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EMPLOYMENT TRIBUNALS

Claimant: Mr S Godfri Gnanasegaran
Respondent: Ladbrokes Betting and Gaming Ltd
Heard at: East London Hearing Centre (by CVP)
On: 17 February 2021
Before: Employment Judge Housego
Members: Ms K Labinjo
Mr J Quinlan

Representation

Claimant: Did not attend and was not represented
Respondent: Dr Mirza Ahmed, of Counsel, instructed by Ward Hadaway LLP

JUDGMENT

The claims are dismissed.

REASONS

1. The Claimant claimed that he was unfairly dismissed, and that this was race discrimination. His dismissal arose as part of a restructure of the Respondent's shops following the reduction to £2 a spin in fixed odds betting machines. This resulted in a substantial number of redundancies, of whom the Claimant was one.
2. The Claimant was represented by solicitors at a preliminary hearing on 18 September 2020, when this hearing date was set. They became involved before the Response was filed by the Respondent.
3. On 16 February 2021 the Claimant asked the Respondent to agree to the postponement of the hearing. They declined. The Claimant emailed the Tribunal at 09:38 today. In full, his email said:

*"S. Godfri Gnanasegaran v Ladbrokes Betting & Gaming Limited
Case Number: 3201851/2020
Your Honourable Judge,*

I kindly request to postponed this case until the pandemic finish due to I am one of them affected.

When the defendant's represent requested evidence to accept to postponed the case, I gave the evidence of the situation. My wife's medical certificate. I kindly request you to consider only the requirement to postponed. Nothing else.

I added a hospital appointment letter for today further stress the situation.

I don't have legal representative currently, I wish to get help from legal experts or organisation like citizen advice bureau.

I received a notice from Ladbroke's legal representative stressing 1) I may be sued 2) He may be negotiate further 3) I need to get legal help.

See attached email.

So it's important to postponed the case to further help.

I believe rather than looking into money and time than dishonesty, inequality and racism are main objects of the case.

If you can't find there are no reasons to postponed this case,

I am withdrawing this case .

Your truly,

Samson Godfri Gnanasegaran"

4. Dr Ahmed opposed the application. The hearing had been listed for 5 months. All the witnesses were present to give evidence. The reasons given were not such that in his submission an adjournment should be granted.
5. In answer to questions from the Tribunal, Dr Ahmed (who was able to obtain information from the solicitor instructing him who was also in the hearing) informed the Tribunal that:
 - 5.1. The Claimant's solicitors had come off the record yesterday. They had not given a reason.
 - 5.2. In answer to an enquiry from those instructing him, the Claimant had provided some documentary evidence. It was clear that the Claimant's wife had suffered a stroke in December 2020. How serious was not known. She had an outpatient appointment at Whipp's Cross Hospital this afternoon for an ultrasound examination of her pelvis.
 - 5.3. A fit note had been provided dated 10 December 2020 indicating that the Claimant's wife had suffered a left side cerebral hemisphere accident.
6. The Tribunal noted that the primary reason advanced by the Claimant was to adjourn the hearing until the end of the pandemic. The Claimant said that this was because he is "*one of them affected*". He did not say that he was ill personally (and provided no medical evidence, although it had been provided in respect of his wife). This not a good reason to adjourn. The pandemic may be endemic. Virtual hearings deal with concerns about reluctance to attend by reason of health concerns.
7. The Rules now expressly provide for this (Rule 46):

"Hearings by electronic communication

46. A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal."

8. The Claimant did not say that he had any internet or technical issues related to internet access: there was no practical reason apparent as to why he could not attend a virtual hearing today.
9. The Claimant referred to his wife's stroke, but no other details were given. It appears that this occurred in December 2020, or before. He does not say that he is a full time carer for her, for example.
10. The reason the Claimant's solicitor withdrew from the case is not known, and there may be professional reasons for it: but the Claimant does not say that he was taken by surprise by this, or that he has been left in the lurch – he merely says that he does not currently have a legal representative.
11. The Claimant does not say that he has made any effort to get alternative representation, only that he wishes to get help.
12. The Tribunal considered the Rules contained in Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
13. Rule 30A provides:

"30A. (1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.

(2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—

 - (a) all other parties consent to the postponement and—
 - (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or
 - (ii) it is otherwise in accordance with the overriding objective;
 - (b) the application was necessitated by an act or omission of another party or the Tribunal; or
 - (c) there are exceptional circumstances."
 14. There must be exceptional circumstances before this hearing may be postponed at such short notice. The Rule is prescriptive – because the application is made less than 7 days before the hearing the Tribunal may only order a postponement in one of the circumstances set out in this Rule. Only "*exceptional circumstances*" can be relevant, as plainly the others are not applicable. Accordingly there is no power to adjourn the

hearing. If there was discretion to do so, the Tribunal would not have agreed to this on the evidence (or lack of it) before it.

15. The Tribunal noted that the Claimant's email indicated a wish to withdraw the claims if postponement was not granted. That would mean a dismissal which could not be appealed, and nor could a request for reconsideration be submitted by the Claimant (which can be done within 14 days of receiving this judgment). As it is possible that it is the urgency of the situation that has led the Claimant to submit a short email rather than a properly argued and evidenced application the Tribunal decided not to treat the claims as withdrawn by the Claimant.

16. The Tribunal applied Rule 47:

"Non-attendance

47. 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."

17. The Tribunal has made such enquiries as are practicable. The Claimant had made plain only about 20 minutes before the hearing that he would not be participating in it. The Tribunal decided to dismiss the claims under this Rule, and decided against proceeding in the absence of the Claimant. The witness statements of the Respondent, and its argued case, would not be challenged by cross examination. Without a contested hearing there was no point in proceeding in the absence of the Claimant. The Response and witness statements of the Respondent set out the reasons why there was a redundancy situation, how the pools were selected, the selection matrix applied, and how it was implemented and why they say it was fair to dismiss the Claimant. Without evidence from the Claimant the Tribunal (whose role would not involve cross examination of the Respondent's witnesses) could not find for the Claimant. Accordingly the Tribunal decided upon dismissal of the claim rather than proceed in the absence of the Claimant.

Employment Judge Housego

17 February 2021