



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr M Ostrowski

Tesco Stores Limited

**Heard: By telephone**

**On: 1 September 2021**

**Before: Employment Judge JM Wade**

**Appearance:**

**For the Claimant: No attendance**

**For the Respondent: Ms A Skeoch (solicitor)**

## JUDGMENT

The claimant's claims of a failure to pay holiday pay, race discrimination, victimisation and whistleblowing detriment are dismissed upon his failure to attend or be represented at today's preliminary hearing, pursuant to Rule 47.

## REASONS

1 The claimant was formerly a flexible warehouse operative and has not attended for a private case management hearing today, having presented a claim form on 12 May 2021. That claim form was unclear but in outline, a number of allegations/claims (as described above) can be discerned.

2 An Employment Judge ordered further information be provided by 30 July 2021. The claimant has not provided that information. Ms Skeoch tells me today that she had emailed the claimant to chase that information this week, but has had no reply. There appears to be no contact from him to the Tribunal since 18 May 2021.

3 Today, when neither the claimant, nor Ms Skeoch nor the interpreter had attended by 10.05 I asked our clerk to telephone all. The claimant did not answer the call to a mobile number and the call went to voicemail. A message was left and that was followed up by an email. Ms Skeoch attended and apologised for lateness, confirming she had received the notice of hearing to her email inbox. The email to the claimant was sent to the address last used by him and given by him in his claim form. By 10.35 the claimant had still not attended.

4 I then discussed the actions available to the Tribunal with Ms Skeoch including continuing in the claimant's absence, seeking to identify the claims without

the claimant's further information, postponing and re-listing, or dismissing pursuant to Rule 47. She contended firstly for dismissal. There was also the option of an Unless Order or strike out warning.

5 Weighing the options available to me I took into account that there is a fundamental right in the interests of justice to be heard before a claim is dismissed, or more accurately to have a reasonable opportunity to be heard. The claimant has had that opportunity because he has had the hearing details in good time, he has had the opportunity to apply for a postponement and has not done so, and he has been reminded this morning by our clerk.

6 The respondent and the Tribunal has been put to cost. The allegations the claimant makes are serious and carry stigma - relating to health and safety and race discrimination - and the respondent's witnesses no doubt bear the worry of that. I also take into account other Tribunal users, who need their cases determining and who do comply with Orders. It appears English is not the claimant's first language but his claim form details are typed in English and run to 32 close typed pages, to which sensible response is difficult. Use of the Tribunal's resources must be deployed fairly and it is not fair in these circumstances to extend the use of its resources in this case.

7 If misfortune has prevented attendance then the claimant has the opportunity to challenge this decision providing evidence of what intervened to prevent him attending or seeking a postponement. The prejudice to him is therefore moderated. I also bear in mind that the prejudice in dismissing unclear claims is less than the prejudice in dismissing a clear claim with good arguable prospects. That is not the case here. In all the circumstances of the case it is in the interests of justice to dismiss the claim. The claimant had not attended by the time the hearing terminated at 10.37am (or thereabouts).

**Dated: 1 September 2021**

Employment Judge JM Wade

Public access to employment tribunal decisions (judgments and reasons for the judgments) are published, in full, online shortly after a copy has been sent to the parties in a case.