



EMPLOYMENT TRIBUNALS

Claimant: Ms S Rauf

Respondent: Anchor Hanover Group

Heard at: Leeds

On: 9 November 2020

Before: Employment Judge Shepherd

**Members: Mr T Downes
Mr K Lannaman**

Appearances:

For the Claimant: no attendance

For the Respondent: Mr Frew

REASONS

1. The claims brought by the claimant were dismissed on 9 November 2020 pursuant to rule 47 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013. The judgment was sent to the parties on 16 November 2020.

2. On 22 December 2020 the claimant applied for written reasons for that judgment of the Tribunal. Rule 62(3) provides that written reasons will not be provided unless they are asked for within 14 days of the sending of the written record of the decision. The claimant's application was refused as it was out of time. The claimant made a further application for written reasons on 4 January 2021. She said that she required these as an essential part of the appeal process. In the circumstances, I have decided to extend the time limit and provide written reasons.

3. The claimant's claims were dismissed as the claimant failed to attend or be represented at the hearing. The Tribunal considered all the information available to it and enquiries were made about the reason for the claimant's absence.

4 The claimant's application for a postponement had been refused on Friday, 6 November 2020.

5. The claimant did not attend the hearing on Monday 9 November 2020.

6. The Tribunal heard submissions from Mr Frew, on behalf of the respondent, you in which he submitted that the Tribunal should proceed in the absence of the claimant and reach a determination or that the claim be dismissed pursuant to rule 47.

7. The Tribunal considered the position and determined that the claimant should be asked if she would be able to participate in a hearing by video link. The Tribunal clerk telephoned the claimant in order to ask if this was possible. No answer was received and the Tribunal clerk left a message indicating to the claimant that she should inform the Tribunal of her decision by 12 o'clock. The Tribunal clerk then wrote to the claimant and sent an email at 11:29 asking whether she would be prepared to join the Tribunal on a video link and asking for a decision by 12 o'clock.

8. At 12:36 the claimant sent an email to the Tribunal indicating that she had seen the email which she said was informing her that she had to attend a video hearing 12:00 pm. She stated that "due to severe back pain and continuous headaches I am unable to attend this hearing, which I have already informed to the court."

9. The Tribunal considered the position and all the information which was available to it. All enquiries that were practicable had been made about the reasons for the claimant's absence. There is a significant history of the claimant requesting postponements and not attending hearings. The claim was presented on 26 June 2019. The case was listed for a preliminary hearing for case management on 23 August 2019. That preliminary hearing was postponed on the basis of the claimant's fit note expiring on 14 September 2019. The hearing was postponed and relisted on 20 September 2019.

10. On 2 September 2019 the claimant indicated that she was not able to attend the case management hearing. On 3 September 2019 the Tribunal wrote to the claimant indicating that the file been referred to Employment Judge Smith who had stated that the purpose of the hearing was to ensure that the case was in order to proceed to a final hearing. It was indicated that the claimant should consider how the claim will be pursued if the claimant feels the stress of a Preliminary Hearing is too overbearing.

11. The claimant gave a further indication that she would be unable to attend the hearing and sent a 'fit note' from her GP. On 17 September 2019 the Tribunal wrote to the claimant indicating that Employment Judge Lancaster directed that

"The Doctor's note does not state that the claimant cannot attend a case management discussion. If the claimant is not as he(sic) suggests going to be fit to attend the hearing until the case is resolved then it will not be possible to hold the final hearing at all. If the claimant provides further medical evidence to the effect that he cannot attend a case management discussion but that there is a date when he will in fact be expected to be fit to do so, the application may be reconsidered."

12. At the Preliminary Hearing on 20 September 2019 the hearing was postponed. Employment Judge Lancaster noted that the claimant had still not been able to obtain any medical evidence in support of the contention that the hearing should be delayed because of her ill-health. It was stated:

“The case cannot keep on being postponed simply so long as the claimant may remain signed off work, unless there is clear medical evidence to say that she is also unfit to participate in these proceedings.”

13. The claimant attended a Preliminary Hearing on 4 November 2019 before Employment Judge Rogerson accompanied by her son. The hearing had been listed to include consideration of the respondent’s application to strike out the claim based on the claimant’s alleged failure to actively pursue the case. That application had been based on claimant’s failure to attend previous case management hearings and for not producing medical evidence which confirmed that she was unable to participate in those hearings. Employment Judge Rogerson stated that the claimant had attended and

“She is aware that she must provide medical evidence if she cannot participate at any future hearings because of her ill-health.”

14. On 6 March 2020 Employment Judge Davies made a case management order that the claimant must write to the Tribunal and the respondent with regard to exchange of witness statements it was also stated that the claimant must send her witness statement or

“...explain why she had not done so and providing medical evidence confirming whether or not she is well enough to prepare for and participate in the Tribunal hearing and, if not, when she will be fit to do so. The doctor’s letter she has provided reports how the claimant feels about taking part in the proceedings rather than confirming whether she is actually fit to do so. It gives a date for when she might feel better rather than when she will be fit to participate in the Tribunal Proceedings.”

15. The hearing listed for 16–23 March 2020 was postponed and Employment Judge Davies provided reasons including:

“However, it is not consistent with the overriding objective to postpone the case for a long period. Further, the best way to resolve the stress caused by the Tribunal proceedings may well be to conclude the proceedings.”

16. The claimant failed to attend a preliminary hearing by telephone on 15 May 2020 before Employment Judge Little and the claim was listed for a final hearing for six days commencing 9 November 2020.

17. On 15 October 2020 the claimant made an application to adjourn the hearing. She stated:

“My request to court is to adjourn the hearing for at least six months. I am in no financial position to appoint any solicitor as I have not worked for a long time due to the injury suffered at work....”

18. On 20 October 2020 the Tribunal wrote to the claimant indicating that Employment Judge Cox had considered her request to postpone the hearing and had refused it. It was stated:

“The claimant’s application for the Hearing to be postponed for six months has been referred to Employment Judge Cox who has refused the application for these reasons:

1. The claimant does not give any indication that she would be any more able to deal with a hearing even if it was held in 6 months’ time.
2. She provides no medical evidence in support of her application. Although she says her medication is affecting her ability to concentrate, she appears able to put together detailed emails to apply for a postponement and has been able to identify documents she believes the respondent should disclose to her.
3. The hearing has already been postponed once on the claimant’s application.
4. The claimant will not recover from any anxiety caused by this claim until the claim is decided.
5. The claimant does not need to be legally represented at the hearing. The Tribunal will ensure the parties are on an equal footing

The claim remains listed for hearing on 9 – 16 November 2020.”

19. On 21 October 2020 the claimant once again made an application to adjourn the hearing. She stated, amongst other things:

“I am in no state to attend this court hearing and this cannot be any clearer by the fact that my current state of health supports my argument, so the question is if I cannot represent myself then who will? The learned judge has written that the court will ensure that both parties are on an equal footing. How is this possible that an injured Layman who is too ill, even unable to read entire bundle of documents has the capacity to attend an important hearing in court as compared to an experience solicitor. The learned judge has not considered this point.”

20. The claimant provided a “statement of fitness for work” from her GP which indicated that she was not fit for work because of “work-related stress back pain – pain clinic”

21. On 26 October 2020 the claimant wrote to the Tribunal indicating:

“If my adjournment application is not granted then as per court order I will appear in court but I will not be able to proceed my case as I am not medically fit enough nor am I prepared. In the interest of justice it is my humble request of the court will grant my adjournment application and order the respondent to supply the relevant document which I have requested”

22. On 5 November 2020 the Tribunal wrote to the claimant indicating that Employment Judge Brain had considered her application to postpone the hearing and had refused it. It was stated that the application to postpone had been refused for the same reasons as in Employment Judge Cox’s letter of 20 October 2020.

“The claimant’s medical evidence certifies her as unfit to work until 7 November 2020. There is no medical evidence in support of her case that she will be unable to attend the hearing on 9 November 2020 nor any medical evidence as to when she would be fit (if not currently fit).

The claimant may repeat the application for postponement on 9 November 2020 but this may not be granted unless supported by medical evidence as to when the claimant may be fit to attend.

The claimant will appreciate that the interests of justice apply to each party and delay prejudices the fairness of the hearing.”

23. On 6 November 2020, the last working day before the hearing was due to commence, the claimant wrote to the Tribunal requesting that the hearing be adjourned for more than six months. She enclosed the letter from her GP. The relevant paragraph states:

“Mrs Rauf suffers with chronic back pain and is under pain specialist clinic awaiting follow-up. Her sleepless nights have made her pain worse. She has mentioned to us that she is not able to concentrate and we support her application on medical grounds.”

24. On 6 November 2020 the Tribunal wrote to the claimant indicating that Employment Judge Shepherd had considered her request to postpone the hearing and had refused it. The reasons for refusal to postpone the hearing set out the reasons provided by Employment Judge Cox and Employment Judge Brain and stated:

“The claimant has now made a further request for a postponement. She referred to issues with regard to disclosure of documents. She has already been informed by Employment Judge Cox that any disputes about disclosure of documents will be resolved at the hearing.

The claimant has provided a letter from her GP which refers to her stress and anxiety and sleepless nights and the death of a close family member which has affected her stress level. It also refers to the claimant’s chronic pain. It goes on to state “she has mentioned to us that she is not able to concentrate and we support her application on medical grounds.”

The letter from the claimant’s GP does not say that she is unfit to attend the hearing. It provides no indication as to when the claimant will be fit to attend the

hearing. She has been informed that her application may not be granted unless supported by medical evidence as to when she may be fit to attend.

The respondent objects to the application and says that the claimant has continuously said that she is unfit to do this case. She said that she needed six months when she asked for a postponement in March 2020. It is now eight months down the line and she says she needs "more than six months." The respondent has four witnesses who have taken time out of their diaries to attend. The respondent has incurred counsel's fees.

The respondent's representative points out that there remains no indication that delaying the hearing is likely to improve the claimant's health or ability to participate in these proceedings. It appears it is actually the proceedings causing the stress and that will not go away by postponing the hearing.

The case is in urgent need of resolution. There is no medical evidence indicating that the claimant is unfit to attend the hearing on Monday, 9 November 2020 and there is no indication providing, if she was unfit to attend the hearing, when she would be fit to attend the hearing.

The application for postponement is, therefore, refused."

25. The claimant did not attend the hearing on 9 November 2020 and the Tribunal carried out the actions set out at paragraphs 6,7 and 8 above.

26. The claimant has been given numerous opportunities to provide medical evidence that she was unfit to attend the hearing. She was made aware of what was required. The Tribunal had gathered for a six-day hearing.

27. This was a claim that had been proceeding for a substantial amount of time. The interests of justice apply to both the claimant and the respondent. The claimant merely persisted in her application for a postponement. There was no medical evidence as to why she could not attend either in person or by a video link.

28. To postpone a six-day case and relist the case does not only affect the claimant and her case, it also causes disruption to the Tribunal system and other cases which need to be heard. It appears that the claimant was also concerned about not being legally represented. The Tribunal is used to dealing with unrepresented parties. Obviously, it may assist the parties to have legal representation but that cannot be a reason for postponing a hearing in most cases – unless the claimant is in the process of obtaining representation.

29. The case has been delayed and numerous hearings have been postponed at the claimant's request and there must come a time when such requests on grounds of ill-health not supported by medical evidence should be refused in the interests of justice.

30. The Tribunal has considered all the information available to it, practicable enquiries were made about the reason for the claimant's absence and it is satisfied that the claim should be dismissed pursuant to rule 47 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013.

Employment Judge Shepherd

20 January 2021

Sent to the parties on:

21 January 2021