



EMPLOYMENT TRIBUNALS

Claimant

Mr Robin Lottrie

v

Respondent

Network Rail Infrastructure Limited

Heard at: Watford (by CVP)

On: 9 November 2021

Before: Employment Judge Alliot (sitting alone)

Appearances

For the claimant: Did not attend

For the respondent: Mr Thomas Cordrey (Counsel)

JUDGMENT

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

The judgment of the tribunal is that:

1. The claimant’s claim is struck out.

REASONS

The claimant’s non-attendance

1. Notice of this hearing was sent out on 3 May 2021. It has been listed for a three day full merits hearing. The claimant has therefore had six month’s notice of it.
2. The CVP link was sent to the claimant by email on 8 November 2021.
3. At 10am, the scheduled start time for this hearing, the claimant was not in attendance. Accordingly, I adjourned to 10.45 for enquiries to be made of him.
4. The court clerk telephoned the claimant and the gist of what she was told is as follows: The claimant stated that he was “out and about”. That he had a

difficult year, but he had been to the Old Bailey as his daughter's partner had been a victim of crime, that his mother and grandmother had passed away and that he had childcare commitments. The claimant said he would see what he could do about joining the hearing via his mobile phone. Being "out and about" meant that he did not have access to a laptop. The claimant was told he could email in any representations he wanted to make.

5. At the resumption of this hearing the claimant did not attend by CVP and had not sent in an email.
6. In my judgment the claimant has provided no valid reason for his absence or that would require an adjournment in the interests of justice.

The claimant's compliance with tribunal orders

7. At a preliminary hearing heard on 4 May 2020, the parties were ordered to exchange witness statements by 22 January 2021. By agreement, that deadline was extended to 24 February 2021. At the time, the hearing was scheduled for 15-17 March 2021. That hearing was postponed due to the claimant suffering a bereavement.
8. As already recorded, this hearing was listed and notice given to the parties on 3 May 2021.
9. On 28 June 2021, the claimant's representative confirmed to the tribunal and the respondent's representatives that they were no longer instructed to act on behalf of the claimant. Therefore, the claimant was a litigant in person.
10. On 29 September 2021, the respondent's instructing solicitors emailed the claimant to ask when he would be in a position to exchange witness statements. The claimant made no response.
11. On 8 October 2021, the respondent's instructing solicitors sent a second email seeking to arrange for a date for exchange of witness statements. The respondent also requested documentation in relation to mitigation. The claimant did not respond to those emails.
12. On 13 October 2021, the respondent's instructing solicitors sent a third email to the claimant requesting a response and asking him if he intended to proceed with his claim. On the same day the claimant responded that he did intend to proceed with the claim. The claimant said he would get back to the respondent by 18 October 2021 but did not.
13. On 20 October 2021, the respondent's instructing solicitors made an application for a strike out order and/or unless order. Regional Employment Judge Foxwell directed that that application would be heard at the start of this full merits hearing.
14. On 21 October 2021, the respondent's instructing solicitor sent the bundle to the claimant and received a confirmation that it had been downloaded and the single comment from the claimant "I hope this is right the bundle pack".

15. In breach of the tribunal order, the claimant has not served a witness statement.

Strike out

16. In my judgment, in failing to attend this hearing or apply in advance for an adjournment with an explanation as to why he could not attend or provide and explanation today why he could not attend and in failing to serve a witness statement, the manner in which the claimant has conducted these proceedings has been unreasonable. Accordingly, pursuant to Rule 37(1)(b) of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013, I strike out the whole of the claimant's claim.
17. Further, in failing to serve a witness statement, the claimant has failed to comply with an important order of the tribunal and accordingly, I strike out the whole of the claimant's claim pursuant to Rule 37(1)(c) of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013
18. Further, the claimant has failed to attend at this hearing and I dismiss the claim pursuant to Rule 47 of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013.

Reconsideration

19. Pursuant to Rule 71, Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013, the claimant may apply for reconsideration of this judgment. Such an application must be made in writing within 14 days of the date on which this judgement was sent to him. If the claimant makes such an application he needs to set out why reconsideration of the original decision is necessary. Any such application should be accompanied by a statement from the claimant explaining why he has not exchanged a witness statement with the respondent and why he was not in attendance at this hearing.

Employment Judge Allcott

Date:29/11/2021

Sent to the parties on: 3/12/2021

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For the Tribunal Office