it was not accepted (and indeed there was no evidence to suggest) that his firm had acted inappropriately or unfairly in its dealings with the Claimant in the conduct of her claim.

11 In our unanimous judgment, Mr O'Neil submissions are well-founded, and we accept them. The Claimant has had every opportunity within which to present compelling evidence of any genuine inability on her part to attend this hearing, but has failed to do so. We also find that the Claimant, with the assistance of Mr Ebeh, has repeatedly tried to frustrate the progress of her claim and to prevent its' being heard by a number of means, including seeking to obstruct or prevent timely communication and by raising groundless allegations against both the Tribunal's staff and the Respondent's solicitors. We have no doubt that the Claimant has acted in this manner because she appreciated that her claim had little if any prospect of success, and that she was and is at risk of a significant costs application. Whether or not the Respondent chooses to pursue such a course hereafter is a matter for them. However, in our judgment, the Claimant has failed to attend the full merits hearing of her claim without reasonable cause, we consider that in all the circumstances summarised above the appropriate course is to dismiss it.

**Employment Judge Barrowclough  
Date:8 December 2020**