



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss T Gannon

**First Respondent:** Gill Akrupe / Social Interest Group

**Second Respondent:** Rav Grewal / Tumara Care Limited

**Heard at:** London Central by video (CVP)

**On:** 30 July 2021

**Before:** Employment Judge E Burns (sitting alone)

## **Appearances:**

**For the Claimant:** Did not attend

**For the First Respondent(s):** Miss L Kaye, counsel

**For the Second Respondent(s):** Ms Hayley Marles, solicitor

## **RESERVED JUDGMENT**

The claimant's claims against all of the respondents named above are dismissed in full under rule 47 of The Employment Tribunal Rules of Procedure 2013 (the "Rules") because of her failure to attend or be represented at today's preliminary hearing.

## **REASONS**

### **The Claimant's Claims**

1. The claimant commenced and concluded a period of early conciliation against Social Interest Group on 23 November 2020. I have not seen any evidence that she has sought to conciliate against any other potential respondents.
2. On the same day, 23 November 2020, the claimant presented a Claim Form which appears to bring claims against two of the following four potential respondents:
  - (1) Gill Akrupe
  - (2) Social Interest Group
  - (3) Rav Grewal; and
  - (4) Tumara Care Limited

3. Social Interest Group is a company limited by guaranteed and a registered charity. Gill Akrupe is a trustee and director of Social Interest Group. Tumara Care Limited is an employment agency. Rav Grewal is the owner and director of Tumara Care Limited.
4. Unfortunately, due to the Covid-19 pandemic, there was a lengthy delay between the claimant submitting the Claim Form and it being processed by the tribunal. The tribunal sent an acknowledgement of the Claim Form to the claimant and served it on the respondents on 4 May 2021.
5. A Notice of Claim letter identifying two respondents as follows:
  - (1) Gill Akrupe
  - (2) Rav Gerwal Tumara Carewas sent by post on 4 May 2021 stating that Responses needed to be presented by 1 June 2021. As there was only an Acas conciliation certificate for Social Interest Group it is not clear to me why the respondents were identified in this way.
6. A Response was presented on behalf of Social Interest Group by its solicitor on 18 May 2021, seeking clarity as to whether the claim was intended to be against the company or the individual or both.
7. On 26 May 2021, Rav Grewal wrote to the tribunal to apply for an extension of time to present a response. Her application was granted by Legal Officer Mohammed Ali and Ms Grewal was given an extension until 14 June 2021. A Response was subsequently presented on behalf of Tumara Care Limited on 11 June 2021 by its solicitor. The second respondent also sought clarity as to whether the claimant intended to bring her claims against the company or the individual or both.
8. The claimant has subsequently challenged the extension of time granted by the legal officer. This issue was outstanding and would have been considered at today's hearing.
9. From the Claim Form and the Responses, I have gleaned that the claimant worked in the role of Service Manager at the Penrose Croydon service run by Social Interest Group from 3 July 2020 to 13 November 2020. The respondents say this was a temporary engagement as an agency worker, the agency being Tumara Care Limited.
10. On 13 November 2020, the first respondent notified the second respondent that it did not wish the claimant to return on 16 November 2020. The second respondent communicated this to the claimant, which brought the engagement immediately to an end. The first respondent had also made a conditional offer of employment to the claimant on 4 September 2020 which it retracted following the termination of the engagement.

11. The central dispute appears to concern why the claimant's engagement was brought to an end. The claimant's claim includes a long list of complaints, however. In her case management agenda, she listed them as including:
- Race discrimination
  - Disability discrimination
  - Notice pay
  - Protected disclosure /
  - Whistleblowing
  - Harassment
  - Wrongful dismissal
  - Bullying
  - Abuse of process
  - Breach of contract
  - Failure to adhere to applied policy, procedure and or rule
  - Reputational damage
  - Actual and forecasted loss of earnings/loss of opportunity
  - Intentional infliction of harm
12. The claimant prepared a detailed draft list of issues to accompany the agenda. That document has a number of questions under the following headings:
- Jurisdiction
  - Employment Status
  - Wrongful dismissal (breach of contract)
  - Public interest disclosures (s.43B, s.47B, and s.103A Employment Rights Act 1996)
  - Direct race discrimination (s.13 EqA)
  - Indirect race discrimination (s.19 EqA)
  - Disabled status (s.6 EqA)
  - Knowledge of disability
  - Direct disability discrimination (s.13 EqA)
  - Indirect disability discrimination (s.19 EqA)
  - Harassment (s.26 EqA)
13. Many of the questions ask about matters which are outside of the tribunal's jurisdiction. By way of an example, one such question is:
- “Are each of the Respondent(s), by way of their failure, refusal and or unwillingness to deploy swift and proportionate action in response to the direct race related discrimination committed against me, and as proven by way of their own internal investigations, guilty of a hate crime?”*
14. The following information is missing from the claimant's Claim Form, agenda and list of issues:
- Which respondents does she wish to pursue the claim against?
  - Who does she was her employer?

- What does she say is the nature of the condition she relies upon for her disability claim?
- What disclosures of information does she rely upon for her whistleblowing claims, when did she make these and to whom?
- What detriments does she say she was subjected to because she made protected disclosures, when did these take place and who was responsible?
- What is the treatment she complains of by way of direct race or disability discrimination, when did this happen and who was responsible?
- What does she say the potential respondents did that resulted in her being indirectly discriminated against related to disability or race?
- What was the unwanted conduct she relies upon for the purposes of her harassment claim, when did this take and who was responsible?

### **The Claimant's Failure to Attend Today's Hearing**

15. There was a case management hearing due to take place on 24 June 2021. It was allocated to me. I reviewed the documentation collated by the tribunal administration in advance of the hearing and identified that the claimant had written to the tribunal on 17 June 2021 asking whether the case management hearing could proceed as she had not received copies of the respondents' Responses from the tribunal.
16. At that time, the Responses had not been formally accepted or served on the claimant. In light of the claimant's letter, I wrote to the parties to try to establish if the hearing could be effective.
17. From the ensuing correspondence, it appeared to me that the preliminary hearing could proceed. The claimant had been sent the Responses, together with a draft case management agenda and a draft list of issues by the respondents' representatives. She had prepared her own case management agenda and an alternative list of issues. I was provided with copies of all these documents.
18. I was keen not to create any additional delay in progressing the claim and therefore communicated on 23 June 2021. that it appeared to me that the hearing could proceed. The claimant replied saying that she would be unable to attend. She said that she had not received the video hearing joining instructions and, more significantly, due to the "*lack of surety around whether or not the Hearing was to proceed.... [she had] since taken on commitments of a time sensitive nature, that regrettably [precluded her] from attendance.*"
19. I wrote to the Claimant at 20:07 on 23 June 2021 (copying in the other parties) to say:

"Dear Miss Gannon

I have attached the email I sent earlier today so that you have the original email which explains that the hearing will be conducted by video. The joining instructions with a link are attached to the email.

The hearing is scheduled to be at 2 pm. I anticipate it will last around an hour and a half.

Your correspondence of 17 June 2021 did not clearly request a postponement. I interpreted it as saying that, as you had not received the ET3s from either of the respondents, it would be difficult for you to attend a case management hearing. According to the information I have been sent today, you have been sent both ET3s and so will be aware of the respondents' respective positions. The hearing is a case management hearing only where we discuss the issues in the case and decide how it should proceed. It is intended to be a collaborative discussion, where I can explain any aspect of the tribunal procedure that the parties do not understand. It is essential that all parties attend.

As indicated previously, the tribunal expects parties to ensure that they are available to attend hearings until they receive formal confirmation of a postponement. The reason for this is to enable us to allocate judicial resources appropriately. This is not possible when cases are postponed with less than 48 hours before the hearing date. I appreciate that you may not have realised this, however.

If you are not able to rearrange your commitments, I will on this occasion postpone the hearing tomorrow. However, I ask that you reflect on this overnight and confirm your position to me and the respondent's representatives by 9 am tomorrow morning. If the hearing is postponed, I would like to rearrange it for the afternoon of 30 July at 2pm. Please would all parties confirm whether this date and time are suitable.

Kind regards

Employment Judge E Burns"

20. When she had not replied by 13:03 the following day, I postponed the hearing the saying:

"In the absence of a response from the claimant (to my email sent at 20:07 yesterday) confirming her attendance today, I am reluctantly postponing the case management hearing. The case management hearing will be rearranged for **2 pm on 30 July 2021**. I will ask that the case is reserved to me meaning that it will be conducted by video. A notice of hearing will be sent out shortly."

21. The claimant replied to apologise for not responding saying she was not receiving emails from my skype email address. She also said that she had a medical appointment on 30 June 2021 and attached evidence of this. I replied to say that the hearing was listed for July and not June. I ensured this email was sent by the administration rather than my skype email address.

22. A notice of hearing was sent by email to the parties by the administration on 28 June 2021.

23. On 27 July 2021, the claimant wrote to the tribunal saying:

*"A Preliminary Hearing in respect of those matters above referenced is scheduled to take place upon the afternoon of Friday July 30<sup>th</sup> 2021.*

*The purpose of my application today, July 27<sup>th</sup> 2021, is to respectfully request that in place of on the day attendance, I am permitted to make written representations to Her Majesty's Courts and Tribunals Service thereafter, and as pertains to any preliminary issue(s).*

*I thank you for both your time by way of your revision of this correspondence, and your wider consideration of the issues herein detailed and or otherwise discussed.”*

The respondents objected and applied for an order:

*“That unless the Claimant attends the Preliminary Hearing on 30 July 2021, her claim shall be dismissed on the grounds of her non-compliance with the Tribunal orders, that she is not actively pursuing her claim, and/or that she is conducting the proceedings in an unreasonable manner.”*

24. The correspondence was referred to me. The response sent on my behalf said:

*“Employment Judge E Burns does not grant the [claimant’s] application. The purpose of a case management hearing is to enable a discussion to take place about the claim and what preparatory steps needed to be taken to ensure the claim is ready to be heard at a hearing. There are several aspects of the claim that are unclear and need clarification. The most effective way to obtain the clarification sought is at a case management hearing. The need for attendance by the parties was made clear to the claimant when the last case management hearing had to be postponed. The claimant has given no reason why she cannot attend the hearing. The hearing will proceed, and the claimant is expected to attend.*

*If she is unable to attend by video due to a lack of facilities, the tribunal is able to accommodate an in-person hearing or a telephone hearing. She is required to reply urgently to say if an alternative format of hearing is required.*

*Employment Judge E Burns declines to make an unless order at this stage, but will consider any application the respondents may wish to make if the claimant does not attend the hearing.”*

### **Decision to Dismiss the Claims**

25. The claimant did not attend today’s hearing.
26. The respondents made an application at the hearing that I should dismiss the claimant’s claims under rule 47 because of her failure to attend.
27. Rule 47 says:

*“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.”*

28. I am satisfied that the claimant received the notice of hearing and the joining instructions for the hearing. She was aware the hearing was taking place as her application to submit written representations instead of attending the hearing refers to it.
29. The claimant had provided no explanation for her non-attendance.
30. I enquired of the respondents' representatives whether the claimant had communicated with them about her non-attendance. She had not. I also had a clerk check if the tribunal had received any emails had she sent in written submissions. The tribunal was unable to try telephoning her as there are no telephone numbers on her Claim Form..
31. I also enquired of the respondents' representatives whether they were aware of the nature of the condition the claimant relies on in connection with her claim for disability discrimination claim. They confirmed that none of the respondents were aware of the claimant having a medical condition.
32. I noted that in the relevant section of the claim form asking about disability, the claimant has ticked the 'No' box and had not indicated that she required any reasonable adjustments. She had, however, ticked the box to say that she could participate in a video hearing.
33. I decided to grant the respondent's application because:
  - The importance of attending a case management hearing in person had been impressed upon the claimant in correspondence from the tribunal – both earlier in connection with the previous case management hearing and this week in connection with today's case management hearing
  - The claimant had had an opportunity on two occasions to progress her claim, but had failed to do so
  - Her reason for not attending the earlier case management hearing lacked a degree of credibility, but I nevertheless postponed the hearing to a date when there was no reason she could not attend in recognition of her being a litigant in person
  - The claimant did not provide an explanation for her non-attendance
  - The respondents have been put to the cost of preparing for two case management hearings, but the case has not been able to progress. I note that the respondents have reserved their position on costs.
  - The respondent's representatives told me that the claimant had refused to provide basic information about her claim when asked her, such as the medical condition she is relying on as the basis for her disability claim
34. My conclusion was that the claimant has not actively pursued her claim and had no intention of doing so.

35. It is, of course, possible that the claimant had a valid reason for not attending today's hearing and was somehow prevented from communicating it. If this was the case, she is entitled to apply under rule 70 for my decision to be revoked. I set out below the relevant provisions for her information:

**“Rule 70**

A Tribunal may .....on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

**Rule 71**

... an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record .....of the original decision was sent to the parties .....and shall set out why reconsideration of the original decision is necessary.

**Rule 72**

- (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.
  - (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
  - (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision ....”
36. Unless a well-founded application for reconsideration, supported with evidence, is made within the time limit, my decision brings the claim to an end.



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**Employment Judge E Burns  
30 July 2021**

Sent to the parties on: 04/08/2021

For the Tribunals Office