



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr SM Ali

v

TESCO STORES LTD

Heard at: London South (by video)

On: 12 May 2021

Before: Employment Judge P Klimov, sitting alone

Representation

For the Claimant: not present or represented

For the Respondent: Mr C. Kelly (of Counsel)

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable due to the Coronavirus pandemic restrictions and all issues could be determined in a remote hearing.

JUDGMENT

The Claimant's claim is dismissed.

REASONS

1. On 16 October 2019, the Tribunal sent to the parties a notice of hearing to take place on 2 and 3 April 2020.
2. The hearing was postponed until 20-21 December 2020. It appears to be for reasons related to the introduced Covid restrictions on in person hearings.
3. On 15 December 2020, the Claimant's representatives applied to postpone the hearing on the ground of them not having sufficient time to prepare.
4. It appears the application was not granted. However, due to the closure of the Tribunal building on 18 December 2020 for health and safety reasons the case

was re-listed for a final hearing on 12 and 13 May 2021. The notice of the hearing was sent to the parties on 4 March 2021.

5. On 9 April 2021, the Respondent's representatives applied to postpone the hearing on the ground that one of the Respondent's witnesses might not be available because of the high probability that his wife would be giving birth on one of the hearing days.
6. No decision had been made by the Tribunal on the Respondent's application before on 10 May 2021 the Respondent's representatives withdrew the application because the witness would be able to attend the hearing.
7. On 10 May 2021 at 12:02, the Claimant's representative wrote to the Tribunal stating that they would not be available to attend the hearing as they had made plans for the hearing dates and it was too late to change their plans. They asked the Tribunal to postpone the hearing.
8. By email to the Tribunal of 10 May 2021 at 12:26, the Respondent's representatives opposed the application on the grounds that the hearing dates had been know to the Claimant's representative for some time, and in the absence of the Tribunal decision on the Respondent's application of 9 April 2021 they should not have made other arrangements for the hearing dates. They also pointed out that no separate application had been made by the Claimant's representative to postpone the hearing.
9. On 10 May 2021 at 14:22, Employment Judge Glennie refused the Claimant's representative's application because they had not explained what other plans had been made and why that had been done in the absence of any decision from the Tribunal on the Respondent's application. He confirmed that the hearing would proceed on 12 and 13 May 2021. Unfortunately, his decision was not sent to the parties promptly.
10. On 10 May 2021, in preparation to the hearing, I wrote to the parties asking the Respondent to email me a copy of the bundle and witness statements.
11. On 11 May 2021 at 15:59, the Claimant's representative wrote directly to me seeking a postponement of the hearing on the ground that the hearing dates of 12 and 13 May 2021 "*were cancelled by Tesco via a postponement application*" and they had made plans for those dates "*for religious reasons*".
12. On 11 May 2021 at 16:20, I emailed the parties refusing the Claimant's representative application for the reasons set out in EJ Glennie decision of 10

May 2021. I confirmed that the Respondent's application to postpone the hearing had not been granted before being withdrawn and therefore the hearings dates had not been vacated and the hearing would start on 12 May 2021 at 10:00am.

13. On 10 May 2021 at 17:41, the Claimant representative sent a further email to the Tribunal explaining that their plans for 12 and 13 May 2021 were to celebrate the End of Ramadan (Eid) with their families. They said that they had not opposed the Respondent's application to postpone the hearing and now did not have enough time to prepare for the hearing.
14. On 10 May 2021 at 20:45, the Respondent's representatives wrote to the Tribunal repeating their opposition to the Claimant's representative's application and pointing out that it would have been known to the Claimant and his representative for some time that Eid would be falling on the hearing dates and no application had been made by the Claimant's representative to postpone the hearing on that ground until very late. They also submitted that the Claimant's representatives had known of the hearing since 4 March 2021 and had been in possession of the hearing bundle and the Respondent's witness statements since December 2020, and therefore had had ample time to prepare for the hearing.
15. I received copies of those two emails after I had made my decision to refuse the Claimant's representative's application of 11 May 2021. However, I did consider whether taking into account further information in the two emails a postponement should have been granted and decided that my decision to refuse a postponement was correct. The Claimant's representative had sufficient time to prepared for the hearing, the hearing dates and Eid dates were known to them for some time, but they made no application to postpone the hearing due to Eid celebrations until a day before the hearing. In the absence of the Tribunal's decision on the Respondent's application of 9 April 2021, there were no reasons for the Claimant's representative to assume that the hearing would not go ahead.
16. The Claimant and the Claimant's representative did not join the hearing. The clerk telephoned and spoke with the Claimant representative. He told the clerk that they would not be joining the hearing because of Eid celebrations. I asked the clerk to explain to the Claimant's representative that if they did not join, the

hearing would proceed in their absence and a judgment might be made against the Claimant. I also asked the clerk to warn the Claimant's representative that there might be costs consequence for the Claimant and/or his representative if they unreasonably failed to attend the hearing. The clerk explained all that to the Claimant's representative. He said that he was aware of that but still confirmed their decision not to attend the hearing.

17. At the hearing Mr Kelly for the Respondent applied to strike out the Claimant's claim because it had not been actively pursued.
18. In the circumstance I was satisfied that the Claimant's and the Claimant's representative's refusal to attend the hearing, despite their application for a postponement being refused and despite them being warned that the hearing would proceed in their absence and a judgment might be made against the Claimant, was unreasonable. In deciding that I took into account the reason for their non-attendance.
19. Under Rule 47 of the Employment Tribunals Rules of Procedure 2013 ("ET Rules") if a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim. I decided that while religious observance would ordinarily be a strong ground for the Tribunal to favourably consider a request for a postponement, the Claimant and his representative knew of the hearing dates since 8 March 2021. Also, they would have known that Eid would be falling on those dates and yet made no application to change the hearing dates. Further, it appears from their emails to the Tribunal that they were ready to proceed with the hearing on those dates and only made their Eid celebration plans after the Respondent had applied to postpone the hearing in April 2021. The Tribunal did not grant the Respondent's application or otherwise indicated that the hearing would not proceed on 12 and 13 May 2021.
20. For these reasons, I decided that the Claimant's claim must be dismissed under Rule 47 of ET Rules.

Employment Judge P Klimov
12 May 2021

Sent to the parties on:

.12/05/2021.

For the Tribunals Office

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