



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs Pauline Sulima

DHL International (U.K.) Limited

Heard at: Leeds by CVP

On: 6 May 2021

Before: Employment Judge Wedderspoon

Representation:

Claimant: No attendance

Respondents: Mr. Dunn of Counsel

JUDGMENT

1. The claimant's claims are dismissed for non-attendance at the substantive hearing.

REASONS

1. The claimant failed to attend the final hearing listed to commence on 6 May 2021 via CVP. By claim form dated 6 October 2020, the claimant brought claims of constructive unfair dismissal, arrears of pay and notice pay.
2. By email dated 6 May 2021 timed at approximately 7.15 a.m. the claimant stated "*Acknowledgement of correspondence. Date 5 May 2021. Dear Sir/Madam To the record of this proceeding ET case number 1805852/2020 note that claimant will address outside of U.K. not so fake "justice" those all relevant issues with relevant proof and evidence following any U.K. judge issuing make up order/judgement on ground that Respondent fail to received purportedly emails with Claimant's evidence and documents as evidence. Respondent fail to received purportedly emails with claimant evidence and documents as evidence. Respondent set up hearing bundle with them self. Claimant is unaware of the content hearing bundle. Respondent also send worthless witness statement of Jirina Kysela without signature of Statement of Truth. It is unacceptable, unequal, unjust and Claimant rejected any of "issues" set up by U.K. judge or Respondent self-agreement with U.K. judge in this proceeding.*"

Respondent's application

3. Upon the commencement of the hearing, the Employment Judge raised the claimant's email with the respondent. The respondent had not received this so the Employment Judge requested the Tribunal clerk to forward it to the respondent so that it could take instructions. The case was postponed and

in the meantime the Tribunal clerk sought to urgently contact the claimant. This contact was done by email because the claimant had not provided any telephone contact details. The claimant did not respond by resumption of the hearing and in fact, by the end of Counsel's submissions the claimant had not responded to the Tribunal's urgent enquiries.

4. Upon resumption of the hearing the respondent made an application to seek a dismissal of the claim pursuant to rule 47 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the rules"). Alternatively, the respondent sought to strike out the claimant's case on the basis that it has not been actively pursued (see rule 37 of the rules) but acknowledged that the claimant would require an opportunity to respond to such an application. Further in the alternative the respondent suggested an unless order be made.
5. The respondent submitted that the claimant's email dated 5 May 2021 but sent to the Tribunal on 6 May 2021 was not copied to the respondent and contains very serious allegations unsupported by any evidence which formed a feature of the claimant's conduct in the litigation and in the course of her employment. In respect of the allegation that the Employment Judge had issued a make-up order, the claimant was alleging that the Employment Judge had colluded with the respondent and again was a very serious allegation unsupported by any explanation or evidence. Secondly in respect of the respondent failing to receive evidence from the claimant this was clearly not the case. The claimant had sent documents to the respondent namely pages 231 to 234 which were included in the trial bundle plus telephone records at pages 308-9. Thirdly the respondent submitted that the claimant raised she had covertly recorded telephone calls in polish. The respondent raised this with the Employment Tribunal. On 19 April 2021 Employment Judge Davies, stated that the claimant could not rely upon a polish recording and must provide an English translation by 26 April 2021. The claimant did not respond and did not provide a translation to the respondent. Mr. Dunn submitted the order of Employment Judge Davies was a proper and reasonable order and the respondent and Employment Judge did not collude. Further, on behalf of the respondent, Mr. Dunn submitted that the claimant's allegation that she is unaware of the content bundle is not correct. The trial bundle was sent to the claimant on 16 April 2021 by hard copy and by electronic copy. The claimant's position was contradictory, on the one hand she says she does not know what is in the bundle/has not received it and on the other hand, says documents she sent to the respondent were not included in the bundle. The claimant has also alleged that she was treated unequally and unjustly; these are serious allegations unsupported by any evidence.
6. Mr. Dunn. On behalf of the respondent submitted that the claimant knew on 16 December 2020 at the preliminary hearing the dates of the substantive final hearing (6 and 7 May 2020). She was given leave to apply to vacate the hearing within 7 days and she did not do so. A checklist was also provided within the case management order as to when preparatory steps should be taken for the trial. Further a notice of hearing was sent to the claimant dated 17 December 2020 setting out the dates of the final hearing.

The claimant knows about the dates of this hearing and has decided not to engage in the hearing. Further, pursuant to the case management order, the claimant was required to provide particulars of her constructive unfair dismissal claim by 6 January 2021. The claimant provided a 15 page document. The respondent raised this with the Employment Tribunal by letter dated 19 January 2021 and contended that the claimant had in fact added in new matters and did not really particularise the claim. The respondent stated that the claimant had failed to comply with the case management order and particularise her claim and sought an unless order. Employment Judge Wade responded to this on 16 February 2021 stating that the claimant's particulars would be treated as her witness statement and a fair hearing can still take place. The claims are limited to those reasonably discernible in the claim form as identified by Employment Judge Wedderspoon. Mr. Dunn stated that the claimant was provided with a signed copy of the appraisal at page 123. The claimant did not acknowledge this. She was sent a CVP link from the Tribunal yesterday.

7. Mr. Dunn submitted that the claimant has not sought an adjournment of the case but decided not to engage in the hearing without providing a proper explanation. She has made serious allegations without evidence. He further submitted that the failure to attend meetings and not to respond to correspondence is a feature of her conduct generally. He submitted that the claimant raised a grievance in April 2020. She failed to attend the grievance hearing and failed to give evidence so that the grievance could be investigated. At the grievance appeal, the claimant made serious allegations against the respondent including manipulation, fraud, dishonesty and forgery. Similarly, it was submitted the claimant has made unsubstantiated and serious allegations against the respondent and employment Tribunal system but then fails to provide any evidence to support her contentions.
8. Mr. Dunn submitted on behalf of the respondent that pursuant to Rule 47 of the Rules the Tribunal having made practical enquiries where a party failed to attend, has the discretion to dismiss the claim. He submitted there was no adequate reason given by the claimant for non-attendance; the Tribunal had made enquiries with no response from the claimant; pursuant to the overriding objective the Tribunal should dismiss the claim. It was just and proportionate to dismiss so to place the parties on an equal footing; senior employees of the respondent had attended today's hearing as well as the respondent's legal team. The matter of saving expense should be considered; a future listing would require further time for the claimant to provide an explanation. Alternatively, he suggested an unless order could be made.
9. The Employment Judge sought clarification from the respondent and its understanding of the claimant's email. The respondent clarified the claimant had indicated that she was not going to engage in the hearing but to seek redress outside the UK legal system. Further the claimant had sought to adjourn the hearing on 15 April 2021 on the basis that both parties were behind in respect of the timetable and she had started a new job. The respondent objected to the adjournment application. The application was refused on 19 April and sent to the parties on 20 April 2021. The claimant

did not indicate she was unhappy with the orders from the Preliminary Hearing in December 2020 or any other order of the Tribunal until today.

The Law

10. Rule 47 of Schedule 1 of the Rules states as follows :-
“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.”
11. Rule 37 of Schedule 1 of the Rules states :
“At any stage of the proceedings either on its own initiative or on the application of a party a Tribunal may strike out all or part of a claim or response on any of the following grounds – (d)that it has not been actively pursued..”. Pursuant to 37 (2) a party must be given a reasonable opportunity to make representations either in writing or at a hearing (if requested).
12. Rule 38 of Schedule 1 states
“An order may specify that if it is not complied with by the date specified the claim or response or part of it shall be dismissed without further order. ..”
13. In exercising its discretion to make any of the above orders the Tribunal must take into account the overriding objective at rule 2 of schedule 1 which states
“The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes so far as practicable – (a)ensuring that the parties are on an equal footing; (b)dealing with cases in ways which are proportionate to the complexity and importance of the issues (c)avoiding unnecessary formality and seeking flexibility in the proceedings (d)avoiding delay so far as compatible with proper consideration of the issues; and (e)saving expense.

Conclusions

14. The claimant was aware of the two day final hearing listing and has decided not to participate in the final hearing. At the preliminary hearing on 16 December 2020 when the claimant attended representing herself, the case was listed for a final hearing on 6 and 7 May 2021 by CVP. The parties were given leave to apply within 7 days to vacate and re-list the hearing and/or re-list as an in-person hearing. No application was made to vacate the hearing. The record of the Preliminary Hearing was sent to the parties on 27 December 2020. By Notice dated 17 December 2020 (sent to the parties on the same date by email), the parties were notified of the dates of the listing of the final hearing. The claimant sought to adjourn the final hearing by application dated 15 April 2021. This was refused by order dated 19 April 2021. The claimant was informed by the Employment Tribunal she could, not rely upon polish recordings she needed to provide English translations by 26 April 2021. This was a proper and reasonable order by the Employment Tribunal and consistent with the overriding objective. The claimant had available to her a bundle in paper form and electronic form.

The claimant's documents were included in the bundle. The claimant has failed to identify any of her documents not included in the final bundle. She has been provided with witness statements from the respondent. A witness is able to sign a witness statement on the first day of trial.

15. The claimant did not attend the hearing because she has chosen not to participate in the final hearing on the basis of serious allegations that there was collusion between the Employment Judge and the respondent of "making up an order"; by implication this is the latest order from the Employment Tribunal dated 19 April 2021 when the claimant's application to adjourn was refused and she was ordered to provide English translations of covert recordings. The Tribunal attempted to make contact with the claimant today by email so she could be heard but she did not respond.
16. The claimant's allegations are serious and strike at the heart of the integrity of the Tribunal system but are unsupported with any evidence whatsoever of impropriety or collusion between solicitors and the judiciary. The claimant was given a further opportunity to engage with the process today but failed to respond. The respondent's witnesses attended today taking time out of their working day along with a legal team to represent the respondent; this involves time, cost and stress on the part of lay witnesses. The trial has been listed for nearly 6 months and is ready to proceed on a two day listing. Delay should be avoided and expense saved where possible. Cases should be dealt with fairly and justly which applies to both the respondent and the claimant.
17. The claimant has expressed her wish not to participate in the hearing or in fact with the UK legal system; that is her choice to make which she has made clearly in the context of serious allegations of impropriety (made for the first time today) and in the context that her application to adjourn last month was refused. An unless order is not proportionate or appropriate bearing in mind the unequivocal email of the claimant's email of today's date. Further in the context of the claimant not wishing to participate it is unnecessary to consider an order under Rule 37(1)(d) of the Rules.
18. The Tribunal concluded that the claimant failed to attend the final hearing, she chose not to attend, was given a further opportunity to participate today (when the Tribunal emailed her); she failed to do so and it is in accordance with the overriding objective that the claimant's claims be dismissed.

Employment Judge Wedderspoon

12 May 2021

Note - Reasons for the order have been given orally at the hearing. The claimant did not attend. These are the full written reasons for the order.